

REPORT OF THE DIRECTOR-GENERAL

Freedom of association in practice: Lessons learned

Global Report under the follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work

INTERNATIONAL LABOUR CONFERENCE
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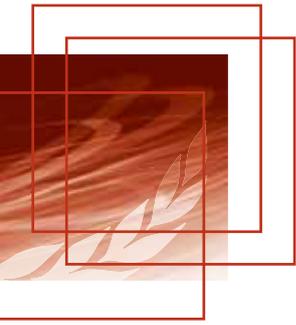
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Executive summary

This Global Report provides a global overview of the application and realization of universal principles and rights concerning freedom of association and collective bargaining in a year which makes the tenth anniversary of the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, and the 60th anniversary of the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

All workers and employers have the right to establish and to join organizations of their choice to promote and defend their respective interests, and to negotiate collectively with the other party. They should be able to do this freely, without interference by the other party or the State. Freedom of association is a fundamental human right and, together with collective bargaining rights, a core ILO value. The rights to organize and to bargain collectively are enabling rights that make it possible to promote democracy, sound labour market governance and decent conditions at work.

This Global Report, like the two earlier Global Reports on the same subject published in 2000 and 2004, is based on the premise that achieving the ILO's goal of decent work for all women and men in conditions of freedom, equity, security and human dignity is only possible if they can have a say in what this means for them. Freedom of association and the right to organize and bargain collectively are fundamental human rights, the exercise of which has a major impact on work and living conditions, as well as on the development and progress of economic and social systems.

A conducive environment

A legislative framework which provides the necessary protections and guarantees, institutions to facilitate collective bargaining and address possible conflicts, an efficient labour administration, and strong and effective workers' and employers' organizations, are the main elements of a conducive and enabling environment for freedom of association and collective bargaining. The role of governments in providing for an enabling environment is of paramount importance.

Ratification of Conventions

Ratification of the international labour Conventions Nos 87 and 98 that deal with freedom of association and collective bargaining expresses a commitment by a government to implement the principles and rights concerned. Progress in achieving wider ratification has been made. Nonetheless, universal ratification needs further efforts. By 31 December 2007 the total number of ratifications of Conventions Nos 87 and 98 stood at 148 and 158 member States respectively out of the total ILO membership of 181 States. It should be a matter of concern that Convention No. 87 has now become the least ratified of all eight fundamental Conventions. This Global Report invites further reflection on ways to remedy the situation.

The application of rights in practice

While ratification is an important element, the real challenges lie in the effective implementation of Conventions. The supervisory work of the ILO shows the need for increased efforts to promote respect for these rights and implementation of their principles

in both ratifying and non-ratifying States. The Report identifies some significant positive developments. Complaints concerning lack of civil liberties have diminished in comparison with problems arising from the application of the relevant rights and principles. The recognition of the importance of these rights appears to have strengthened, but the problems of guaranteeing them in practice remain.

Within this overall trend, there are serious and major cases involving large-scale dismissals, harassment, imprisonment and violence, including killings of trade unionists. Trade unions and employers' organizations continue to experience obstacles in their day-to-day activities. Problems arise with: restrictions on the establishment of organizations or the right to join them; interference by governments and other parties in the functioning of employers' and workers' organizations; restrictions on collective bargaining; discrimination against union members; and undue restrictions on the right to strike.

In recent years the ILO supervisory bodies have recorded an increase in the number of complaints concerning acts of anti-union discrimination and interference. These allegations concern prejudicial acts (including dismissals, demotions, transfers and refusals to hire) against trade union officers and members.

Government intervention in trade union activities is a recurrent problem. Less visible but equally pernicious restrictions of freedom of association exist where this right is denied or discouraged in practice as a result of pressure and interference in the activities of trade unions. Registration systems still allow the authorities to exercise undue discretion. Restrictions frequently take the form of excessively high membership requirements or requirements for previous authorization. Many countries have in fact abandoned legislation or practice which guarantees the dominant or monopoly position of one union, although significant exceptions still remain.

Several countries continue to exclude important categories of workers, such as public servants, agricultural workers, domestic workers and seafarers, from the right to bargain collectively. There has been progress, especially with regard to public employees and rural workers. In some cases governments interfere in collective bargaining by subjecting collective agreements to government economic policy or approval, by introducing compulsory arbitration to end collective disputes, or by promoting individual employment contracts.

The role of governments

An enabling environment for freedom of association and collective bargaining calls for proper legislation and effective institutions, including for dispute resolution. Political will is essential both for enacting the right legislation and for proper implementation of the law. Governments also need the necessary administrative and technical capacity to uphold these principles. Strong and efficient labour administrations are important for the promotion of collective bargaining.

The context of globalization

Globalization has resulted in more intense competition. Structural and technological changes pose unprecedented challenges to today's industries and the traditional methods of representation and negotiation for both workers and employers. Various studies demonstrate that respecting freedom of association and collective bargaining rights has a positive impact on competitiveness and economic performance. New bargaining strategies underline efficiency and productivity. Recent examples confirm the potential of collective bargaining, as a tool adaptable to emerging needs, to respond successfully to new challenges.

Structural changes in employment

New challenges arise with new forms of work and new types of employment relations which divide the workforce into "core" and "contingent" workers within the same sector, industry or workplace. The precariousness resulting from atypical employment relationships calls on trade unions in particular to find new and innovative approaches to ensuring the coverage of the workers concerned. Structural changes in employment, in particular those resulting from privatization, new technologies, outsourcing and the extension of production chains, as well as new types of employment relationship, affect the exercise of the principles and rights of freedom of association and collective bargaining.

Levels of collective bargaining

Collective bargaining can take place at varying levels according to the country and sector. Some countries have differentiated multi-level bargaining systems in which levels of bargaining (intersectoral, sectoral and

company) are connected or coordinated with one other. Coordination of bargaining levels is recognized as a key issue in terms of achieving desirable macro- and microeconomic outcomes. The determination of the bargaining level, as with many other aspects of industrial relations, will continue to depend on specific national, sectoral or local circumstances.

Topics for collective bargaining

The agenda for collective bargaining is not confined to any particular set of items. Issues covered in collective bargaining mirror changes in the labour market. New issues such as telework, employment relationships, protection of personal data, alternative dispute settlement mechanisms, and HIV/AIDS, are also taken up. An expanding topic for collective bargaining has been trade-offs negotiated by trade unions in exchange for commitments by employers to retain production at existing sites.

Other means of dialogue

Other means of dialogue, mostly complementing collective bargaining, have been evolving. However, freedom of association is a prerequisite for any type of collective representation and for genuine engagement in bipartite and tripartite dialogue.

Institutions and initiatives at the international level

Growing integration of economies and interdependence of States have given further impetus to international efforts. A broad set of initiatives, ranging from company codes of conduct and international framework agreements (IFAs) to bilateral and multilateral government initiatives, has been developed. The actors at the international level, in particular international workers' and employers' organizations, have also taken steps to enhance their effectiveness. Strength has in many cases been sought through unification and cooperation.

The trend towards concluding IFAs has grown over the past four years and is likely to continue. By December 2007, the number of such agreements had reached 61 and covered approximately 5 million workers. Development finance institutions (DFIs), including the World Bank and regional development banks, have over the last few years paid greater attention to labour standards in their operations. DFIs

increasingly require borrowers to adhere to national labour laws and international labour standards. This reflects a recognition of the fact that respecting freedom of association and collective bargaining rights is also sound economic policy.

Corporate social responsibility (CSR) initiatives can promote respect for labour standards. The challenge is to make sure that they are developed with the participation of representative trade unions and include guarantees that freedom of association and collective bargaining will be respected.

Bilateral and multilateral free trade agreements (FTAs), as well as regional economic integration arrangements, increasingly contain social and labour provisions that refer to international labour standards and include freedom of association and collective bargaining principles.

The need to combat exclusion

Certain sectors of economic activity and categories of workers or employers are more difficult to organize. That may be because of a lack of proper legislation or practical difficulties. For instance, factors relating to location or other technical reasons create difficulties in organizing agricultural workers. In the public service, there are several examples of restrictions on the right of employees to organize, bargain collectively or engage in industrial action. This concerns above all services that are deemed to be "essential". In spite of various advances, teachers and health service workers continue to face obstacles in exercising their right to organize and bargain collectively. Nevertheless, much has been achieved in those sectors in many member States, proving that progress is possible if there is the will to achieve it.

Sustaining the move to organize the unorganized

Well-functioning labour markets enhance economic productivity, generate incomes, and promote social justice, industrial peace and sustainable social and economic development. These objectives cannot be achieved if large segments are excluded from the protection and privileges provided in law and practice.

The trade unions aim to organize the unorganized. These include: workers in new industries and sectors; those in various non-regular employment relationships; workers in export processing zones (EPZs) and the informal economy; and migrant workers. Greater attention is being paid to membership of women and

young people. These are combined with increased cooperation and mergers among unions at national and international levels, to gain strength and to mobilize their forces to meet the challenges of globalization. Meanwhile, globalization has made it possible for trade unions to make their voice heard beyond borders, throughout production chains, in international markets and by a wider audience.

In some EPZs, the rights to organize and bargain collectively exist in legislation but not in practice. In spite of recent progress in this area, it is evident that stronger labour law and enforcement and genuine collective bargaining are needed to ensure that the still limited cases of success become the norm.

In some countries a large majority of workers are in the informal economy, and the informality they face consists not only of a lack of legal protections but also a lack of collective voice. In general, union coverage is low and collective bargaining rarely takes place. The gap in application of labour standards in the informal economy is a reality, lending itself in many cases to lower wages, longer working hours, hazardous conditions and the abuse of workers. For freedom of association and collective bargaining to become effective in the informal economy, they must be anchored through the rule of law. Governments have a primary role in this regard.

Increasing labour mobility poses important challenges for trade unions. These challenges are three-fold: defending the rights of migrant workers to organize and bargain collectively, including those in irregular situations; organizing them; and upholding decent work conditions for these workers. Legislation in a number of countries still limits trade union rights for migrant workers. Membership in mainstream and strong trade unions and federations alongside with nationals gives migrants greater voice in society and the world of work, thereby ensuring their equal rights and providing a disincentive to forced labour and trafficking of migrants.

The ILO responds with technical assistance

ILO assistance comes in the form of advocacy, awareness raising, training, advisory services and technical cooperation for development of institutions and capacity building. Results are obtained through six main instruments of change: labour law reform; building the capacity of labour administrations; strengthening employers' and workers' organizations; developing tripartism and institution building; preventing and settling disputes; and advocacy and information.

Building the capacity of ILO constituents to give effect to the principles and rights on freedom of association and collective bargaining is essential. The ILO Declaration and its promotional follow-up mechanisms are designed to benefit both ratifying and non-ratifying member States. More recently, there has been a decline in extra-budgetary funding directly linked to technical cooperation on freedom of association and collective bargaining. Availability of funding, including extra-budgetary funds, is essential if the ILO is to assist member States effectively and therefore continued support of some donors in this regard should be acknowledged and recognized.

Evaluations and lessons learned

Evaluations of the impact and sustainability of projects on freedom of association and collective bargaining indicate that technical cooperation has been able to support governments by facilitating the drafting and adoption of legislation, while promoting the participation of the tripartite partners in the process. ILO projects have helped to establish and to improve social dialogue institutions. Training and support was provided for those with responsibility in labour dispute resolution, including members of the judiciary. Most significantly, the projects supported or provided training for large numbers of trade union members, informing them about new labour laws and educating them on basic negotiation and bargaining techniques. The projects have similarly supported or provided training to many employers on the same topics and facilitated tripartite discussions on various issues.

A plan of action for the next four years

The ILO will continue to explore the reasons for non-ratification and take appropriate action to help governments overcome obstacles to ratification. Of crucial importance is the assistance given to strengthen workers' and employers' organizations and the public institutions concerned to enable them to promote the rights and principles in question.

The Governing Body of the ILO in November 2008 will consider for adoption a plan of action on freedom of association and collective bargaining for the next four years, taking into account the Conference discussion on this Global Report. Since the first Global Report on this subject in 2000, the main tasks have become clear: promoting ratification and

effective implementation of the international labour standards related to freedom of association and the right to bargain collectively; services to constituents in areas that help them give effect to this principle; and strengthening the ILO's knowledge base to facilitate this work and its advocacy functions.

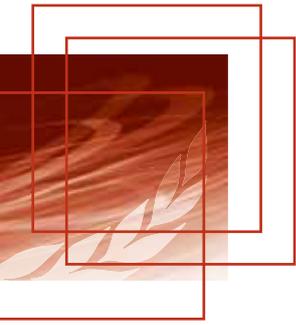
Promotion and realization of freedom of association and the effective recognition of the right to

organize are at the heart of the ILO mandate. They are both challenges and opportunities, as they are major means of finding solutions to other issues in the world work. They are essential to human rights, democracy and the social and economic development of countries. With the support and participation of its constituents, the ILO will continue to build on the progress made so far.

List of abbreviations

ACTRAV	Bureau for Workers' Activities
ACT/EMP	Bureau for Employers' Activities
ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
CEART	Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel
CFA	Committee on Freedom of Association
CSR	corporate social responsibility
DEG	German Investment and Development Company
DFI	development finance institution
DWCP	Decent Work Country Programme
EBRD	European Bank for Reconstruction and Development
EPZ	export processing zone
EWC	European Works Council
FDI	foreign direct investment
FMO	Netherlands Development Finance Company
FTA	free trade agreement
GFA	global framework agreement
GUF	Global Union federation
ICFTU	International Confederation of Free Trade Unions
IFA	international framework agreement
IFC	International Finance Corporation
IILS	International Institute for Labour Studies
IOE	International Organisation of Employers
ITUC	International Trade Union Confederation
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
MERCOSUR	Common Market of the Southern Cone
MNE	multinational enterprise
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
PAMODEC	programme to support the implementation of the Declaration
PROMALCO	Promotion of Management–Labour Co-operation
PSI	Public Services International
SLAREA	Strengthening Labour Relations in East Africa
SYNDICOOP	project for poverty reduction among unprotected informal economy workers through trade union–cooperative joint action
TUAC	Trade Union Advisory Committee (to the OECD)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNI	Union Network International
USAID	United States Agency for International Development
USDOL	United States Department of Labor
WCL	World Confederation of Labour
WHO	World Health Organization





Introduction

1. This Global Report appears at a significant time. The year 2008 marks the tenth anniversary of the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. It also sees the 60th anniversary of the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) are the main international instruments on the subject. The promotion of these Conventions across the globe and the deliberations by the ILO supervisory bodies on their implementation have influenced much national legislation and practice over the last six decades. The novel experience of the 1998 Declaration further mobilized international support for freedom of association and the effective recognition of the right to collective bargaining. It has maintained the focus on these issues in numerous ILO member States through technical cooperation programmes.

The 1998 Declaration

2. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up recalls that the ILO was founded on the conviction that social justice is essential to universal and lasting peace, and that economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote social justice and democratic institutions. It further recalled that the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim, freely and on the basis of equality of opportunity, their fair share of the wealth they have helped to generate, and to achieve their full human potential.

3. According to the Declaration, all Members of the ILO, even if they have not ratified all the relevant international labour Conventions, have an obligation arising from the very fact of membership of the Organization, to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

4. Adopted by the International Labour Conference, the highest decision-making body of the ILO, the Declaration is universal and applies equally to the entire membership of the Organization. It calls upon the Organization and the international community to assist member States, including those member States not yet in a position to ratify all the fundamental Conventions, to better respect, promote and realize the fundamental principles and rights at work.

The evolving landscape

5. This Global Report is the third covering the rights and principles of freedom of association and the effective recognition of the right to collective bargaining. The first Global Report, *Your voice at work*, was published in 2000. The second on this topic, *Organizing for social justice*, was submitted to the Conference in 2004.

6. *Your voice at work* dealt with collective representation in the changing world of work, and identified excluded or vulnerable groups such as agricultural

workers, public sector employees, persons working in export processing zones (EPZs), and domestic and migrant workers. It contained information and lessons learned from the supervisory work of the ILO as well as successes achieved in Poland, Indonesia and South Africa.

7. The second Global Report on the topic, *Organizing for social justice*, identified three interrelated steps in the process of progressive realization of rights to organize and bargain collectively, namely: ratification of international labour standards; establishing the necessary legal and administrative framework to enforce rights; and empowering the social partners, notably through technical cooperation and policy advice, to ensure that these rights are effectively respected.

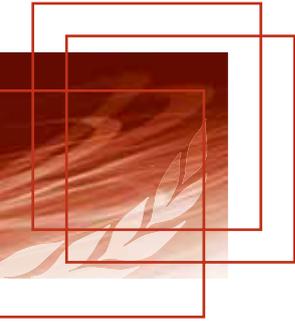
8. The present Global Report examines further these areas to provide a dynamic picture of global trends regarding the rights to organize and bargain collectively. Chapter I deals with various aspects of an enabling environment for freedom of association and collective bargaining rights. Recognizing the importance of ratification of the core Conventions on freedom of association and collective bargaining, Nos 87 and 98, even if ratification is not in itself a guarantee of their full application, the chapter provides an update on the ratification and implementation of these instruments. It highlights some examples

of progress in the implementation of the Conventions, as well as certain persistent failures to respect their provisions.

9. Chapter II provides an overview of recent developments concerning freedom of association and collective bargaining and highlights certain trends and aspects of collective bargaining. Chapter III discusses developments concerning international employers' and workers' organizations as well as initiatives such as corporate social responsibility (CSR) schemes and international framework agreements (IFAs). It also looks at free trade agreements (FTAs) and other inter-governmental action which refer to the rights to organize and collective bargaining. Chapter IV provides a sectoral perspective of the practice of the rights to organize and collective bargaining and goes on to discuss the situation of migrant workers and the informal economy. Attention was drawn to these two groups in the earlier Global Reports and the Conference debates on them. Chapter V reports on some ILO activities that have directly or indirectly addressed the promotion of those principles and rights in member States. The aim is to assess and draw lessons from those activities.

10. Chapter VI sketches out elements of a plan of action on freedom of association and collective bargaining for the next four years.





Chapter I

A conducive environment

11. The freedoms to associate and to bargain collectively are fundamental rights. They are rooted in the ILO Constitution and the Declaration of Philadelphia annexed to the ILO Constitution. Their core value has been reaffirmed by the international community, notably at the 1995 World Summit on Social Development in Copenhagen and in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. These enabling rights make it possible to promote and realize decent conditions at work.

12. Strong and independent workers' and employers' organizations, and the effective recognition of their right to engage in collective bargaining, are major tools for labour market governance. Collective bargaining is a way of attaining beneficial and productive solutions to potentially conflictual relations between workers and employers. It provides a means of building trust between the parties through negotiation and the articulation and satisfaction of the different interests of the negotiating partners. Collective bargaining plays this role by promoting peaceful, inclusive and democratic participation of representative workers' and employers' organizations.

13. The continuing importance of collective bargaining in the twenty-first century derives from its potential as a powerful tool for engagement between employers' and workers' organizations to address economic and social concerns. It can strengthen weak voices and reduce poverty and social disadvantage. This can be done by applying collective bargaining to the needs of the parties and promoting voluntary agreements that sustain the well-being of individuals and enterprises.

14. The recognition of the right to collective bargaining is the key to the representation of collective interests. It builds on freedom of association and renders collective representation meaningful. Collective bargaining can play an important role in enhancing enterprise performance, managing change and building harmonious industrial relations.

15. Collective bargaining, as a way for workers and employers to reach agreement on issues affecting the world of work, is inextricably linked to freedom of association. The right of workers and employers to establish their independent organizations is the basic prerequisite for collective bargaining and social dialogue. Nevertheless, these fundamental rights are still not enjoyed by millions around the world, and where these rights are recognized, there continue to be challenges in applying them. In some countries certain categories of workers are denied the right of association, and workers' and employers' organizations are illegally suspended or their internal affairs are subject to interference. In extreme cases trade unionists are threatened, arrested or even killed.

16. The exercise of the rights to freedom of association and collective bargaining requires a conducive and enabling environment. A legislative framework providing the necessary protections and guarantees, institutions to facilitate collective bargaining and address possible conflicts, efficient labour administrations and, very importantly, strong and effective workers' and employers' organizations, are the main elements of a conducive environment. The role of governments in providing for an enabling environment is of paramount importance.¹

1. Sections in this chapter explaining government action are based on information available to the ILO through its formal procedures. This was envisaged in the annex to the ILO Declaration of 1998, with a reference in paragraph III.B(1) to the information gathered and assessed in accordance with established procedures, and to the findings of annual reviews and the reports under article 22 of the Constitution.

Box 1.1
Ratification of ILO fundamental Conventions Nos 87 and 98 since 2003

<i>Ratifications in 2003</i>	Convention No. 87: Zimbabwe
	Convention No. 98: Armenia and New Zealand
<i>Ratifications in 2005</i>	Convention No. 87: Mauritius and Uganda
<i>Ratifications in 2006</i>	Convention No. 87: Armenia, El Salvador, Montenegro and Vanuatu
	Convention No. 98: El Salvador, Montenegro and Vanuatu
<i>Ratifications in 2007</i>	Convention No. 98: Kuwait

Progress in ratifications

17. Ratification of a Convention expresses a commitment by a State to observe the provisions of the Convention in its national law and practice. The fundamental Conventions on freedom of association and collective bargaining, Conventions Nos 87 and 98, have continued to receive new ratifications in recent years (see box 1.1 and figure 1.1).

18. By 31 December 2007, total ratifications of Conventions Nos 87 and 98 stood at 148 and 158 States, respectively, out of a total of 181 ILO member States.² These figures correspond to 82 per cent and 87 per cent, respectively, of the ILO's membership.

19. *Organizing for social justice* reported in 2004 that just under half the ILO member States in the Asia-Pacific region had ratified Convention No. 87 and just over half had ratified Convention No. 98, compared with ratification levels of between 85 and 98 per cent in Africa and the Americas, and up to 100 per cent for Europe. The most recent information underlines the same trends (see table 1.1). It should also be borne in mind that there are a number of new ILO member States in the Asia-Pacific region that have not yet ratified these two Conventions.

20. Another question that has also often been raised concerns the proportion of the global workforce or the percentage of the world population not yet covered by these Conventions. Some States of chief industrial importance and countries with large populations and areas are among those that have not ratified the two Conventions. This leaves a large proportion of

the world's employers and workers without the protection offered by these instruments in international law. About half the total labour force of ILO member States lives in five countries that have not yet ratified Convention No. 87 (Brazil, China, India, Islamic Republic of Iran and United States). No significant action towards ratification has been taken over the last four years in these countries.

21. In several countries, governments have reported that ratification of the two Conventions is envisaged and that the necessary steps are being taken to that end. Some governments indicate that they are encountering difficulties in bringing their national legislation or practice into compliance with the content of these two Conventions. Many of them have requested ILO assistance for drafting new legislation and creating necessary institutions.³

Comparison with other fundamental Conventions

22. The campaign to promote ratification of the fundamental Conventions, including Convention No. 87 and Convention No. 98, was launched in May 1995 following the Copenhagen World Summit for Social Development. The campaign aimed to achieve universal ratification of all the core Conventions. Table 1.2 presents the results of this campaign by the end of 2007.

23. With 181 member States, universal ratification would mean a total of 1,448 ratifications for eight

2. The countries that had not ratified Convention No. 87 by the end of 2007 were: Afghanistan, Bahrain, Brazil, Brunei Darussalam, China, Guinea-Bissau, India, Islamic Republic of Iran, Iraq, Jordan, Kenya, Republic of Korea, Lao People's Democratic Republic, Lebanon, Malaysia, Marshall Islands, Morocco, Nepal, New Zealand, Oman, Qatar, Samoa, Saudi Arabia, Singapore, Solomon Islands, Somalia, Sudan, Thailand, Timor-Leste, United Arab Emirates, United States, Uzbekistan and Viet Nam. The countries that had not yet ratified Convention No. 98 were: Afghanistan, Bahrain, Brunei Darussalam, Canada, China, India, Islamic Republic of Iran, Republic of Korea, Lao People's Democratic Republic, Marshall Islands, Mexico, Myanmar, Oman, Qatar, Samoa, Saudi Arabia, Solomon Islands, Somalia, Thailand, Timor-Leste, United Arab Emirates, United States and Viet Nam.

3. Information on ILO assistance is provided in Chapter V.

I. A CONDUCTIVE ENVIRONMENT

Figure 1.1. Number of ratifications of Conventions Nos 87 and 98, 1990–2007

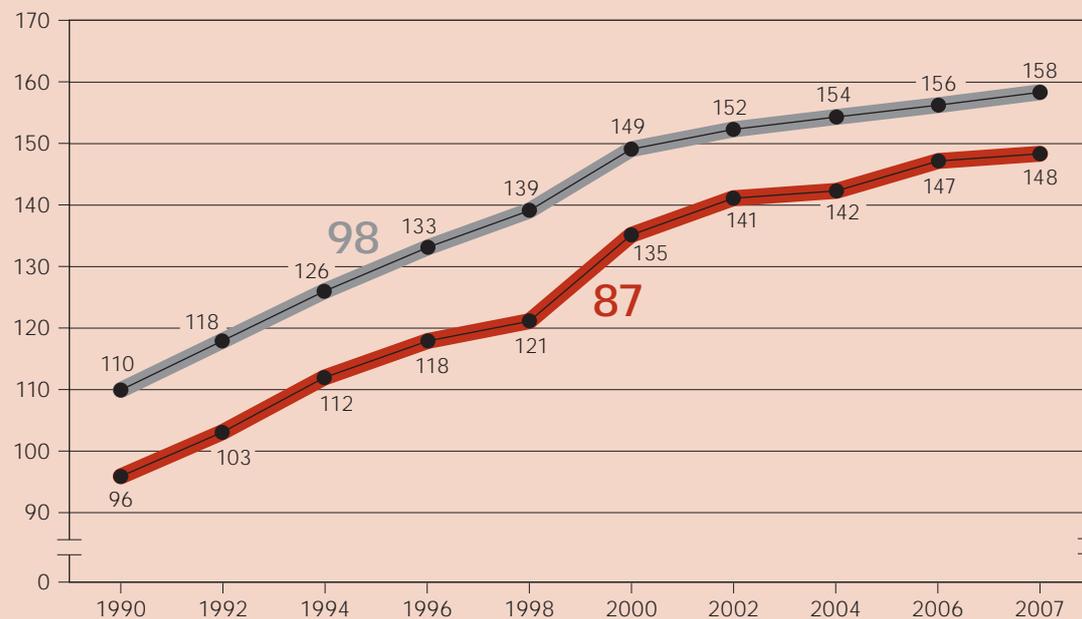


Table 1.1. Number of member States having ratified Convention No. 87 and/or Convention No. 98 since 1950

Region	1950	1970	1995	2000	2003	2007	
						Number	Percentage ³
Africa							
Convention No. 87	0	23	32	42	46	48	91
Convention No. 98	0	30	40	51	51	52	98
Americas							
Convention No. 87	1	18	28	30	32	33	94
Convention No. 98	0	18	26	30	30	32	91
Asia and Pacific¹							
Convention No. 87	0	5	8	12	13	14	45
Convention No. 98	0	7	12	15	16	17	55
Europe and Central Asia²							
Convention No. 87	7	26	43	48	48	50	98
Convention No. 98	2	27	45	48	50	51	100
Arab States of West Asia							
Convention No. 87	0	2	3	3	3	3	27
Convention No. 98	0	4	5	5	5	6	55
No. of member States	62	121	173	175	177	181	

¹ Excluding members from Arab States. ² Includes Azerbaijan, Israel, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan ³ Ratifications as a percentage of member States in the region.

Table 1.2. Ratifications of fundamental Conventions

	New ratifications since the commencement of the campaign in 1995	Total ratifications at 31 December 2007
Convention No. 29	35	172
Convention No. 87	34	148
Convention No. 98	32	158
Convention No. 100	37	164
Convention No. 105	55	170
Convention No. 111	45	166
Convention No. 138	103	150
Convention No. 182	165	165
Total	506	1293

Conventions. The figure stands now at 1,293 (89.3 per cent of the possible total). New ratifications after the start of the campaign – or confirmations of previous commitments – have reached 506 for all the eight fundamental Conventions. Convention No. 87 has received 34 new ratifications and Convention No. 98 has had 32 new ratifications. These are the smallest numbers of new ratifications achieved in comparison with the other six fundamental Conventions.

24. Universal ratification of these Conventions would mean 181 ratifications for each one, representing the total ILO membership at the time of preparation of this Report in December 2007. A total of 148 ratifications were registered for Convention No. 87 and 158 ratifications for Convention No. 98. In spite of progress in their ratification, Conventions Nos 87 and 98 have not yet been as widely ratified as the fundamental Conventions on forced labour, discrimination or, indeed, the Worst Forms of Child Labour Convention, 1999 (No. 182). Convention No. 98 has the lowest total of ratifications compared to other fundamental Conventions, with the exception of the Minimum Age Convention, 1973 (No. 138), which had a low ratification rate in 1995 but has rapidly gained acceptance since the start of the ratification campaign.

25. Given the fundamental nature of Convention No. 87, it is a matter of concern that it now has the lowest rate of ratification of all the eight fundamental Conventions. This is further underlined by the fact that several major States with a large share of the world's working population have not ratified it. Among these are four of the States of chief industrial importance, which are permanent members of the ILO's Governing Body.

Information on actual application of the principles

26. Ratification does not mean that the rights and principles concerned are implemented in full. The principles of freedom of association and collective bargaining are so integral to the basic mandate and function of the ILO that their observance and implementation in all the ILO member States, whether or not they have ratified the relevant Conventions, are subject to the supervisory procedures of the ILO Governing Body's Committee on Freedom of Association (CFA). The following section presents information on actual application of freedom of association and collective bargaining rights as it emerges from the ILO supervisory work over the last four years.

27. During the period 2004–07, the Conference Committee on the Application of Standards examined 35 individual cases relating to Convention No. 87 and 16 cases relating to Convention No. 98. Conclusions on six of these cases were included in special paragraphs in the reports of the Committee: Myanmar in 2004 and 2005 and Belarus in 2005 and 2007, for failure to apply Convention No. 87; Bangladesh in 2006, for failure to apply Convention No. 98; and Belarus in 2006, for failure to apply both Convention Nos 87 and 98.

28. In the period between March 2004 and June 2007, the CFA adopted 366 individual reports on cases relating to 82 countries. The majority of reports adopted concerned the Americas region (204 for Latin America and 18 for North America). The second region in terms of the number of reports adopted was Asia, with 56 reports, four of which concerned Arab States (three for Iraq, one for Bahrain). Forty-eight reports were on cases received from European countries,

I. A CONDUCTIVE ENVIRONMENT

of which 28 related to Central and Eastern Europe. Africa, with 40 reports, maintained roughly its earlier level. Figure 1.2 presents a percentage breakdown by region of allegations examined by the CFA during this period.

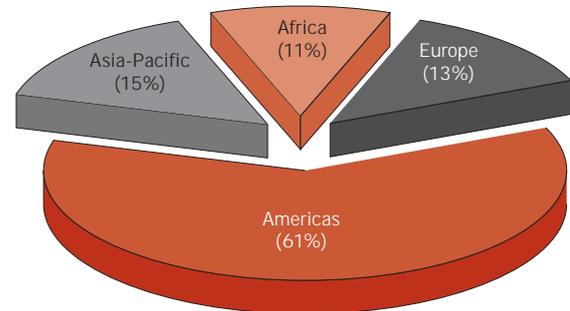
Trends in the subject areas of allegations

29. The two previous global reports presented statistical data on allegations examined by the CFA according to the type of restriction. Table 1.3 shows the percentages by region of alleged violations included in the complaints made to the CFA corresponding to each type of restriction. It thus reflects the perceptions of the complainant organizations regarding violations of freedom of association and collective bargaining rights in their countries, rather than the conclusions of the CFA based on its examination of the allegations. However, in most of the cases brought before the CFA, the complainant employers' and workers' organizations have been able to demonstrate the validity of their allegations.

30. The trend previously depicted in 2004, in *Organizing for social justice*, of a decrease in allegations concerning the denial of civil liberties, is generally confirmed by the latest data. Allegations made to the CFA on the restriction of civil liberties accounted for one-third of complaints in the period 1995–2000, but progressively decreased to 10 per cent of all allegations for the period 2000–03 and stood at 13 per cent for the period 2004–07. On the other hand, the largest single category of allegations, both globally and by region, concerns acts of anti-union discrimination. Allegations of anti-union discrimination have increased, from 23 per cent in 1995–2000 to 26 per cent in 2000–07. There has been an increase in allegations of employer interference in trade union activities, from 4 per cent for the period 1995–2000 to 6 per cent for the period 2000–03 and to 8 per cent for the period 2004–07. Alleged violations of collective bargaining rights have increased from 11 per cent in the period 1995–2000 to 19 per cent for the period 2000–03 and fell to 15 per cent for the period 2004–07. There has also been a slight increase in allegations concerning government interference in trade union activities, from 8 per cent in 1995–2000 to 9 per cent in 2000–03 and 11 per cent in 2004–07 (see also figure 1.3).

31. These trends might indicate that, while the basic institutional frameworks for the exercise of the right to freedom of association are progressively being put in place, the practical problems of implementation call for more attention.

Figure 1.2. Allegations examined by the CFA from March 2004 to June 2007 by region



32. During the period 2004–07 there was a sharp increase in the total number of complaints submitted to the CFA. Between March 2004 and June 2007, the CFA adopted 366 case reports, an increase of 34 per cent over the corresponding number of 273 reports in the period 2000–03. A greater number of complaints brought before the CFA appears to reflect, on the one hand, a willingness on the part of workers' and employers' organizations to effectively express their (in some cases newly acquired) voice, and on the other, the new challenges and realities brought about by globalization. Increased awareness of the complaints mechanism also plays a role.

33. In the same period, four CFA cases originated from complaints by employers' organizations; two concerned Europe and two the Americas. These complaints alleged government interference in the activities of employers' organizations (Albania); a Government's refusal to allow membership contributions to employer's organizations to be tax deductible (Republic of Moldova); legislative interference preventing the parties from freely determining the level of negotiation (Peru); and the arrest of the president of an employer's organization and difficulties faced by employers in participating in collective bargaining, as well as their exclusion from social dialogue structures, tripartism and consultations (Bolivarian Republic of Venezuela).

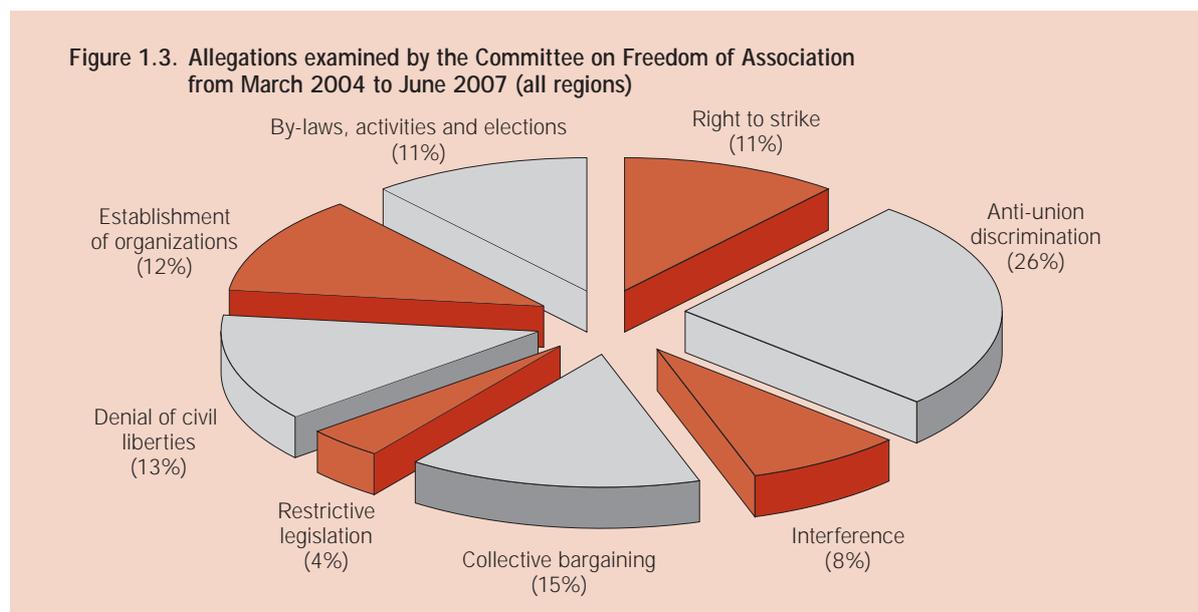
Democracy and civil liberties

34. The exercise of freedom of association and collective bargaining is dependent on the maintenance of fundamental civil liberties, in particular, the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly, the right to a fair trial by an independent and impartial tribunal,

Table 1.3. Subject areas of allegations examined by the CFA between March 2004 and June 2007 as a proportion of total allegations

	Denial of civil liberties	Restrictive legislation	By-laws, elections and activities	Establishment of organizations	Right to strike	Anti-union discrimination	Interference	Collective bargaining
Global (533 allegations)	13%	4%	11%	12%	11%	26%	8%	15%
Africa (83 allegations)	17%	6%	6%	11%	14%	29%	5%	12%
Americas (292 allegations)	12%	2%	9%	9%	11%	29%	9%	19%
Asia and Pacific (109 allegations)	18%	9%	7%	11%	13%	27%	7%	8%
Europe (49 allegations)	6%	6%	16%	16%	13%	16%	11%	16%

Figure 1.3. Allegations examined by the Committee on Freedom of Association from March 2004 to June 2007 (all regions)



and protection of the property of trade unions and employers' organizations.⁴ Although complaints concerning violations of such fundamental rights have decreased in recent years, the fact remains that serious violations of civil liberties continue to take place in different parts of the world.

35. From 2004 to June 2007, the CFA addressed violations of civil liberties notably in Cambodia, China, Colombia, Djibouti, Eritrea, Guatemala, Haiti, Indonesia, Islamic Republic of Iran, Myanmar, Nepal, Philippines, Republic of Korea, Bolivarian

Republic of Venezuela and Zimbabwe. Some cases involved grave violations of civil liberties, including murder, abductions, disappearances, threats, arrests and detentions of trade union leaders and members, as well as other acts of anti-union harassment and intimidation, violations of freedom of assembly and of freedom of expression. Closely linked with such violations are delays in the administration of justice, which sometimes reinforce a climate of impunity, violence and insecurity. This highlights the need to ensure due process.

4. See the resolution concerning trade union rights and their relation to civil liberties, ILC, 54th Session, Geneva, 1970, which is appended to this Global Report.

I. A CONDUCTIVE ENVIRONMENT

Freedom of association and representational security

36. Today, outright prohibitions of all types of workers' organization or employers' association are rare. Progress has been achieved in removing restrictions, especially in a number of countries belonging to the Gulf Cooperation Council, to the benefit of emerging forms of workers' representation.

37. One recurrent type of denial of the right to organize is the prescription by governments of single organizations to which workers must belong, outlawing or suppressing others. The single most remarkable area of progress in this regard over the last 15 years has been the ending of state-sponsored and state-controlled trade union monopolies in large parts of the world. Ethiopia, Mauritania, Republic of Moldova and United Republic of Tanzania are among the latest additions to the list of countries that have amended their legislation to allow trade union pluralism. Nigeria also repealed provisions requiring all registered trade unions to be affiliated to the central labour organization. In Bahrain, where the existence of trade unions in the private sector was authorized in 2002, a draft amendment to the Trade Union Act – currently before Parliament – aims to allow workers to establish more than one union per enterprise. Legislative amendments with regard to trade union monopoly are also being examined in Kuwait and Lebanon. State monopoly situations still remain in certain countries where political power is held by a single party and where there is a recognized or organic link between those exercising political power and the prescribed actors in the world of work.

38. Less visible but equally pernicious restrictions of freedom of association exist where this right is denied or discouraged in practice as a result of pressure, prejudicial acts and interference by employers and governments in the activities of trade unions. Addressing such a denial of rights requires adequate protection against acts of anti-union discrimination and interference. Restrictive measures include registration systems that enable the authorities to exercise undue discretion in authorizing the establishment and functioning of employers' and workers' organizations. An essential step in guaranteeing genuine freedom of association – once monopolies have been abolished – is the establishment of a mechanism allowing for the free and unobstructed registration of employers' and workers' organizations. Such problems may persist, particularly in countries in transition from a system of state-led trade union monopoly.

39. The case of Belarus is an example of widespread anti-union discrimination and interference leading to

a virtual monopoly in favour of the prevailing trade union structure, despite the formal recognition in legislation of the right to establish more than one organization (see box 1.2).

40. In general, both workers' and employers' organizations have had to overcome new obstacles in the process of their establishment. Restrictions frequently take the form of excessively high membership requirements or requirements for previous authorization. Progress has been noted in countries from all regions towards fully guaranteeing the right of employers and workers to establish organizations. For instance, provisions requiring excessively high thresholds for the establishment of employers' and workers' organizations have been lifted in Peru, Portugal and Uganda. Moreover, pursuant to the examination of the relevant complaints by the CFA, registration of employers' organizations was finally carried out in Bosnia and Herzegovina and The former Yugoslav Republic of Macedonia.

Protection against anti-union discrimination and interference

41. It is essential for trade unions and employers' organizations to function in full independence and freedom. This implies a dual absence of interference: firstly, on the part of government authorities in the activities of these organizations; and, secondly, on the part of employers' organizations in the establishment and activities of workers' organizations, and vice versa. In recent years the ILO supervisory bodies have witnessed a surge in complaints concerning acts of anti-union discrimination and interference. These allegations concern prejudicial acts (including dismissals, demotions, transfers and refusals to hire) carried out primarily by employers, including governments in their capacity as employers, against trade union officers and members, either because they have established or joined a trade union or because of their participation in trade union activities. Alleged acts of interference account for over half of all complaints if allegations related to government interference in trade union activities, for example, through restrictive legislation, are included.

42. Complaints concerning anti-union discrimination and acts of interference illustrate the need for sufficiently dissuasive remedies and penalties for such acts. Procedures to redress grievances should be expeditious, inexpensive and impartial. With regard to the need for appropriate remedies, the ILO supervisory bodies have repeatedly noted that sufficient protection against acts of anti-union discrimination is not granted by legislation if employers can in practice dismiss any

Box 1.2
Belarus: The continuing debate on rights

In November 2003, pursuant to a complaint under article 26 of the ILO Constitution, the Governing Body appointed a Commission of Inquiry into complaints of restrictions on the right of workers to establish organizations of their own choosing and government interference in trade union affairs in Belarus. The Commission of Inquiry in 2004 made altogether 12 recommendations for compliance with Conventions Nos 87 and 98. In 2005 and 2006, the Conference Committee on the Application of Standards called upon the Government to take concrete steps for the implementation of these recommendations in a special paragraph of its report. In its November 2006 session, the Governing Body encouraged the Government to continue collaboration with the Office.

Between November 2006 and March 2007, several meetings took place between high-level missions of the Government of Belarus and the ILO. The ILO participated in a seminar for judges and prosecution officers of the Republic of Belarus in Minsk in January 2007. The Committee of Experts on the Application of Conventions and Recommendations (November–December 2006 session) and the CFA (March 2007 session) noted with interest that some of the recommendations of the Commission of Inquiry had been implemented, but raised deep concerns over a number of issues, in particular with regard to the registration of trade unions and the new draft trade union legislation currently under consideration in the country. The CFA noted that several draft provisions, if applied in the current circumstances, would result in a quasi de facto monopoly of workers' representation.

At its March 2007 session, the Governing Body, noting that further dialogue had taken place, called upon the Government of Belarus to fully cooperate with the ILO for the implementation of all the recommendations of the Commission of Inquiry and decided to keep the developments under close review.

At its June 2007 session, the Conference Committee on the Application of Standards considered that the steps taken did not address the heart of the matter. In particular, it noted the concerns raised with regard to the draft trade union law, and urged the Government to vigorously pursue its consultations with all social partners in the country and its cooperation with the ILO, with a view to making the legislative changes required to bring the law and practice into full conformity with Convention No. 87 and the recommendations of the Commission of Inquiry.

In June 2007, in response to the request made by the Conference Committee, an ILO mission visited Minsk, where it participated in discussions on the draft trade union law. It concluded that as drafted, the legislation would not only fail to resolve the key issues, but would raise several other important and controversial problems, which would inevitably take time to be examined and solved.

In November of the same year, the Governing Body welcomed the Government's stated intention to reach an agreement between all parties concerned on the question of trade union legislation and decided to keep the issue under review.

Box 1.3
**Protection against anti-union discrimination:
What constitutes a sufficiently dissuasive remedy?**

A recent case brought before the CFA with regard to Switzerland illustrates the challenges which sometimes exist in relation to determining what constitutes a sufficiently dissuasive remedy against anti-union discrimination. The CFA noted that Swiss legislation provided better protection (reinstatement) for workers who have been victims of dismissal in violation of the principle of gender equality than for workers dismissed for anti-union reasons, the reason being that the Gender Equality Act is seen as aiming to promote the constitutional principle of equality between women and men, while the protection against anti-union discrimination is governed by the Code of Obligations in the context of the rights and obligations of the parties to a (voluntarily concluded) contract of employment. In an interim report, the CFA noted that the payment of nominal compensation for anti-union dismissal in some cantons of Switzerland fails to act as a deterrent against acts of anti-union discrimination, as it amounts to approximately three months' salary on average and is limited to a maximum of six months' salary. The Committee therefore invited the Government to take measures to provide the same protection to trade union representatives who suffer anti-union discrimination as for victims of dismissals that violate the principle of equal treatment for men and women, including the possibility of reinstatement, and encouraged the continuation of tripartite discussion on this matter including a review of the situation in certain cantons with regard to compensation for anti-union dismissal.

Box 1.4

Republic of Korea: Progress made and remaining challenges

The case of the Republic of Korea has been one of the most long-standing cases before the Committee on Freedom of Association (CFA), dating back to March 1992. Significant steps have been made in the meantime, in terms of the recognition of trade union rights in law and practice, including: the recognition of multiple unions at national level, which allowed for the legalization of the Korean Confederation of Trade Unions (KCTU) in 1999; the enactment of the Teachers' Trade Union Act, which allowed for the legalization of the Korea Teachers & Educational Workers' Union (CHUNKYOJO) in 1999; and the adoption of the Act on the Establishment and Operations of Public Officials' Trade Unions, which recognizes the right of public servants to organize. Apart from the need to conclude the ongoing work on legislative amendments, the most important remaining challenge appears to be the effective establishment of a harmonious industrial relations framework in practice. In fact, the prevailing tradition of confrontational industrial relations, and the consequent environment of criminalization of trade union activities, often give rise to a climate that is not conducive to the resolution of the remaining legislative and other issues.

The Republic of Korea joined the Organisation for Economic Co-operation and Development (OECD) in 1996. At that time, the OECD Council mandated its Employment, Labour and Social Affairs (ELSA) Committee to regularly monitor Korea's progress in terms of labour law and industrial relations reforms. This monitoring took place on the basis, among other things, of the information available through the ILO's CFA. In 2006, the OECD Council decided to terminate this monitoring mandate and invite the Government to provide information on further developments in the spring of 2010.

Recently, there has been discussion on the ratification of Conventions Nos 87 and 98, but no time-frame has been set.

worker, even if they pay the compensation prescribed by law for cases of unjustified dismissal, when the true reason is the worker's trade union membership or activities. If reinstatement is not possible, governments should ensure that the workers concerned are paid adequate compensation, which would represent a sufficiently dissuasive penalty for anti-trade union dismissals. Issues have been raised in this regard in a number of countries, including Cambodia, Hong Kong (China) and Switzerland (see box 1.3).

43. With regard to the existence of sufficiently prompt and impartial procedures, the most important issue concerns delays in the administration of justice. Delays in the administration of justice constitute a denial of justice and are therefore a denial of the trade union rights of the persons concerned. It has also been noted that the basic regulations prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures that guarantee effective protection.

44. In recent years, several countries have taken measures to institute or reinforce the mechanism for the examination of workers' grievances concerning anti-union discrimination. Armenia, Czech Republic, Fiji, Indonesia, Uruguay and Yemen have adopted new legislation or established new mechanisms and procedures over the last four years to prohibit anti-union discrimination and interference, and to provide for new dissuasive sanctions or means of redress in this regard.

The right to collective bargaining

45. In some cases, for instance Cape Verde and Hong Kong (China), a lack of measures to promote machinery for negotiations has been observed. Other governments focus on a severely restrictive interpretation of the terms "national conditions" and "where necessary" used in Article 4 of Convention No. 98, prompting the supervisory bodies to raise concerns about disincentives, obstacles and downright prohibitions of free and voluntary negotiations. In the case of Australia, the Committee of Experts expressed concern over the provisions of the Workplace Relations Act, 1996, as modified in 2005, with regard to the primacy accorded to individual contracts over collective agreements, the obstacles contained in this act with regard to bargaining at any level above that of the workplace, and the express prohibition of bargaining over a very wide range of matters which are common topics in free and voluntary negotiations. Data provided by the Australian Bureau of Statistics points to a decline in union membership, from 45.6 per cent in August 1986 to 20.3 per cent in August 2006.

46. The parallel experience of New Zealand may give indications as to the cause of such a significant fall in union membership rates. Union membership in New Zealand also declined dramatically during the 1990s, when the Employment Contracts Act promoted individual agreements at the expense of

collective bargaining. A slow but steady growth in union membership has taken place since the adoption of the Employment Relations Act 2000 (ERA) which aimed to redress bargaining inequalities through a new legal framework.⁵

47. Further progress has been noted in other countries. The supervisory bodies noted that in the Canadian province of Ontario, as a result of efforts to promote mutually beneficial collective agreements between education sector unions and school boards, for the first time in the education sector's history, all of the 122 negotiations between publicly funded school boards and their teachers have led to four-year agreements. In Fiji, legislative amendments removed the excessively high representation thresholds required for recognition for collective bargaining purposes, establishing an obligation to negotiate regardless of whether or not the union represents the absolute majority of workers in a given unit. The ILO supervisory bodies were able to observe positive developments in Ecuador and Germany with regard to the right of teachers who are part of the civil service to engage in collective bargaining. In Uruguay, three bodies were set up to host negotiations, including in the rural and public sectors, and 20 groups of wage committees have been set up. Agreements were reached in 19 of these committees.

48. Several countries continue to exclude important categories of workers, such as public servants, agricultural workers, domestic workers, and seafarers, from the right to bargain collectively. Progress has, however, been noted in law and in practice, especially with regard to public employees and rural workers. Examples are provided in Chapter III.

49. Government interference in the bargaining process continues to occur, and may involve, for instance, subjecting collective agreements to government economic policy, making collective agreements subject to government approval, imposing the level at which bargaining occurs, introducing compulsory arbitration to end collective disputes, or by promoting individual contracts or agreements with non-unionized workers at the expense of collective agreements. However, progress has also been made in removing restrictions on collective bargaining. For example, Singapore has abolished the requirement for government approval of the content of agreements, while restrictions on the coverage of collective agreements have been removed in Argentina. The validity of a collective agreement is no longer subject to "national

economic interests" in Egypt or in the United Republic of Tanzania. Brazil and Turkey have also repealed provisions which imposed compulsory arbitration to end collective disputes. In Zimbabwe, legislation has been adopted to limit compulsory arbitration to cases where this could be justifiable under Convention No. 98.

Conflict and dispute resolution

50. Conflicts resulting in strikes, work stoppages, slowdowns or other industrial action in both the public and private sectors continue to be prevalent. One of the key powers of a trade union is its ability to mobilize the workforce to strike. The exercise of the right to strike varies in different countries and sectors. Third-party services through arbitration, mediation or conciliation are also used as means of resolving disputes and avoiding work stoppages.

51. The right to strike is recognized in international instruments, but often unduly restricted in law and practice in many ILO member States, especially in some public services. In some countries, strikes tend to be widespread, whether officially recognized or not, while in others they are less common. Grounds for industrial action vary across sectors. Recent studies have highlighted the fact that wages and job security continue to be the main causes of industrial conflicts. This includes dismissals and job losses due to plant closures and company restructuring. Other strikes, broadly defined as "political", are motivated by general or specific government policies, for example on social security, labour law reform, privatization and restructuring.

52. Although there are many other means available for resolving disputes, deep divergences of views, communication barriers or lack of will by either of the parties, can result in a failure to make use of dialogue mechanisms. Minimizing conflicts is an important objective of labour relations theory and structures. Successful collective bargaining and other methods of dialogue between workers and employers can prevent conflicts.

53. Mature industrial relations systems provide mechanisms for airing grievances, as well as services for conciliation, mediation and arbitration available to both parties. For instance, effective collective bargaining mechanisms helped to prevent any work stoppages from 1998 to 2005 in South Africa's education sector.⁶

5. See B. Foster and I. McAndrew: "Growth and innovation through good faith collective bargaining: An introduction to the conference collection", in *New Zealand Journal of Industrial Relations*, Vol. 28, No. 2, 2003, p. 118.

6. Republic of South Africa Department of Education: *Teachers for the future: Meeting teacher shortages to achieve education for all*, paper co-sponsored by the ILO, 2005.

Box 1.5 Developments in Canada

Collective agreements play an important role in Canada and are enforced by both the federal and provincial governments. Federal legislation covers about 10 per cent of the workforce. Provincial labour laws cover the remaining 90 per cent. In 2005, over 4.1 million union members and 310,000 non-union members were extended protection under collective coverage. In total, over 32 per cent of Canadian workers were directly covered by collective agreements.¹ Government workers are four times more likely to be union members or receive extended coverage than those in the private sector. Furthermore, collective agreement density was higher amongst permanent employees between the ages of 45 to 54 and among those with post-secondary education.

A significant development in jurisprudence

The Canadian jurisprudence on collective bargaining underwent a significant development in 2007 as a result of the decision of the Supreme Court of Canada in the case of *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia* (2007 SCC 27).

The decision stemmed from a constitutional challenge brought by unions and union members to the Health and Social Services Delivery Improvement Act. The Act was adopted and quickly passed by the British Columbia provincial legislature in 2002 in response to challenges facing the provincial health-care system. It gave health-care employers greater flexibility to organize their relations with their employees, while invalidating important provisions of the collective agreements then in force. The Act also effectively precluded meaningful collective bargaining on a number of specific issues. Furthermore, section 10 of the Act voided any part of a collective agreement, past or future, which was inconsistent with the Act.

The Supreme Court of Canada declared that parts of the Act were unconstitutional, as it violated the freedom of association guarantee in s. 2(d) of the Canadian Charter of Rights and Freedoms. The Court ruled that the Charter protects the right of union members to engage in collective bargaining on workplace issues without undue interference by state action. In doing this, it specifically referred to Convention No. 87 as well as the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, noting that the “interpretation of these Conventions, in Canada and internationally, not only supports the proposition that there is a right to collective bargaining in international law, but also suggests that such a right should be recognized in the Canadian context”.

The decision of the Supreme Court of Canada to recognize that the freedom of association guaranteed by s. 2(d) of the Charter includes a right to collective bargaining is a landmark decision in Canadian industrial relations. While the Charter does not cover private enterprises, it does ensure the adherence of both the provincial and federal governments which employ millions of people across the country.

¹ <http://www.statcan.ca/english/studies/75-001/comm/fact-2.htm> at Table 2 – 2005 annual averages.

Box 1.6 Less industrial action

As suggested by the ILO Social Dialogue Survey in 2006¹ and confirmed by available statistical data, there is a general trend towards fewer instances of industrial action. ILO research also suggests that industrial conflicts are now being resolved more quickly and more effectively; this tendency is evident in all regions, but is most pronounced in Europe.

Collective bargaining has contributed to this positive record. A collective agreement creates an atmosphere of mutual trust and establishes social peace. But it is also an important normative source for dispute resolution (e.g. by establishing mutually acceptable rules for resolving a dispute through, for instance, conciliation, mediation or arbitration). It is also of interest to note that, on the basis of some recent bargaining outcomes, certain social partners are seeking to resolve future issues in dispute themselves rather than through government intervention.²

¹ The survey was carried out in 2006 with the participation of ILO tripartite constituents in over 40 countries in the context of a research study on changes in industrial relations systems since the early 1990s, with particular reference to collective bargaining. ² For example, Finnish road transport agreement (2006); UK papermaking industry (papermaking partnership, 2007); and cooperation pact in the Bulgarian chemicals sector (2007).

Source: GB.300/ESP/1, paras 58 and 59.

Box 1.7
Grievance procedures negotiated by the Employers' Federation of Ceylon covering 23 plantations in Sri Lanka and various trade unions in the plantation sector

The Collective Agreement requires the employer to hold meetings with the "Plantation Trade Union Committee" every week to reply on the complaints received. A "Trade Union Representative" can also make direct representations on urgent matters to the supervisor, who should maintain a labour diary giving details of disputes. Where there is a sudden dispute, the response must be given without delay. If the reply is not acceptable or a reply is not received, the issue can be carried through the "District Union Representative" to the Management of the unit for a reply within 14 days. If such a reply is not received, the Collective Agreement provides for the possibility to complain to the company head office.

If a reply is not received from the head office within seven days, the union can request the Commissioner of Labour to refer the dispute for voluntary arbitration under the terms of the Collective Agreement. The Collective Agreement provides for one arbitrator to be nominated by the employer, one by the trade union and one by both parties as Chairman. The decision made by the arbitrators is binding and any breach by the parties is deemed to constitute misconduct. Where the dispute cannot be settled by voluntary arbitration, the Commissioner of Labour must recommend compulsory arbitration. Where one party is not satisfied with the award made under compulsory arbitration, the party may appeal to the High Court on questions of law.

The Commissioner of Labour also has the power to summon the parties to the dispute for settlement by conciliation. Where a settlement is agreed, they sign a Memorandum of Settlement that is binding on them. It is an offence to contravene the Memorandum of Settlement, and the Commissioner of Labour can prosecute the offender under the Industrial Disputes Act.

Source: A. Navamukundan: *Wage determination and grievance procedures in the private sector in Malaysia, Sri Lanka and South Korea*, viewed at <http://www.gurn.info/topic/wages/index.html#CB> on 4 April 2007.

54. The right to strike continues to be subject to significant restrictions, such as: outright prohibitions; legal prerequisites which preclude its exercise in practice; restrictions on strikes in services which are not essential in the strict sense of the term, or by public servants who do not exercise authority in the name of the State; the introduction of compulsory arbitration at the request of the public authorities or a single party, thereby pre-empting any possibility of resorting to industrial action; or restrictions on solidarity strikes or strikes called by union federations or confederations.

55. Views on the scope and limits of strikes continue to diverge widely. However, there have been recent developments in the law and practice of many countries resulting in a wider recognition or extension of the right to strike. In Albania, the outright prohibition of strike action was repealed with the adoption in 2003 of amendments to the Labour Code. The Government of Cyprus repealed legislation which gave the Council of Ministers discretionary power to prohibit strikes in the services it considered essential. In Liberia, the judiciary and labour committees of the Senate acted to repeal legislation prohibiting strikes. Latvia adopted amendments to the Law on Strikes lowering the quorum required for a strike ballot so that the legal prerequisites would not unduly

obstruct the exercise of the right to strike. In the Czech Republic, the Act on Collective Bargaining was amended so as to lift the obligation to submit the names of the employees who will participate in a strike and ensure that balloting for industrial action only takes account of the votes cast. In Nigeria, legislative amendments have abrogated provisions which made check-off facilities conditional on the insertion of "no strike" and "no lockout" clauses in collective agreements.

56. With regard to secondary strikes where the initial strike is lawful, or strikes called by federations and confederations, Croatia adopted amendments to the Labour Law which allow solidarity strikes, while Nicaragua adopted legislative amendments to allow federations and confederations to stage industrial action.

57. As regards the issue of compulsory arbitration, a new law in Peru removes compulsory arbitration and repeals provisions that effectively prohibited strikes in the "essential public services". In Mali, legislative amendments are under examination with a view to repealing provisions that enable the Ministry of Labour to impose arbitration in order to end strikes where the dispute is liable to "jeopardize the normal operation of the national economy or involves a vital industrial sector".

Box 1.8 The IOE and the CFA

The International Organisation of Employers (IOE) has over a number of years outlined its position and activities with regard to the ILO's 1998 Declaration and its Follow-up, which have been reproduced in the Review of Annual Reports presented to the ILO Governing Body each March. The following excerpts relate to IOE initiatives in relation to freedom of association and the effective recognition of the right to collective bargaining:

"Our main means of engagement in relation to freedom of association remains the Committee on Freedom of Association (CFA). The IOE continues to work closely with the employer members of the CFA to ensure that the work of the Committee remains relevant to employers.

"The IOE was actively involved in the ILO publication on the CFA for employers, *Employers' organizations and the ILO supervisory machinery*, which was released in 2006. The publication is intended to provide employers with useful information on how the CFA can serve their interests. As part of the follow-up activities, in which the IOE has been actively involved, a subregional workshop took place in Panama at the beginning of 2006. On the same lines, in collaboration with the ILO International Training Centre (Turin), the ILO Standards Department and the IOE, the Federation of Employers of Ukraine hosted a workshop with a special focus on freedom of association."

Source: IOE statement reproduced in GB.298/3, Mar. 2007.

The capacity of labour administrations

58. Governments have a primary role in protecting freedom of association and creating an enabling environment for collective bargaining. Shortfalls and problems identified by ILO formal procedures need to be addressed by governments to ensure that the relevant rights are protected. Political will is essential both for enacting the right legislation and for implementing the law. Political will is also necessary for the ratification and implementation of Conventions Nos 87 and 98. However, governments also need the necessary administrative and technical capacity to uphold these principles. In many countries, labour administrations are not able to influence economic and social policies that can have a direct impact on collective bargaining frameworks. Strong and efficient labour administrations are important for the promotion of collective bargaining.

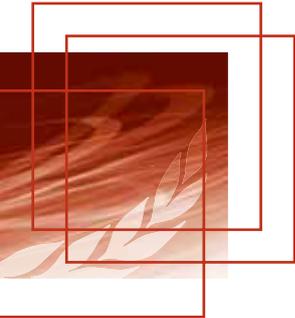
59. The role of governments does not stop at the formulation of legislation, although this will continue to be a major preoccupation as legal frameworks also tend to change with time. For instance, the Trade Union Law adopted by Japan in 1949 has so far been amended at least 28 times. Governments can further provide for a conducive environment by adopting promotional measures as well as policies and structures facilitating and supporting collective bargaining. This should include effective machinery and mechanisms to prevent and resolve labour disputes. Information services, such as public databases on all agreements concluded, can also be helpful. Relevant legislation

should be enforced through labour inspection and other administrative and judicial means, without, however, interfering in collective bargaining itself or imposing any outcome.

*

60. This chapter has noted a number of elements that are essential for creating and sustaining a conducive environment for promoting freedom of association and collective bargaining. Key among these are the enabling legislation and administrative frameworks needed to enforce the law and facilitate the exercise of the rights and principles concerned. While noting some encouraging signs of progress, the chapter also points to areas that require further attention. In the following chapter, the report addresses some of the broader contextual issues influencing the exercise of these principles and rights.





Chapter II

Developments affecting collective bargaining

61. In order to provide a more dynamic picture of freedom of association and collective bargaining, this Report must look beyond the formal mechanisms and appraise the context in which collective bargaining is practised. This chapter outlines some of the relevant trends and developments in this area. It addresses the benefits of freedom of association and collective bargaining in today's globalized economy, updating certain arguments that were made in the last Global Report on this subject, and notes the challenges posed by some employment patterns to collective bargaining. The chapter also presents some information on levels and subjects of bargaining, and explores the complementary role of other forms of social dialogue.

Globalization

62. Globalization has profoundly affected the world of work. It has brought with it structural and technological changes and intensified global competition. It is continuing to influence collective bargaining procedures and content and the relative position of various actors. Collective bargaining systems face new challenges, even when their importance as a means of cooperation between workers and employers for economic prosperity and job security is fully recognized.

63. Trade and financial liberalization have led to more direct competition between goods and services produced in different countries under different labour conditions. A significant reduction in transport and

communication costs, and easier movement of capital and commodities, increase opportunities but also intensify competitive pressures on enterprises. New bargaining strategies accordingly emphasize efficiency and productivity. There has also been growing uncertainty for employers and workers. Collective bargaining is well suited to respond to such concerns, as a tool which can be applied to different situations and changing economic conditions.

64. Freedom of association and collective bargaining have figured prominently in the debate on the relationship between labour standards and globalization. There have been several studies and discussions on the effects of free and increased international trade, foreign direct investment (FDI), and other aspects of globalization, on respect for freedom of association and collective bargaining and, conversely, the effects of better observance of those labour standards on economic performance, competitiveness and growth.

65. Freedom of association and collective bargaining rights may be classified as "civic rights", as they are an integral element of civil liberties and democracy. Empirical studies also show a strong relationship between democracy and respect for freedom of association and collective bargaining rights.¹ To deny these rights is to deny democratic rights. While it is essential to make the case for freedom of association and collective bargaining rights on ethical grounds, it is also important to consider the causes and consequences of respect for these rights. This point is well made generally with respect to human rights by Amartya Sen, Nobel Prize Laureate in Economics in 1998.²

1. M. Rodwan Abouhard and D. Cingranelli: *Human rights and structural adjustment* (Cambridge, Cambridge University Press, 2007).
2. A. Sen: "Legal rights and moral rights: Old questions and new problems", in *Ratio Juris* 9(2), 1996, pp. 153–167.

66. Debates on the relationship between freedom of association and collective bargaining and globalization have tended to focus on the labour cost effects of those rights. The non-labour cost effects, though less studied, may be no less real. They include enhanced social stability and economic performance. It has been argued that stronger freedom of association and collective bargaining rights may lead to higher labour costs (including wage and non-wage benefits) but also to higher labour productivity. This and other aspects, such as the development impacts of collective bargaining on employment, growth and poverty reduction, require further study.

67. The non-labour cost effects of these rights may be of considerable importance in promoting global competitiveness, even though they may be more difficult to research. Stronger democracy and freedom of association and collective bargaining rights may result in greater economic and social stability that enhances global competitiveness and economic performance. Even ten years ago, a major study³ provided cross-country empirical evidence suggesting that democracies yield long-term growth rates that are more predictable, produce greater stability in economic performance, and handle adverse shocks much better than authoritarian regimes.

68. Along these same lines, if we consider the correlation between qualitative indicators of democracy and freedom of association and collective bargaining rights and country credit risk indices, we find that stronger democracy and freedom of association and collective bargaining rights are associated with lower country credit risk, which might also be expected to enhance economic performance and trade competitiveness.⁴ Joseph Stiglitz, another Nobel Prize Laureate in Economics, supports the positive impact

of freedom of association and collective bargaining rights: “Open, transparent, and participatory processes are important ingredients in the development transformation – important both for sustainable economic development and for social development that should be viewed as an end in itself and as a means to more rapid economic growth.”⁵

69. Freedom of association and collective bargaining, through their contribution to political and social stability, can contribute to increased FDI and increased exports. Studies on the effects of freedom of association and collective bargaining rights and democracy on FDI show that stronger rights are associated with greater FDI.⁶ These results are confirmed in another study focusing on Latin America and the Caribbean⁷ as well as a study evaluating a larger sample of countries.⁸ As regards the impact of stronger rights on wages, microeconomic effects might also be offset by the macroeconomic impact whereby higher wages boost aggregate demand (so-called “wage-led growth” scenarios) and thus contribute to economic growth and the creation of more formal employment.

70. There have been a number of studies on trade effects.⁹ One recent paper evaluates the effects of freedom of association and collective bargaining rights and democracy on exports, using several classifications of industries by labour intensity.¹⁰ This study includes data for 162 countries and employs a number of indicators of freedom of association and collective bargaining rights and democracy. The paper finds strong relationships between stronger freedom of association and collective bargaining rights and higher total manufacturing exports, and between stronger democracy and higher total exports, total manufacturing exports and labour-intensive manufacturing exports.

3. D. Rodrik: *Democracy and economic performance* (Harvard University, 1997) pp. 2–3.
4. D. Kucera: *The effects of core worker rights on labour costs and foreign direct investment: Evaluating the “conventional wisdom”*, discussion paper DP/130/200, International Institute for Labour Studies, Working Paper No. 130, 2001.
5. J. Stiglitz: “Participation and development: Perspectives from the comprehensive development paradigm”, in *Review of development economics*, Vol. 6, No. 1, 2002, pp. 163–182. The “processes” that Stiglitz refers to are very similar to Portes’ definition of “civic rights”. These include a strengthening of civil society, for which Stiglitz specifically refers to labour unions. Stiglitz defines “social development” as “the ability of a society to peacefully resolve conflicts and to address amicably sources of common concern when interests differ”.
6. M. Busse: “Do transnational corporations care about labor standards?”, in *Journal of Developing Areas* Vol. 36, No. 2, 2003, pp. 39–58; and M. Busse: “Transnational corporations and repression of political rights and civil liberties: An empirical analysis,” in *Kyklos*, Vol. 57, No. 1, 2004, pp. 45–65.
7. C. Daude, J. Mazza and A. Morrison: *Core labor standards and foreign direct investment in Latin America and the Caribbean: Does lax enforcement of labor standards attract investors?*, Inter-American Development Bank Paper, 2003.
8. D. Kucera: “Core labour standards and foreign direct investment”, in D. Brown and R. Stern (eds): *The WTO and labor and employment* (Cheltenham, Edward Elgar, 2007).
9. For comprehensive surveys on the topic, see D. Brown: *International trade and core labour standards: A survey of the recent literature*, OECD Labour Market and Social Policy – Occasional Papers, No. 43, 2000; and W. Sengenberger: *Globalization and social progress: The role and impact of international labour standards* (Bonn, Friedrich-Ebert-Stiftung, 2005).
10. D. Kucera and R. Sarna: 2006. “Trade union rights, democracy, and exports: A gravity model approach”, in *Review of international economics*, Vol. 14, No. 5, 2006, pp. 859–882.

II. DEVELOPMENTS AFFECTING COLLECTIVE BARGAINING

71. All in all, the studies referred to here provide no solid evidence that respecting freedom of association and collective bargaining rights adversely affects a country's global competitiveness. Indeed, the evidence generally points in the opposite direction.

Structural changes in employment

72. Structural changes in employment, in particular those resulting from privatization and restructuring of enterprises, the use of new technologies, outsourcing and production chains, as well as new types of employment relationships, are important contextual factors that affect the exercise of the principles and rights of freedom of association and collective bargaining.

73. Privatization and deregulation have occurred primarily in the telecommunications, transport and financial services. There has also been extensive privatization in utilities, health and education. Major deregulation is also under way in postal services. In many countries until recently, government was the sole employer of staff in the public services. The role of the private sector in providing public services is being increasingly recognized.¹¹ In general, all sectors have reported job losses associated with the shifts to privatized and deregulated services. In the oil and gas sector in South America, some companies have recently begun to revert to the public sector. The impact of this development on labour relations and workers' representation has yet to be analysed.

74. As regards the proportion of workers whose pay or working conditions are covered by collective agreements, many countries continue to have higher coverage rates in public sector enterprises as compared to the private sector; privatization would therefore normally be expected to affect collective bargaining coverage. In addition, the manufacturing and construction sectors maintain a rather high rate of collective bargaining coverage, helped by extension mechanisms, where they exist.¹² The number of collective agreements is lower in small and medium-sized enterprises.

75. A closely related issue is company restructuring. Of the complaints brought before the ILO's supervisory bodies, an increasing number concern large-scale dismissals in the context of restructuring of private enterprises or public establishments and, in

some cases, their closure and subsequent reopening as a different legal entity, with contracts being given to former workers who were not unionized or to unionized workers on condition that they give up union membership. There are also similar situations involving subcontracting arrangements accompanied by dismissals of trade union leaders or members, and compulsory retirement imposed as a result of legitimate trade union activities. Such allegations primarily concern countries in South America and Asia. The ILO's supervisory bodies have emphasized that workers should be able to exercise their trade union rights freely during any restructuring process and in restructured establishments, and restructuring, subcontracting and compulsory retirement should not serve as an excuse for acts of anti-union discrimination.

76. While some older industries might stagnate, new industries and new areas of economic activity, such as IT, are flourishing. Collective bargaining has to adapt to these realities. In some cases negotiations may have to be modelled on a smaller-scale and more innovative basis, and collective bargaining may need to take place with greater frequency in the dynamic industries and enterprises in the private sector.

77. The changing organization of production and business relationships is manifest in increased subcontracting, joint ventures and international outsourcing. In some of those situations, essential elements of collective bargaining may be absent. For example, workers may lack direct access to the real decision-makers on the employer side, or may not have all the information necessary for real bargaining to take place.

78. Atypical work, agency labour and flexible types of employment relationship have implications for collective bargaining. In some cases, because of multiple contractual relations, it may be difficult to identify the real employer, or the workers may not be recognized within the same bargaining unit. Casualization, or the shift of employment from regular jobs to other types of employment such as contractual work, is leaving its mark. Practical difficulties in reaching and organizing these workers, most of whom are employed in small and medium-sized enterprises, have resulted in their limited collective bargaining coverage.

79. The effect that the type of employment relationship may have on the implementation of the right to organize is seen as an evolving challenge. An increasing number of allegations brought before the

11. As the ILO has pointed out in a *Practical guide for strengthening social dialogue in public service reform* (Geneva, 2005): "Whether they are delivered publicly or privately, services such as health, education, utilities, posts, telecommunications, transport, the police and fire fighting are considered to be public services because they are provided to sustain the well-being of each citizen and help the development of society as a whole."

12. J. Ishikawa and S. Lawrence: *Trade union membership and collective bargaining coverage: Statistical concepts, methods and findings*, Working Paper, Geneva, ILO, 2005, p. 28.

ILO supervisory bodies concern the denial of the right to organize of workers who do not have recognized employee status. In such cases the workers may be deprived of the means to collectively defend their occupational interests. The allegations refer to the use of “disguised” employment relationships in order to avoid granting workers the right to freedom of association. This may be done through the establishment of cooperatives, or contracts for the provision of services under civil or commercial legislation.

80. This issue has been raised on several occasions with regard to certain countries in South America, for example in cases concerning Bolivia, Chile, Colombia, El Salvador and Guatemala. In the case of Colombia, the supervisory bodies have noted with concern the considerable increase in complaints concerning the use of cooperatives, subcontracting arrangements, and the use of commercial and civil law contracts to disguise employment relationships and prevent unionization. They have also noted collective “accords” with non-unionized workers and their impact on unions and collective bargaining in that country.

81. Some unions, however, have managed to organize such workers and negotiate on their behalf. In July 2007, a federation of subcontracted workers of CODELCO, the largest copper corporation in Chile, successfully obtained better pay and conditions of work for its members. In Argentina, the metallurgical unions organize and negotiate for contract workers in the same way as for their other members.¹³

82. The ILO supervisory bodies have consistently emphasized that all workers, without any distinction, and irrespective of their employment status, including self-employed workers, managerial employees and workers in cooperatives, should enjoy the right to establish and join trade unions of their own choosing, like all other workers. This is all the more important in the case of vulnerable categories of workers for whom the exercise of the right to organize is a way of breaking out of marginalization and poverty.

Levels of collective bargaining

83. Collective bargaining can take place within varying frameworks and levels, depending on the country. Some countries have differentiated multi-level bargaining systems in which levels of bargaining

(intersectoral, sectoral and company) are interconnected. Other forms of negotiations, such as tripartite consultations at national level or company level “works agreements” (such as the European Works Councils (EWCs) or similar bodies), are often related to collective bargaining.

84. Sectoral bargaining, which aims to standardize terms of employment within one industry, can have a range of bargaining patterns. Bargaining may be either broadly or narrowly defined in terms of the industrial activities covered, and may be either split up according to territorial subunits or conducted nationally. Sectoral collective agreements can act to stabilize working conditions and help to create a level playing field for companies in a given sector. In general, sectoral agreements establish a base for working conditions, which may be improved or adapted through further bargaining at company or shop levels.

85. Sectoral characteristics are reflected in the structure of many employers’ and workers’ organizations and in the fact that many collective agreements are adopted along sectoral lines.¹⁴ Some countries, including the Members of the European Union, have sectorally based structures for dialogue while many others do not. Where they exist, sectoral negotiations may be confined to wage issues. In Austria, for example, social partners in the metalworking sector concluded a collective agreement in 2006 covering about 180,000 employees. The agreement provided for a pay increase of 2.6 per cent and an additional bonus payment linked to profits at individual company level.¹⁵

86. In some countries, such as France, there have recently been legislative attempts to give a more extended role to enterprise level agreements. Previous patterns still hold, with Western Europe and the Nordic countries continuing with their traditions of sectoral collective agreements, while in Japan, United States, United Kingdom and Central Europe, enterprise-level bargaining still predominates. In Germany, within the framework of sectoral collective agreements, some unions have negotiated separate agreements to prevent the relocation or closure of workplaces. Furthermore, some large multinational companies have agreed to provisions that go beyond those contained in the sectoral agreements. However, these are exceptions, and sectoral collective bargaining continues to be the norm in Germany.

13. H. Sanchez: *El enfoque de ORIT sobre autorreforma sindical y economía informal*, paper presented at the ILO Forum on Decent Work for a Fair Globalization (Lisbon, 31 October–2 November 2007).

14. ILO: *Future orientation of the Sectoral Activities Programme and proposals for activities in 2008–09*, Governing Body, 298th Session, Geneva, March 2007, GB.298/STM/1.

15. <http://www.eurofound.europa.eu/eiro/2006/11/articles/at0611019i.html>

Box 2.1 Coordination between bargaining levels

Collective bargaining takes place at different levels of an economy. It is increasingly recognized that effective coordination across and within bargaining levels is the key factor in determining efficiency and equity in collective bargaining systems. Coordination creates a more predictable and stable economic environment, contributes to fair competition, can lift the overall productivity of an economy and last, but not least, reduces bargaining costs. Coordination of bargaining can also prevent the creation of inflationary wage pressures. Such coordination can be achieved not only by establishing a hierarchical relationship between existing bargaining levels, but also by less formal arrangements such as policy guidelines provided by “umbrella” employers’ and workers’ organizations, “pattern” outcomes established by big companies and/or coordinated negotiations campaigns.

The mutual relationship between bargaining levels is not static: it has been adapting to the needs of social partners throughout the years. While each set of national arrangements might be very different, each level of bargaining has its own specificity and potential role.

In many countries, economy-wide and sectoral-level bargaining set the general framework on policies and issues for lower levels, matters which could otherwise not be addressed efficiently through enterprise-by-enterprise agreements. In the last 20 years, negotiations at the national level have multiplied, demonstrating that “social concertation has undergone an astonishingly lively and broad-based revival”, especially in Europe, where it was mainly linked to the introduction of the European single currency and EU enlargement. In Asia, national-level concertation contributed to overcoming many of the consequences of the 1999 financial crisis. In Latin America, there are positive examples of national social dialogue addressing key economic and social issues. In Africa too, national social pacts have been negotiated as a way out of a major civil crisis and many are regarded as having provided a solid foundation for democracy and economic and social reconstruction.

It is argued by some that a large-scale decentralization of collective bargaining (or even the individualization of bargaining) would have beneficial economic effects. But it seems that these positions remain marginal. In fact, the 2002 World Bank study on collective bargaining suggests that “... there are grounds for believing that a centralized, union-based system of wage bargaining may be less costly to society than an individually based negotiating system in terms of both transaction costs and dispute costs”. The same study argues that coordinated systems seem to “facilitate faster and more flexible response to shocks”.

This conclusion confirms the validity of ILO Recommendation No. 163 which encourages coordination of collective bargaining levels. It also reinforces the fact that national and sectoral bargaining may be the only way that workers in high turnover or precarious or temporary work arrangements can effectively exercise their right to bargain collectively.

Source: ILO: *Collective bargaining and the Decent Work Agenda*, GB.300/ESP/1, Geneva, Nov. 2007.

87. The level of collective bargaining, whether at the sector or enterprise level, is likely to vary, depending on the wishes of the parties, as well as the degree of consensus achieved on what should be negotiated and at which level. In reality, a number of different trends coexist, sometimes even within a single country. Within this framework, the trend towards coordinated bargaining is conspicuous. Meanwhile, the determination of bargaining level, as with many other aspects of industrial relations, continues to be a country-specific question and an evolving product of a country’s economic and social development.

Expanding topics for collective bargaining

88. Over the years, collective bargaining has come to cover a range of topics which, depending on the country, may include wages, working time, work organization, recruitment, restructuring, safety and health, and training and education (including life-long learning). Issues related to gender and non-discrimination, as well as family issues such as parental leave, have also been topics for bargaining. Collective agreements are also used to institutionalize grievance procedures and dispute settlement methods and to prevent strikes. However, pay and working time remain the core issues in most cases.

89. Issues covered by collective bargaining mirror shifts in the labour market. New issues such as telework, employment relationships, protection of

personal data, and alternative dispute settlement mechanisms, are also taken up in some countries. New topics have emerged. These include new issues in the areas of bankruptcy, equality, career development, leisure time, compensation, evaluation systems, bonuses/performance pay, family leave, pension schemes, profit sharing and further education. Collective bargaining may also cover harassment, membership card check agreements and enterprise restructuring. In Canada, for example, with a large ageing population, increasing attention is being focused on provisions such as medical coverage and pension security.

90. In recent years the scope of bargaining has also widened with an increase in the number of bipartite and tripartite initiatives to develop employment and training policies. Training clauses in collective agreements tend to provide a good basis for identifying responsibilities, building different types of partnerships, and promoting equity in training. One such example is the General Agreement on technological development and computerized systems, which is a basic collective agreement negotiated between the Confederation of Norwegian Business and Industry and the Norwegian Confederation of Trade Unions.

91. In Argentina, some of the more active trade unions have begun discussions with employers to establish worker training programmes at the sectoral level, most notably in the building industry. In Brazil, various trade union initiatives have emerged to support the public employment system. One noteworthy programme, created by the metalworkers' union, is integrating basic literacy courses with initiatives for labour market insertion, while stimulating plant-level dialogue with management around restructuring and training issues.¹⁶

92. In some European countries such as Denmark, France, Italy, Netherlands, Spain and Sweden, sectoral collective agreements include provisions on fixed-term contracts, and matters such as the maximum use of such contracts, limits on their duration and rules governing the conditions in which they may be used. Specific sectoral collective agreements for temporary agency work have been concluded in recent years in Austria, Belgium, France, Luxembourg, Netherlands, Portugal, Spain and Sweden. These agreements tend

to cover issues such as pay and conditions, benefits, representation rights and training.¹⁷

93. In some countries legislation does not include certain benefits and protections for workers that are taken for granted in other countries. As a result, those issues may also fall within the ambit of collective bargaining. In many countries, issues such as the number of days of annual leave, or the type and scope of health insurance and pension schemes or supplementary pension coverage, are established by law and not negotiable unless it be to provide for higher standards. For example, the inclusion of social security in collective agreements is normally intended to ensure better or supplementary protections, such as additional medical insurance coverage, over and above what has been stipulated in law for all workers.

94. HIV/AIDS related issues have also found their way into collective agreements. This is of central concern for workers' and employers' organizations in countries with high rates of infection. Almost three-quarters of the 40 million people infected worldwide are workers. The epidemic directly threatens not only workers themselves but also those who rely on them, such as families and employers.¹⁸ In South Africa, the chief executive of the international gold mining company, AngloGold, signed an agreement with trade unions after surveys reported that 30 per cent of the company's workforce was HIV positive. The agreement recognizes the threat of the epidemic, defines the rights and obligations of stakeholders, and commits AngloGold to assist in minimizing the future impact of the disease. Key features of the agreement include voluntary counselling and testing for employees and partners and a joint trade union/AngloGold labour committee.¹⁹

95. An expanding topic for collective bargaining has been compromise packages involving trade-offs agreed by the unions in exchange for commitments by employers to retain production and jobs at existing sites.²⁰ In such packages concessions may be agreed as regards wage increases, working hours and certain other benefits in exchange for job security. Closely related to this type of agreement are so-called flexibility agreements to avoid redundancies, and employment and competitiveness pacts. Such agreements may include a range of issues relating to cost containment as well as working time, work organization and skill

16. ILO: *Recent transformations in training and social dialogue in Latin America*, available at <http://www.ilo.org/public/english/employment/skills/hrdr/publ/033.htm>

17. European Commission: *Industrial relations in Europe*, Brussels, 2004.

18. ILO: "Why AIDS is a workplace issue", available at www.ilo.org/aids

19. International Transport Workers' Federation: *How unions can help close the door on HIV*, Agenda, issue 1, 2007.

20. For example, Siemens and Daimler-Chrysler (in 2004) and Thyssen Krupp Steel (in 2006).

flexibility. There are conflicting views on the desirability and impact of such agreements.

96. Topics for social dialogue have also widened their scope. With the support of an ILO programme, major stakeholders in Moroccan textiles, such as the Ministry of Labour, Ministry of Industry and Trade, and relevant employers' and workers' organizations, set up a tripartite committee and adopted a national action plan in 2005 to increase competitiveness in the industry through decent and productive work. Within this structure, a bipartite committee was established – the only one of its kind in the country – in order, among other things, to promote decent and productive work and help to settle disputes. Furthermore it regularly assesses the impact of globalization and international trade relations on the sector so as to provide competitiveness in an era where trade restrictions and quotas no longer exist. The second stage of the programme, through capacity building by the ILO, involves the development of social dialogue at the enterprise level in order to increase productivity and improve working conditions. Similar textile sector initiatives are being developed and implemented in Egypt, Philippines and Tunisia.

Bipartite and tripartite dialogue

97. Collective bargaining is the process by which workers collectively negotiate and agree with employers on their terms and conditions of employment. Other, generally complementary, means of consultation and dialogue are also evolving.

98. An example of a single employer's attempt to initiate dialogue with a multitude of workers' representatives is provided by Barclays Africa/Union Forum. It is a voluntary union-employer forum that brings together representatives of Barclays Bank, as the employer, and trade unions within Barclays divisions in Africa, the Middle East and the Indian Ocean regions which the bank now runs as a single entity. The forum, which meets twice a year, was created in 2000 following an agreement between Barclays and the finance trade union organizations affiliated to Union Network International (UNI).

99. The forum started with seven countries and has grown to cover a total of 12. It seeks to inform and consult employees on all matters that affect their interests, and is the first of its kind to cover a

multinational bank in Africa. Barclays already has partnership agreements with finance unions affiliated to UNI in the United Kingdom and the Caribbean. Although the forum cannot bargain or negotiate pay awards at country level, it discusses pan-African issues significantly affecting the majority of the bank's African employees. The forum's activities are governed by a constitution. The forum has greatly helped to foster dialogue, transparency, employee communication and a pan-African approach to managing a consistent relationship with workers' representatives.²¹

100. In Italy, an Agro-Food Negotiating Committee was set up by prime ministerial decree in 1999. The committee – composed of representatives of farming organizations, cooperatives, the food industry, commerce, trade unions, consumer associations, and regional governments – is tasked with relaunching the agro-food sector through modernization of farm businesses, developing less-developed areas, and creating employment. Another example in agriculture exists in the Netherlands, where the Dutch Social and Economic Council has established commodity boards in 12 subsectors of agriculture and fisheries. Their task includes promoting business operations and in general representing the collective interests of the businesses and the people involved. The governing bodies of these boards are made up of equal numbers of representatives from the employers' organizations and trade unions.²²

101. Regional dialogue structures are most prevalent in the European Union, where the central organizations of the social partners negotiate and sign general framework agreements on specific issues that provide an outline of general principles to be implemented. One such agreement, signed in 2004, establishes a framework within which employers and employee representatives can work together to prevent, identify and combat stress at work.²³ Another agreement, signed in 2007, concerns harassment and violence at work and is intended to increase awareness and understanding of this problem. It provides employers, workers and their representatives at all levels with an action-oriented framework for identifying, preventing and managing problems of harassment and violence at work.²⁴

102. Social dialogue is also promoted in order to ease economic reforms by involving the social partners in the development of policies, thereby making them more politically acceptable. Apart from facilitating

21. <http://www.union-network.org/uniafrican.nsf/barclaysafricaunionforum?openpage>

22. <http://www.eurofound.europa.eu/eiro/2005/09/study/tn0509101s.html>

23. <http://www.eurofound.europa.eu/eiro/2004/10/feature/eu0410206f.html>

24. http://ec.europa.eu/employment_social/news/2007/apr/harassment_violence_at_work_en.pdf

the adoption of economic reforms, which are often accompanied by austerity measures,²⁵ social dialogue can harness the influence and experience of social partners, for example, in the field of employment promotion.

103. The Rwenzori Highlands Tea Company in Uganda has a joint corporate council in which representatives from management and the workforce meet regularly to discuss company policies, including issues relating to living and working conditions, safety and health, productivity indicators and anticipated changes. This has helped the company to achieve a

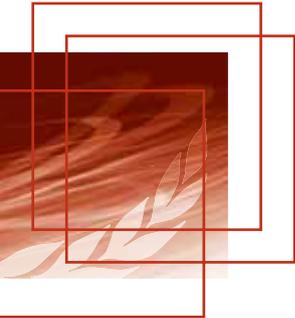
significant reduction in absenteeism. After identifying various reasons for absences, a system of occasional leave was established. The company has also developed a policy to deal with sexual harassment and established procedures for dealing with cases.²⁶

104. There is a large potential for the use of various dialogue structures and innovative initiatives. However, such structures inevitably depend on the existence of freedom of association and collective bargaining rights. Freedom of association is a prerequisite for any type of collective representation and for a genuine engagement in bipartite and tripartite dialogue.

25. For example, during the 1990s in the context of the Maastricht criteria, as a condition of the introduction of the European single currency.

26. T. Fashoyin, A. Herbert and P. Pinoargote: *Uganda – Multinational enterprises in the plantation sector: Labour relations, employment, working conditions and welfare facilities*, ILO, Geneva, 2004.





Chapter III

International institutions and initiatives

105. The increased integration of open economies has given further impetus to efforts by the governmental and non-governmental actors at the international level to promote freedom of association and to support collective bargaining. The actors at the international level, in particular the international workers' and employers' organizations, have taken steps to enhance their effectiveness. Bilateral and multilateral governmental initiatives to promote freedom of association and collective bargaining rights have continued to develop. There are also private initiatives, ranging from company codes of conduct to international framework agreements (IFAs). These trends are reviewed in this chapter.

International workers' and employers' organizations

Creation of the International Trade Union Confederation (ITUC)

106. The establishment of the International Trade Union Confederation (ITUC) in Vienna on 1 November 2006 put an end to much of the division that had characterized the international trade union movement for over a century. Although a number of national organizations remain outside this new framework, at the time of its foundation 304 trade unions from 153 countries and territories affiliated to the ITUC, representing 168 million workers. Through this, unity has been achieved between organizations which historically had represented both reformist and radical as well as confessionally distinct trends.

107. The International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) were dissolved before the establishment of the ITUC. A number of other national trade union

organizations that had not previously been affiliated to a global body joined the ITUC as founding members. The main aim of creating the new Confederation was to achieve greater unity and to give workers worldwide a stronger voice. The Constitution and programme of the new organization pledge support to the ILO in promoting decent work for all and a fair globalization.

108. The ITUC has observer status at the United Nations Economic and Social Council and provides, among other things, the secretariat of the Workers' group of the ILO. Unification of the ICFTU and WCL regional organizations for Africa, the Americas and the Asia-Pacific region has been proceeding since the merger of the international organizations. An agreement between the ITUC, the Global Union federations (GUFs) and the Trade Union Advisory Committee to the OECD (TUAC) created a Council of Global Unions to further common trade union interests worldwide.

109. Addressing delegates at the ITUC's founding Congress in Vienna, the ILO's Director-General identified the promotion and protection of freedom of association as one of the five key issues on which the ITUC and the ILO can promote decent work and a fair globalization. The other four are: action for global growth that produces employment; strengthening the ILO standard-setting system so as to adapt it to new forms of production; strengthening tripartism and social dialogue; and leadership of a global movement which would include all those sharing the aim of decent work.

110. The foundation of the new confederation was also welcomed by the International Organisation of Employers (IOE), which stated in a press release that the new organization consolidates the voice of the international trade union movement and provides the IOE with a singular interlocutor at the international level.

Box 3.1
IOE surveys on collective bargaining and trends in the workplace

A survey on “Trends on Collective Bargaining” was carried out by the IOE secretariat between July and September 2006. One third of the 142 IOE members responded to the survey. Responses came from both developing and developed countries and represented a good regional spread. The survey provides an overview of the trends and provides some conclusions and key messages that include the following:

- A high percentage of member companies of employers’ organizations are engaged in collective bargaining.
- Collective agreements can have a big “spill-over” effect.
- Bargaining at the enterprise level is increasing.
- Bargaining in the public sector is largely staying at the same level.
- Other forms of bargaining are on the increase.
- Overall, the issues covered in collective agreements are broadening.
- Collective bargaining still is “core business” for most employers’ organizations.

The following year, another survey was undertaken entitled “Trends in the workplace 2007”. It includes a section on social dialogue with questions on collective bargaining, trade unions and tripartism, the most important areas for negotiation between employers’ organizations and trade unions, and the importance of tripartism and social dialogue for employers at the national level.

The IOE continues to assist employers’ organizations that do not fully enjoy freedom of association, and provides assistance, guidance and support to ensure that this fundamental principle is respected.

Strengthened international coordination among employers

111. The IOE, established in 1920, is a major organization representing the interests of business in the fields of labour and social policy at the international level. It has more than 140 national employers’ organizations from 138 countries among its members.¹

112. Currently, the growing pace of regional integration has entailed a strengthening of regional employers’ organizations and a significant increase in their collaboration with the IOE. In Europe, BUSINESS EUROPE – formerly known as UNICE – remains an important partner for the IOE in relation to policy debates in Europe and also on global policy issues. In the Americas, the IOE continued its work through the Business Technical Advisory Committee on Labor Matters (CEATAL) of the Organization of American States (OAS). Relations with the Asian and African employers’ organizations, the Confederation of Asia–Pacific Employers (CAPE) and the Pan-African Employers Confederation (PEC), have also been strengthened. The IOE also collaborates with a number of subregional organizations on joint initiatives.

113. In recent years the IOE has worked closely with sectoral employers’ organizations on a variety of issues, particularly in relation to the ILO’s Sectoral Activities Programme. This programme now includes action programmes in the following sectors: agriculture; construction; education; hotel, catering and tourism; and textile, clothing and footwear. Relevant national programmes in those sectors, as well as three new action programmes in the health services, public service and telecommunication sectors, are being developed with the support of the IOE and its members.

114. The international sectoral bodies which have worked with the IOE in recent years include: the Airline Personnel Directors Conference (APDC); Assembly of Employers’ Organizations in the European Food and Drink Industry (AEFD); Confederation of International Contractors’ Associations (CICA); Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET); EuroCommerce; European Chemical Industry Council (CEFIC); Food Manufacturers’ Industrial Group (FMIG); International Chemical Employers’ Labour Relations Committee (LRC); International Cocoa Initiative Foundation (ICI Foundation);

1. More information on the IOE can be obtained from its web site, <http://www.ioe-emp.org/>, from the annual reports of the IOE for the last four years, and from the article by J. Dejardin: “The IOE” in *Bulletin of comparative labour relations* (Kluwer Law International), No. 55 (2005), pp. 103–106.

III. INTERNATIONAL INSTITUTIONS AND INITIATIVES

International Confederation of Private Employment Agencies (CIETT); International Council on Mining and Metals (ICMM); International Hotel and Restaurant Association (IHRA); International Iron and Steel Institute (IISI); International Road Transport Union (IRU); and the International Shipping Federation (ISF). The IOE facilitates the transfer of information and experience to employers' organizations in social and labour fields and provides advice and guidance to members in addressing the issues they are facing.

Global Union federations (GUFs)

115. Trade unions across the world have long sought strength through international cooperation, in particular by working together with unions in the same craft or industry. In 2002, the present GUFs were established as a vehicle for such international cooperation. A GUF is a worldwide federation of national and regional unions that unite workers in the same or allied industries, crafts or occupations. Their creation in many cases implied a merger of earlier international trade secretariats and other branch-level organizations. A list of GUFs is given in table 3.1.

116. In January 2007, a Council of Global Unions was formally created at a meeting in Brussels. The founding agreement for the Council, signed by top leaders of each of its participating organizations, is based on a "common determination to organise,

defend human and trade union rights and labour standards everywhere, and promote the growth of trade unions for the benefit of all working women and men and their families". The agreement was signed by ten GUFs, the ITUC and the TUAC.

117. The establishment of the GUFs has signalled a major transformation process, from primarily information and support functions to more active coordination and action on behalf of members. They develop strategies and policies at international level and implement them, inter alia, through representation, negotiation and joint action on behalf of their members. This has given a new focus to the exercise of the rights to organize and collective bargaining at the international level.

118. National unions, depending on the industries or occupations they cover, may belong to one or more GUFs, which are associated with the ITUC. An individual union is usually also a member of one of the national trade union centres, most of which are now affiliated to the ITUC. The GUFs are autonomous, self-governing and democratic organizations. Their role has expanded with globalization, their membership has grown, and they have been called upon to play a greater role by affiliates which are confronted with problems that defy purely national solutions.

119. The GUFs defend the interests of their affiliates in practical ways using various methods. These include solidarity and support for member organizations, which may be in the form of financial assistance or coordination of actions against employers or

Table 3.1. Global Union federations, 2007

Global Union federation	Total membership (millions)	Number of affiliated unions	Countries covered
EI – Education International	30	348	169
ICEM – International Federation of Chemical, Energy, Mine and General Workers' Unions	20	384	118
BWI – Building and Wood Workers' International	12	350	135
IFJ – International Federation of Journalists	0.5	156	120
IMF – International Metalworkers' Federation	25	200	100
ITF – International Transport Workers' Federation	4.5	681	148
ITGLWF – International Textile, Garment and Leather Workers' Federation	10	217	110
IUF – International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations	12	336	120
PSI – Public Services International	20	650	160
UNI – Union Network International	15.5	900	140

Source: Individual GUF and ITUC web sites. Figures correct as at 13 Dec. 2007.

governments during disputes; provision of information and expertise and useful publications and studies; training for trade union officers and members; engaging in campaigns and creating public awareness; union building in countries where unions are weak or non-existent; and representation of affiliates' interests with multinational enterprises (MNEs), with international organizations at the intergovernmental level, and with other organizations in the international trade union movement. The GUFs also actively help their members to participate in the sectoral work of the ILO. Finally, the GUFs also negotiate and follow up IFAs with MNEs.

International framework agreements

120. International framework agreements (IFAs) often include the principles of freedom of association and collective bargaining.² This is an initiative with coverage beyond the borders of any single State. IFAs are the outcome of transnational negotiations between individual MNEs and GUFs. They are intended to promote a number of minimum labour standards and organize a common labour relations framework across the worldwide operations of the MNE, covering not only the operations of its subsidiaries but also its sub-contractors and suppliers.

121. By December 2007, the number of such agreements had reached 61, covering approximately 5 million workers (a list of IFAs is given in table 3.2).³ These figures are not high compared to the number of workers employed by MNEs globally.⁴ However, the pace of adoption of IFAs has accelerated remarkably in recent years. Whereas 23 IFAs were concluded

in the 14 years from 1988 to 2002, another 32 were signed in the four-year period 2003–06. By December 2007, six more IFAs had been concluded.

122. Most of the MNEs that have signed an IFA have their origin in the European Union and especially in Germany, France and the Scandinavian countries. By December 2007, only seven non-European Union MNEs (out of 61) had signed an IFA.⁵ One company had its headquarters in the United States (although the agreement did not cover United States workers), one in the Russian Federation, one in New Zealand, one in Australia, two in South Africa and one in Canada. As of November 2007, no Asian or Latin American company had concluded an IFA.

123. The content of IFAs varies from one enterprise to another. In most cases, they draw on a pre-existing body of self-regulatory tools of the enterprise concerned, such as corporate codes of conduct. IFAs are negotiated and signed by two parties; they therefore express common interests on both sides of the enterprise and are viewed as more legitimate than management-driven codes. In particular, IFAs as a rule give a prominent place to freedom of association and collective bargaining among their principles. In this they differ from company initiatives and codes, which often focus more on environmental or broad ethical corporate principles. Another feature of IFAs is that they draw on international labour standards and instruments such as ILO Conventions Nos 87 and 98, whereas company codes of conduct usually state a commitment to respect the relevant national legislation in the countries where the companies operate.⁶

124. Freedom of association and collective bargaining are among the main principles and rights promoted by the IFAs, and the application in practice

2. IFAs are also called “global framework agreements” (GFAs). Individual IFAs have different denominations, e.g. “agreement on code of conduct” (IKEA, 1988); “joint declaration on human rights and working conditions (BMW, 2005); “international framework agreement” (EADS, 2005); or “global framework agreement on the development of good working conditions in operations worldwide” (Veidekke, 2005).
3. For the purposes of this Report, only those agreements that are at least co-signed by a GUF and a private for-profit enterprise are considered to be international or global framework agreements. It should be noted, however, that a definition of IFAs which would include all kinds of jointly negotiated transnational texts adopted between unions (including European Union federations, enterprise workers' representatives and European Works Councils (EWCs)), on the one hand, and specific MNEs, on the other, might bring the number of IFAs to hundreds, most of them adopted in the last few years (for example, the European Commission's Employment and Social Affairs DG has identified 91 texts). See E. Pichot: *The development of transnational agreements*, presentation at the study seminar on transnational agreements, 17 and 18 May 2006, European Commission, Brussels.
4. Approximately 95 million, according to a very conservative estimate representing only direct MNE employment in parent companies and subsidiaries. See K.B. Kim: *Direct employment in multinational enterprises: Trends and implications*, MULTI Working Paper No. 101, Multinational Enterprises Programme, Job Creation and Enterprise Development Department, ILO, Geneva, 2006.
5. Chiquita (United States, 2001); Fonterra (New Zealand, 2002); Anglo-Gold (South Africa, 2002); Lukoil (Russian Federation, 2004); Nampak (South Africa, 2006); National Australia Group (Australia, 2006); and Quebecor (2007).
6. Provisions in jointly negotiated texts typically contain clauses focusing on two broad categories of standards. These are: (a) labour standards: child labour, forced labour, equality and non-discrimination, freedom of association and collective bargaining, occupational safety and health, working hours, and adequate wages; and (b) managerial standards: mobility and related issues (such as transfer of pension entitlements), training, job security, subcontracting and, most importantly, restructuring. It would appear that while the former category responds to concerns by workers' representatives, the latter addresses the MNE's concerns and might constitute a major incentive for concluding an IFA.

Box 3.2 Research on IFAs

The International Institute for Labour Studies (IILS) has been conducting research on IFAs since January 2006. It organized a high-level workshop in late 2006, the outcomes of which will be published very soon.¹ A new IILS study is focused on the international dimension of IFAs and on the incentives that have led non-EU companies (which are the exception among MNEs that have concluded an IFA) to adopt negotiated agreements with unions; it also examines the reasons that may prevent MNEs from adopting such agreements to the benefit of unilaterally adopted instruments. The release of the study is expected in early 2008. Further research is under consideration in order to examine the real impact of IFAs on conditions of work and labour relations in MNEs located in non-EU countries, especially in the developing world.

¹ K. Papadakis (ed.): "Cross-border social dialogue and regulation: An emerging global industrial relations framework?", forthcoming, IILS.

of those principles and rights is usually an essential element in the implementation and monitoring of the agreements and their follow-up procedures. Some companies have created joint monitoring bodies composed of management and trade union representatives. This reflects an acceptance of the need for the active participation of all the unions concerned by the operations of a given MNE across the world in the follow-up of an IFA,⁷ and requires a proper dissemination of information. Some IFAs contain specific provisions requiring them to be translated into the languages of all the countries where the companies operate.⁸ The problem of outreach becomes ever more important in respect of suppliers and subcontractors where the links with the MNE or GUF headquarters are less direct.

Other means of promotion and implementation

Finance and procurement: Creating positive incentives

125. Development finance institutions (DFIs) increasingly require borrowers to adhere to national labour laws and international labour standards, including those concerning freedom of association and collective bargaining.

126. Traditionally, DFIs have taken the position that their work should focus exclusively on economic development. However, as it has become increasingly

evident that economic and social development are interrelated and have important positive synergies, many are now beginning to integrate social development considerations, including promotion of good labour practices, in their lending decisions. Integrating respect for freedom of association and collective bargaining into government procurement practices and lending to private companies operating in developing countries has the potential to be a powerful reinforcement for freedom of association and collective bargaining rights.

127. The Asian Development Bank (ADB) in 2000 adopted a Social Protection Strategy, which commits the Bank to observing the ILO's core labour standards in all its activities. In 2006, the ADB also published its Core Labor Standards Handbook (CLS Handbook), which was written in close collaboration with the ILO.

128. More recently, the International Finance Corporation (IFC) of the World Bank Group, which focuses on development of the private sector, revised its lending policy. This is expressed in its Performance Standards, which must be observed by borrowers. Performance Standard 2, which addresses labour issues, aligns the IFC's lending practices with the provisions of international labour standards, including the ILO's freedom of association and collective bargaining Conventions (Nos 87 and 98). This standard was developed in consultation with the ILO (see box 3.3).

129. Performance Standard 2 requires clients of the IFC, whatever the provisions of national law, not to

7. In almost half of the IFAs concluded by the third quarter of 2007, there has been some involvement of national unions, albeit not a comprehensive one, involving all national unions concerned by the operations of the enterprise. GUFs traditionally play the predominant role in the negotiation and signature of these agreements. In addition, IFAs in many cases are initiated by European Union federations and European Works Councils (EWCs). The most comprehensive "stakeholder" participation can be found in the 2005 EDF agreement which involved four GUFs and 20 national unions. The follow-up body (Consultation Committee on CSR) is composed of 28 members.

8. For example, Lukoil in 2004.

Table 3.2. International framework agreements (IFAs)¹ as of December 2007

Company	Year ²	Sector ³	Country	GUF	Workers covered ⁴
DANONE (BSN)	1988 (1994)	Food, drink and tobacco	France	IUF	100 000
ISS	1988 (2003)	Private services (cleaning)	Denmark	UNI	280 000
ACCOR	1995	Hotels, catering and tourism	France	IUF	147 000
IKEA	1998	Forestry, wood, pulp and paper/ Commerce	Sweden	IFBWW	84 000
STATOIL	1998	Oil and gas production; oil refining	Norway	ICEM	16 000
METRO	1999	Commerce	Germany	UNI	250 000
FABER-CASTELL	2000	Manufacturing (writing equipment)	Germany	IFBWW	6 000
HOCHTIEFF	2000	Construction	Germany	IFBWW	37 000
TELEFONICA	2000	Postal and telecommunication services	Spain	UNI	161 500
FREUDENBERG	2000	Chemicals	Germany	ICEM	27 500
SKANSKA	2001	Construction	Sweden	IFBWW	79 000
CARREFOUR	2001	Commerce	France	UNI	383 000
CHIQUITA	2001	Agriculture, plantations and other rural sectors	United States	IUF	26 000
OTE	2001	Postal and telecommunication services	Greece	UNI	18 500
INDESIT / MERLONI	2001	Mechanical and electrical engineering	Italy	IMF	20 000
ENDESA	2002	Utilities	Spain	ICEM	13 600
BALLAST NEDAM	2002	Construction	Netherlands	IFBWW	7 800
FONTERRA	2002	Food, drink and tobacco	New Zealand	IUF	20 000
VOLKSWAGEN	2002	Transport equipment manufacturing	Germany	IMF	325 000
NORSKE SKOG	2002	Forestry, wood, pulp and paper	Norway	ICEM	11 000
DAIMLER-CHRYSLER	2002	Transport equipment manufacturing	Germany	IMF	372 500
ANGLOGOLD	2002	Mining	South Africa	ICEM	64 900
ENI	2002	Utilities	Italy	ICEM	70 000
LEONI	2003	Transport equipment manufacturing	Germany	IMF	18 000
GEA	2003	Mechanical and electrical Engineering	Germany	IMF	18 000
RAG	2003	Chemicals/Mining	Germany	ICEM	98 000
RHEINMETALL	2003	Transport equipment manufacturing	Germany	IMF	25 950
SKF	2003	Mechanical and electrical engineering	Sweden	IMF	39 000
PRYM	2003	Transport equipment manufacturing	Germany	IMF	4 000
H & M	2004	Commerce	Sweden	UNI	40 000
BOSCH	2004	Transport equipment manufacturing	Germany	IMF	225 900
SCA	2004	Forestry, wood, pulp and paper	Sweden	ICEM	46 000
CLUB MEDITERRANEE	2004	Tourism	France	IUF, EFFAT	18 600
LUKOIL	2004	Oil and gas production; oil refining	Russia	ICEM	150 000
RENAULT	2004	Transport equipment manufacturing	France	IMF	130 700
IMPREGLIO	2004	Construction	Italy	IFBWW	13 000
GEBR. ROCHLING	2004	Transport equipment manufacturing	Germany	IMF	8 000
EDF	2005	Utilities	France	ICEM, PSI, FMTI	167 000
RHODIA	2005	Chemical industries	France	ICEM	20 000
FALCK ⁵	2005	Private services (security and emergency)	Denmark	UNI ⁵	230 000
VEIDEKKE	2005	Construction	Norway	IFBWW	5 000
BMW	2005	Transport equipment manufacturing	Germany	IMF	106 000

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Company	Year ²	Sector ³	Country	GUF	Workers covered ⁴
EADS	2005	Transport equipment manufacturing	Netherlands	IMF	110 000
SCHWAN-STABILO	2005	Manufacturing (writing equipment)	Germany	IFBWW	3 000
LAFARGE	2005	Construction	France	IFBWWICEM	77 000
ARCELOR	2005	Basic metal production	Luxembourg	IMF	95 000
PORTUGAL TELECOM ⁵	2006	Postal and telecommunication services	Portugal	UNI ⁵	32 000
PSA PEUGEOT CITROEN	2006	Transport equipment manufacturing	France	IMF	207 000
SECURITAS	2006	Private services (security)	Sweden	UNI ⁵	217 000
ROYAL BAM	2006	Construction	Netherlands	IFBWW	27 000
NAMPAK ⁵	2006	Media, culture, graphical	South Africa	UNI ⁵	700
EURADIUS ⁵	2006	Media, culture, graphical	Netherlands	UNI ⁵	600
STAEDTLER	2006	Manufacturing (writing equipment)	Germany	IFBWW	3 000
NATIONAL AUSTRALIA BANK GROUP ⁵	2006	Financial services	Australia	UNI ⁵	39 300
FRANCE TELECOM ⁵	2006	Postal and telecommunication services	France	UNI ⁵	200 000
ROYAL VOLKERWESSELS STEVIN	2007	Construction	Netherlands	BWI	16 700
QUEBECOR	2007	Media, culture, graphical	Canada	UNI	n/a
WAZ MEDIENGRUPPE	2007	Media, culture, graphical	Germany	IFJ	n/a
BRUNEL	2007	Private services (recruitment)	Netherlands	IMF	3 500
UMICORE	2007	Chemicals/Basic metal production	Belgium	IMF/ICEM	n/a
INDITEX	2007	Textiles, clothing, leather and footwear	Spain	ITGLWF	69 240
TOTAL (approx.):					4 999 790

¹ For the purposes of the present report only those agreements that are co-signed at least by a GUF and an MNE are considered to be international or global framework agreements. ² Corresponds to the year of the first IFA adopted by the enterprise. ³ According to the ILO definition of different sectors. ⁴ Data on IFA coverage corresponds to workers directly employed by the company. ⁵ Agreement is not publicly available.

SOURCES

Data updated as of November 2007, on the basis of various lists of IFAs compiled by: Robert Steiert (IMF)/Marion Hellmann (IFBWW), 2007; Nikolaus Hammer (Leicester University, United Kingdom), 2007; IILS, 2007; ORSE 2007, MULTI, 2007; and various company web sites (accessed 6 November 2007).

ACRONYMS

BWI	Building and Wood Workers International (former IFBWW and WFBW)
EFFAT	European Federation of trade unions in the Food, Agriculture and Tourism sectors
EFJ	European Federation of Journalists
GUF	Global Union federation
ICEM	International Federation of Chemical, Energy, Mine and General Workers Unions
IILS	International Institute for Labour Studies
IFBWW	International Federation of Building and Woodworkers
IFJ	International Federation of Journalists
IMF	International Metalworkers' Federation
ITGLWF	International Textile, Garment and Leather Workers' Federation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
MULTI	Multinational Enterprises Programme (ILO)
ORSE	<i>Observatoire sur la responsabilité sociétale de l'entreprise</i>
PSI	Public Services International
UNI	Union Network International
WFBW	World Federation of Building & Wood Workers

Box 3.3
IFC Performance Standard

“Performance Standard 2 recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers. For any business, the workforce is a valuable asset, and a sound worker-management relationship is a key ingredient to the sustainability of the enterprise. Failure to establish and foster a sound worker-management relationship can undermine worker commitment and retention, and can jeopardize a project. Conversely, through a constructive worker-management relationship, and by treating the workers fairly and providing them with safe and healthy working conditions, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations.”

Source: International Finance Corporation, Performance Standard 2, Labor and Working Conditions, April 2006.

discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and not to discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively. Concerning collective bargaining, it recognizes that clients of the IFC must respect existing collective bargaining agreements or, where such agreements do not exist, should provide reasonable working conditions and terms of employment which, at the very least, comply with national law.

130. Other international financial institutions are considering similar exercises. In 2007, the World Bank expanded the conditions in its procurement rules to include, for the first time, requirements on freedom of association and the right to collective bargaining.⁹ The European Bank for Reconstruction and Development (EBRD) has launched a process to revise its own social standards in the light of those adopted by the IFC. Many national banks, such as the Dutch development bank FMO, and the German development bank DEG, are also quite advanced in this process.

131. Many of the “Equator banks” (a group of private financial institutions that also lend to private enterprises in developing countries) have decided to follow the new IFC standards for labour conditions, including recognition of freedom of association and the right to collective bargaining. They apply Performance Standard 2 to project finance exceeding US\$10 million. Some 56 banks, including many of the world's largest, have pledged to adhere to the Equator Principles.

132. On the equity side, private investment funds also are increasingly taking freedom of association and collective bargaining into account in their investment decisions. These include socially responsible investment (SRI) funds¹⁰ and an increasing number of pension funds, such as the California Public Employees' Retirement System (CalPERS) and the Norwegian Government Pension Fund. Traditionally, investment funds have viewed social issues as a cost that could undermine their return on investment, but recent studies show that SRI has a neutral effect on short-term returns.

133. Examples of social investment indices include the Financial Times Stock Exchange 4 Good Index (FTSE4 Good), the Dow Jones Sustainability World Index (DJSI) and the Ethibel Sustainability Index Global. A recent survey of the top five SRI indices found that labour rights, including freedom of association, the right to organize and participate in collective bargaining, the principle of non-discrimination in the workplace and the right to a safe and healthy workplace, receive strong support.¹¹ In an attempt to mainstream consideration of social and environmental issues in the investment community, the United Nations Secretary-General in April 2006 launched the Principles for Responsible Investment (UN-PRI).¹²

134. The commitment of the investment community, both public and private, to integrating the principles of labour standards, including those concerning freedom of association and collective bargaining, into their investment decisions represents an important step forward. However, challenges remain for both lenders and fund managers. In most cases, it is very difficult

9. Revised Standard Bidding Documents for Procurement of Works are available at: <http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Works-4-07-ev1.pdf>

10. These are funds that take environmental, social and governance factors into account when making their decisions on selection and management of investments.

11. UN Human Rights Council document A/HRC/4/35/Add.4.

12. More information on this initiative can be found at <http://www.unpri.org>

Box 3.4 Better Work: An ILO/IFC partnership

Better Work is a programme launched in 2006 through a partnership between the ILO and International Finance Corporation (IFC). The aim is to improve labour standards performance and competitiveness in global supply chains.

Better Work brings together the ILO's expertise in labour standards and workplace cooperation with the IFC-supported private sector development assistance. The two institutions bring credibility and their individual strengths to the programme. Better Work supports enterprises in implementing the core labour standards and national labour laws, thereby improving their ability to compete in global markets, as well as enhancing productivity and product quality.

Country-level projects will typically combine independent enterprise assessments with advisory and training services to support improvements through workplace cooperation. In the first stage of the programme, three pilot country projects are planned in Viet Nam, Jordan and Lesotho. After initial implementation of these projects, Better Work will expand to other countries. Enterprises are approached through industry-based schemes. Factory information can then be shared with buyers through the Better Work Information Management System (IMS). Such an approach allows buyers to reduce their own auditing processes and redirect resources to resolving problems and developing sustainable solutions. The key to the success of the project will be the support of the employers' organizations, trade unions, national governments and international buyers. Better Work will also establish certified training programmes for trainers and enterprise advisors, a support network, an interactive web-based community to support practitioners, and a professional development programme for these target groups. One of the objectives of the programme is to establish independent organizations that will continue operating after the conclusion of the project, typically, within five years.

Global Tools will range from assessment and training resources to work books to address common problems in small and medium-sized enterprises, model policies and procedures and good practice guides as well as an Information Management System (IMS) that can capture information on compliance and remediation efforts. This system will be adaptable to support self-assessments, country projects and public sector labour administration. They will be available globally through a web portal (<http://www.betterwork.org>).

A global Better Work community will be responsible for ongoing quality control once country projects are independent. Country projects adapt the global tools and develop new ones, which in turn will be made available at the global level. In this way, Better Work tools will be adapted and developed for different sectors and regions. IFC and ILO are designing a comprehensive monitoring and evaluation framework to measure impacts at the factory, industry, country, and global levels.

to get accurate information on respect for freedom of association and collective bargaining, and banks need better tools to engage in constructive dialogue with their clients on the importance and benefits of respecting these rights, in order to help boost compliance. Those financial institutions which remain less convinced of the importance of these rights need further encouragement; those who are unsure of what they should be doing in practice need further support.

135. A key consideration regarding the effectiveness of governmental, intergovernmental and private investor initiatives is engagement with the main stakeholders – workers and employers – through their representative organizations. The impact and sustainability of these investor initiatives are dependent on the participation of employers' and workers' organizations.

Corporate social responsibility: Fostering an enterprise culture of respect for freedom of association and collective bargaining

136. Corporate social responsibility (CSR) has the potential to provide an important complement to government regulation of the workplace and protection of workers' rights, including freedom of association and collective bargaining. The ILO defines CSR as "... a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law."¹³

13. ILO: *InFocus Initiative on Corporate Social Responsibility (CSR): Strategic orientations*, Governing Body, 295th Session, Geneva, March 2006, GB.295/MNE/2/1, para. 1.

137. CSR instruments such as company and industry codes of conduct typically demand compliance with national law, which can foster a shared enterprise culture of respect for the rule of law. CSR is driven by companies; through the sharing of experiences they can learn from each other and build a common understanding of social responsibility in competitive markets. Companies in the same community, or working together in a global supply chain, can hear directly from other companies about the benefits of being active in an employers' association and share with one other positive experience of working with trade unions on issues such as improving competitiveness through improved industrial relations.

138. CSR instruments also refer to the principles contained in international labour standards and can motivate respect for these principles and rights in countries where the national law may not adequately protect them. CSR initiatives thus have the potential to improve local practice in sectors and production zones where national law is inadequate. Company initiatives can also foster public-private partnerships for encouraging sustainable enterprises.

139. A company's public declaration of criteria for managing workplace issues can be an important element of its business strategy. By including the principles and rules relating to freedom of association and other labour standards in a text that bears the company's authority, CSR initiatives can create further certainty and reliability for business as well as employees. These principles can find expression in contractual obligations on contractors and intermediaries supplying non-employee workers as well as primary and possibly secondary suppliers. In such cases codes are supplemented by more binding provisions written into supply contracts, and might even extend into the informal economy.

140. However, CSR is not a panacea; on the contrary, it can even distract from the fundamental obligation to respect the right of workers to organize and bargain collectively. For instance, if a company focuses only on a particular issue, such as safety and health, rather than a broad set of labour rights, it may still ignore the rights to freedom of association and collective bargaining. It will thus ignore and fail to make use of the unique role trade unions can play in helping to ensure a safe and healthy work environment.

141. Although international labour standards as a whole are increasingly used as the reference for many company, industry-wide and multi-stakeholder CSR initiatives,¹⁴ freedom of association and collective bargaining rights are often marginalized or simply omitted. There is a great risk that in such cases, private actors interpreting what the relevant Conventions imply for the social responsibility of companies may create confusion rather than consensus on the importance of these rights. A study conducted by the World Bank found significant variations in the manner in which CSR initiatives interpreted labour principles.¹⁵

142. Omission, misinterpretation or oversimplification are particularly prevalent in monitoring practices in supply chains, where social auditors are generally not adequately trained to understand freedom of association and collective bargaining. Nor can we adequately measure the quality of industrial relations by purely quantitative indicators such as the number of received complaints or recorded conflicts.

143. CSR also risks creating confusion about the appropriate role of companies compared with the essential role of government. This confusion may encourage governments to abdicate their responsibility to protect workers' rights through adequate regulation and effective public labour inspection. In the area of freedom of association and collective bargaining, governments have an especially important role which cannot be ceded to private systems of defining workers' rights.

144. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977 (most recently revised in 2006), is the ILO instrument that provides guidance to companies on what they could be doing to promote respect for workers' rights in their own practices and in their relations with other companies, including in their supply chains. It also speaks to governments about policies to attract the type of foreign direct investment (FDI) that is more likely to promote decent work, and about how to create an enabling environment which encourages companies to pursue their voluntary initiatives. This instrument clearly reflects the central role of freedom of association, collective bargaining and good industrial relations and clarifies the responsibilities of the parties.

14. J. Ruggie, *Human rights policies and management practices of Fortune Global 500 Firms: Results of a survey*, Corporate Social Responsibility Initiative Working Paper No. 28 (Harvard University, John F. Kennedy School of Government, 2006).

15. The World Bank Group: *Company codes of conduct and international standards: An analytical comparison* (Washington, DC, 2003).

Trade agreements and the rights to organize and bargain collectively

145. A growing number of bilateral and multilateral trade agreements, as well as regional economic integration arrangements, contain social and labour provisions. Many of them make explicit references to international labour standards, including those on freedom of association and collective bargaining.¹⁶

146. For example, the European Union's special incentive arrangement for sustainable development and good governance (Generalized Schemes of Preferences/GSP+) provides additional benefits for countries implementing certain international standards in regard to human and labour rights, environmental protection, drug trafficking and good governance. In particular, developing countries that ensure respect for the core labour rights defined by the ILO's fundamental Conventions are eligible for additional trade preferences under the Union's GSP.¹⁷ In June 2007, the EU decided to withdraw GSP benefits from Belarus in response to the country's violation of freedom of association and collective bargaining rights. In 2006, El Salvador was granted GSP benefits once it had ratified ILO Conventions Nos 87 and 98.

147. In Latin America, Argentina, Brazil, Paraguay and Uruguay have entered into a range of labour commitments under the Social and Labour Declaration of the Common Market of the Southern Cone (MERCOSUR), which was signed in 1998. The Bolivarian Republic of Venezuela was also admitted to MERCOSUR as an associate Member in 2006. The Declaration recalls the States parties' membership of the ILO and their ratification of its principal Conventions guaranteeing the fundamental rights of workers. It also proclaims their support for the ILO's 1998 Declaration, reaffirming their commitment to respect, promote and implement the rights and obligations set out in the Conventions recognized as fundamental both within and outside the Organization.¹⁸

148. The North American Free Trade Agreement (NAFTA) was signed by Canada, Mexico and the United States in 1992. NAFTA was complemented in 1994 by the North American Agreement on Labour

Cooperation (NAALC), which commits each of the three signatory countries to "protect, enhance and enforce basic workers' rights" and establishes 11 "guiding principles" which they undertake to promote, subject to their domestic law. The principles include freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, the prohibition of forced labour, and the elimination of discrimination in employment.¹⁹

149. Since 2001, the United States has signed other free trade agreements (FTAs) with a number of countries including Bahrain, Chile, Jordan, Morocco, Singapore and the Republic of Korea. These FTAs all "reaffirm the parties' obligations with the ILO and with the commitments under the ILO Declaration on Fundamental Principles and Rights at Work".²⁰

150. Canada has also promoted FTAs that include a labour component. Its FTA with Chile, for example, was ratified in 1997 and is complemented by the Canada–Chile Agreement on Labour Cooperation (CCALC), which aims to advance fundamental labour principles and workers' rights, including freedom of association and collective bargaining. In addition, the FTA between Canada and Costa Rica, signed in April 2001, includes a labour cooperation agreement which, although an annex, forms an integral part of the FTA. This accord commits both countries to comply with and promote the principles and rights set out in the ILO Declaration.

151. One of the most recent FTAs, approved by the United States House of Representatives in 2005, is the CAFTA–DR (Central America – Dominican Republic – United States FTA). According to this agreement, the Parties "reaffirm their obligations as Members of the International Labour Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)". It refers to internationally recognized labour rights to organize and bargain collectively. The CAFTA–DR includes binding provisions on dispute settlement, including potential financial assessments and trade sanctions. It also establishes a Labour Cooperation and Capacity Building Mechanism.²¹

16. For an overview of recent free trade agreements and their labour components, see C. Doumbia-Henry and E. Gravel: "Free trade agreements and labour rights: Recent developments", in *International Labour Review*, Vol. 145 (2006), No. 3, pp. 185–206.

17. For the list of GSP+ beneficiary countries, see European Commission decision 2005/924/EC.

18. For further information concerning the MERCOSUR see <http://www.mercosur.org.uy>

19. The North American Agreement on Labor Cooperation (NAALC) was signed by the United States, Canada and Mexico on 13 September 1993 and entered into force on 1 January 1994. More information is available at <http://www.naalc.org/english/agreement.shtml>

20. For a complete list and description of all bilateral free trade agreements signed by the United States with developing as well as developed countries, see www.ustr.gov/Trade_Agreements_Bilateral/Section_Index.html

21. The full text of the Agreement is available online at www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Section_Index.html

152. In 2007, a new trade policy was agreed between the Administration and Congress of the United States stipulating that free trade agreement countries would need to be committed to adopting and enforcing laws that abide by basic international labour standards as outlined in the ILO Declaration. The labour standards would be incorporated into the core free trade treaty, rather than a side agreement or letter.²²

153. Labour advocates and free trade advocates have had heated discussions on the proper role of labour obligations under FTAs ever since the signing of the NAALC (the NAFTA's side agreement on labour), and there has been an ongoing debate over whether labour standards are mere goals or should be enforceable obligations under a dispute settlement mechanism. Furthermore, agreements which state that the parties' obligation is to respect their own national laws, with the provision that those laws should conform to ILO standards, do not always entrust the determination of such conformity to an external and objective body.

154. Under some FTAs, but more so under regional integration agreements, capacity strengthening arrangements and trade incentives or penalties are combined. Indeed, the creation of institutional mechanisms to carry out cooperation and capacity building on labour matters is an important component of those FTAs. Provision of adequate financial resources for such activities should also be foreseen. Trade incentives might address the lack of political will but technical assistance and financial support is

also needed to build capacity if meaningful results are to be achieved.

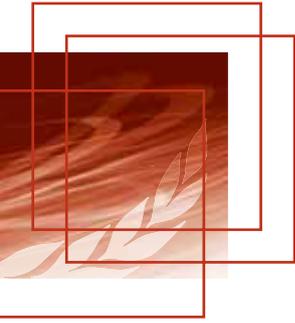
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155. This chapter has reviewed recent trends at the international level in institutions and processes that have contributed in different degrees to promoting the principles of freedom of association and collective bargaining. Such trends indicate a growing and broader concern regarding these rights, for instance among DFIs and in regional agreements. This may well be the consolidation of a new trend, with important new actors of considerable economic and political "clout" weighing in to promote freedom of association and collective bargaining rights. The relative role that employers' and workers' organizations play in these international initiatives tends to determine the extent to which they will support and make the initiatives sustainable in the longer run.

156. Globalization has made it possible for trade unions and for employers' organizations to make their voices heard beyond national borders, throughout production chains, in international markets, and by a wider audience. There has been a trend towards increased cooperation, as well as several mergers, among trade unions at the national and international levels, in order to gain in strength and to mobilize their forces to meet the challenges of globalization. Mergers and increased cooperation have also been on the agenda of many employers' organizations.

22. Trade Facts, Office of the United States Trade Representative, Bipartisan Agreement on Trade Policy: Labor, May 2007. Viewed at: <http://www.ustr.gov/>





Chapter IV

Industrial sectors and categories of workers

157. Previous chapters provided a general picture of developments relating to freedom of association and collective bargaining. This chapter addresses specific industrial sectors and categories of workers, some of which are already included in the plans of action adopted by the ILO. The sections on migrant workers and the informal economy have been expanded in response to the earlier debates on the subject.

Sectoral developments

Agriculture and rural employment

158. Nearly half the world's workforce is found in rural areas, which remain the largest source of employment in Africa and most of Asia. Nevertheless, in many countries agricultural and rural workers are still denied the right to organize and bargain collectively. This is despite the fact that the need to protect the rights of those working in agriculture was recognized as early as 1921, when the ILO's member States adopted the Right of Association (Agriculture) Convention (No. 11), according to which agricultural workers should have the same "rights of association and combination" as industrial workers. This Convention has been ratified by 122 member States.

159. At the same time, the practical difficulties of putting into effect the rights to organize and bargain collectively in the sector cannot be minimized. The agricultural sector, and rural employment in general, have distinctive features.¹ In general, agriculture is a sector in which small enterprises with relatively few employees predominate and self-employment is

widespread. Much of the wage employment is temporary or seasonal, and farms are spread over wide geographical areas. These factors are a challenge to trade union organization. The number of agricultural trade union members is usually relatively small compared to the total number of workers in the sector. On large commercial farms and plantations where large numbers of workers are employed, it is more common for the workforce to be represented by trade unions and to be covered by collective bargaining agreements. Nonetheless, some unions have reported restrictions on the right of temporary workers or of those employed by out-growers to join trade unions. These restrictions are important in the light of current employment trends in the sector.

160. In addition to practical difficulties facing agricultural workers who wish to organize, there is also evidence of government interference which restricts the exercise of this basic right. The most common legal obstacle in the sector remains the full or partial exclusion of agricultural workers from legislation guaranteeing the right to freedom of association and collective bargaining. In addition, there are often excessive requirements regarding minimum numbers of members as a condition for a trade union to be recognized. Over the years, the CFA has examined dozens of complaints related to the agricultural sector. Some concern very serious allegations of human rights violations, including violence, death threats and even murder. Others involve mass dismissals, anti-union discrimination and refusal to grant union recognition.

161. Collective agreements in agriculture are sometimes framed in general terms applicable across the sector, but in most cases, agreements are tailored to

1. Some of the distinctive features of the agricultural sector are discussed in the report on the promotion of rural employment for poverty reduction submitted to the 2008 session of the Conference.

the conditions of employment and work in specific crops, such as sugar, tea, rubber, palm oil, or particular subsectors such as floriculture or livestock. Agreements between a single employer or company and a trade union are common. But there are also many cases where agricultural employers' organizations, or crop associations representing employers in a particular subsector, conclude agreements with trade unions that are applicable to all their members.

162. Collective agreements in agriculture are important for securing decent conditions of work and ensuring stable labour relations in the sector. Many large farms and plantations are in remote locations that are infrequently visited by labour inspectors. Collective agreements often simply incorporate relevant labour code provisions on working time, overtime pay, leave and medical care. This is important for two main reasons. First, knowledge and enforcement of the law tend to be weak in remote areas, whereas the provisions of collective agreements are known and accepted by the parties concerned. Secondly, labour codes frequently treat the agricultural sector differently from other sectors and the agreement thus clarifies the applicable law.

163. As in other sectors, wages are at the heart of collective bargaining in agriculture. Many collective agreements append detailed wage tables that specify wage rates for each category of worker or for each type of work or task. The role of collective bargaining in wage setting is crucial, since many countries exclude agricultural workers from minimum wage protection, or exclude specific types of workers frequently found in agriculture, such as casual, part-time, seasonal or piece-rate workers. Wage rates agreed through collective bargaining can serve as a reference point for employers and workers not covered by specific agreements. In a number of countries, minimum wages in agriculture are determined through sectoral collective agreements.

164. South Africa has taken an innovative approach to governance of the agriculture sector, by setting up a special tripartite body which meets regularly to discuss issues and update legislation. The relevant Sectoral Determination, which is agreed upon by the Government, farmer organizations and trade unions, is the code for farm workers in the country.

It has established minimum wages, working hours, number of leave days and termination rules for the farm workers. It applies to all workers on farms, including domestic workers and security guards.²

165. Likewise, many Member States of the European Union have agreements covering farm workers. For example, Romania has a sector-wide agreement. However, the situation varies from country to country, ranging from no agreements at all in some countries to almost 100 per cent of workers covered by agreements in Austria.³

166. Progress has been made in the Canadian Province of Ontario, where the Supreme Court of Canada in 2001 declared the Ontario law prohibiting the unionization of agricultural workers to be unconstitutional. This ruling was followed by the adoption of new legislation in 2002 recognizing the right of agricultural workers to organize. In Jordan, the coverage of the Labour Code is being extended to agricultural workers in the public sector and part of the private sector. Over the last four years, the Government of the Libyan Arab Jamahiriya has informed the ILO supervisory bodies that under national law the right of affiliation is a principle established for everyone without discrimination including rural workers. In the Syrian Arab Republic, the provisions which prevented agricultural workers and their organizations from engaging in certain activities, notably strikes, have been repealed. In Uruguay, the Government has now set up a Higher Rural Council to promote collective bargaining in the rural sector.

Public services

167. The right of public officials and employees to freedom of association is generally acknowledged in the industrialized and many developing countries, but many public sector employees continue to face significant hurdles. ILO freedom of association jurisprudence maintains that the rights of public employees to organize and bargain must be respected.⁴ Governments as employers at national, provincial or local levels may negotiate with workers' organizations that represent one or more public services or enterprises.

2. Available at http://www.labour.gov.za/legislation/sectoral_display.jsp?id=10376

3. Eurofound: "Industrial relations in agriculture", table 9, available at <http://www.eurofound.europa.eu/eiro/2005/09/study/tn0509101s.html>

4. ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006: "In view of the importance of the right of employees of the State and local authorities to constitute and register trade unions, the prohibition of the right of association for workers in the service of the State is incompatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish organizations of their own choosing without previous authorization."

IV. INDUSTRIAL SECTORS AND CATEGORIES OF WORKERS

Where this representation encompasses many different types of public service activities, negotiations are nevertheless usually conducted separately for each distinct activity. In the case of major public service sectors, such as education and health, negotiation practices and procedures are increasingly differentiated and varied.⁵

168. The ILO's Labour Relations (Public Service) Convention, 1978 (No. 151), with 44 ratifications, promotes collective bargaining for public employees, as well as other methods of ensuring the participation of their representatives in the determination of their conditions of employment. It also provides that disputes must be settled through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation or arbitration. Furthermore, the provisions of Convention No. 87 apply to all workers without distinction whatsoever, and are therefore applicable to employees of the State. It is considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defence of their interests.⁶

169. Grievances concerning freedom to associate and bargain collectively have been expressed by public sector workers throughout the world. Allegations range from legislation denying them the right to organize to violence and even killings of trade unionists. In most cases, not all public service employees are empowered to bargain and conclude collective agreements.

170. Progress has been noted in Botswana, where the adoption of the Trade Unions and Employers' Organizations (Amendment) Act has led to the recognition of the right to organize for public service employees and teachers, although this right remains restricted in the case of prison staff. In the Republic of Korea, the Act on the Establishment and Operation of Public Officials' Trade Unions recognized the right of some public employees to organize, although important restrictions remain. In Lesotho, the right of public employees to organize was recognized in the Public Services Act 2005, but there are still certain

limitations and legislative gaps. In Poland, amendments to the Labour Code and the Law on Trade Unions now permit prison guards to establish trade unions. In Uganda, the Labour Unions Act No. 7 of 2006 abolished the exclusion of prison staff from trade union membership.

171. Until recently in many countries, government was the sole employer in the public services. While the situation varies from country to country, there has been a trend in public services towards reform, staff cuts, outsourcing and privatization. With increasing privatization, the role of the private sector in providing public services has become more visible. However, privatization often leads to retrenchment, which unions generally oppose. The transfer of enterprises from public to private sector usually results in downsizing at a time when workers most need representation. In Thailand, when a state-owned company was privatized, the Ministry of Labour allegedly cancelled the registration of its trade union on the grounds that the company was no longer covered by the same legislation.⁷

172. Participation in public sector reform is also on the agenda of many trade unions. Despite recommendations by ILO sectoral meetings,⁸ the importance of involving public sector unions in decisions on change through social dialogue is frequently ignored. In some countries, however, consultations take place on reform issues. For instance, in Japan, the commitment was made to engage trade unions in public sector reform.⁹

Essential services

173. The right to strike is the most controversial issue for workers in essential services. Such services need to be maintained at all times, as industrial action by public emergency services may endanger human life and safety. One example is the firefighting services. Even where those services have the right to strike, many restrictions on the exercise of that right are maintained. In most cases, however, firefighters

5. ILO: *Future orientation of the Sectoral Activities Programme and proposals for activities*, Governing Body, 298th Session, Geneva, March 2007, GB298.STM/1.

6. ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, op. cit., para. 218.

7. ILO: *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Part II, Geneva, Mar. 2006, p. 132.

8. See for example the agreed outcomes of several ILO meetings on the subject in the last decade, including: the conclusions of the Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition (Geneva, 14–18 December 1998); the conclusions of the Joint Meeting on the Impact of Decentralization and Privatization on Municipal Services (Geneva, 15–19 October 2001); and the *Guidelines adopted by the Joint Meeting on Public Emergency Services*, Geneva, 27–31 March 2003.

9. ILO: *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Part II, op. cit., p. 173.

are subject to an outright ban on strike action.¹⁰ Some countries even deny workers in essential services the right to organize.

174. According to ILO jurisprudence, while the right to organize cannot be denied, the right to strike can be restricted in the essential services; the exclusion of the armed forces and police is permitted, while the rights of firefighters and emergency medical services (EMS) workers to organize are protected. In some cases, however, such as the police service in South Africa, the right of police to organize and bargain collectively is granted in the Labour Code.¹¹ However, firefighters in some countries are placed in the same category as the armed services and face an outright ban on organizing. In some countries there is no bargaining for workers in essential services, as the Government sets conditions of work, but unions may play a consultative role.¹² Furthermore, budgetary issues can dictate matters such as the staffing of a fire station or emergency vehicle, which are in fact also safety and health issues and can be regarded either as a policy matter or as an issue for a collective agreement.¹³

175. The ILO's supervisory bodies have noted some positive developments regarding the right to strike in legislation pertaining to essential services. As to the need to ensure that any restriction on the right to strike is limited to essential services in the strict sense of the term, Jamaica adopted legislative amendments that removed a large number of sectors from the earlier list of essential services. In Lithuania, legislative amendments were adopted to ensure that restrictions on the right to strike are limited to essential services in the strict sense of the term. In Costa Rica, draft legislation defines essential services in much the same way. In the Dominican Republic, measures are under consideration for the removal of certain industries, namely those relating to citrus and coconut production, from the list of essential services. In Turkey, a draft bill aims inter alia to remove certain sectors from the list of activities where strikes are prohibited.

Education

176. The extent to which teachers' unions can negotiate varies enormously in different countries. Despite constraints on collective bargaining and social dialogue in the education sector of many African countries, progress has been made on key issues in recent years. In the United Republic of Tanzania, a series of policy dialogue seminars, supported by the ILO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), brought together key government officials and the teachers' union leadership to improve the union's ability to participate in reform processes.¹⁴ Nigeria provides for the right to organize and bargain collectively, but places some restrictions on these rights. Teachers in the public and private sector participate through social dialogue in policy discussions by stakeholders on teacher reforms. However, there is no institutional collective bargaining.¹⁵ In Mali, teachers and health-care personnel negotiate separate sectoral level agreements, but the rest of the public sector is subject to a centralized agreement.¹⁶

177. Despite various advances, teachers continue to face obstacles in exercising their right to organize and bargain collectively. In some countries, such as Ethiopia, Cameroon and the Islamic Republic of Iran, teachers' activists have faced detention. In Turkey, Peru and El Salvador, leaders of teachers' unions have been dismissed. Anti-union discrimination against education workers has taken place in Chile, Uruguay and Nigeria. The right of teachers to strike and demonstrate peacefully has been violated in Chile, Togo and Honduras. The long list of countries where governments have intervened to obstruct collective bargaining by teachers on salaries and conditions of work includes Argentina, Canada, Chile, Guatemala, Japan, India and Nicaragua. Teachers are among the trade unionists whose lives have been in danger in Colombia, where in 2005 and 2006, respectively 44 and 35 education workers were murdered by paramilitary or guerrilla groups.

178. The situation in Ethiopia has been the subject of a long-standing complaint before the CFA on

10. S. Tomoda: *Public emergency services: Social dialogue in a changing environment*, report produced for the Joint Meeting, ILO, Geneva, 2003.

11. B. Mgijima: *Best practice in social dialogue in public emergency services in South Africa*, Sectoral Activities Programme Working Paper, ILO, Geneva, 2003.

12. J. Pérez: *Social dialogue in the public service*, Working Paper for the InFocus Programme on Social Dialogue, Labour Law and Labour Administration, ILO, Geneva, 2002.

13. S. Tomoda: *Public emergency services: Social dialogue in a changing environment*, op. cit., 2003.

14. B. Ratteree: *Teachers, their unions and the Education for All Campaign*, background paper for EFA Global Monitoring Report 2005 through the ILO, Geneva.

15. *ibid.*

16. J. Pérez: *Social dialogue in the public service*, op. cit.

violations of basic trade union rights, while parallel allegations of non-observance of international standards concerning teachers have been brought before the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART). The Labour Proclamation of 2003 specifically excluded teachers in the public sector from the right to unionize and various violations of trade union rights have been reported.¹⁷

179. In Greece, demands made by teachers during strikes in 2006 included the following: increased spending on education; 12 years of compulsory education for all citizens; the filling of vacancies through collective appointments; the elimination of hourly wages; retraining for teachers with provision of substitute teachers; reduction of student–teacher ratios; and improved insurance and pensions.¹⁸

180. Teachers and their representatives in the United States have made some advances towards greater participation in education reform. One initiative that started in the 1990s and continues to gain momentum is the Teacher Union Reform Network (TURN). This is a union-led effort to restructure the national teachers' unions to promote reforms that will ultimately lead to better learning and higher achievement for America's children. The unions believe that including them as partners in the transformation of public education is essential to achieving the ultimate goal of improving student learning.¹⁹

Health services

181. Labour relations in health services are very complex. Public institutions and those in the private sector are usually covered by different legislation. Health services may be subject to greater national, as well as local, regulations compared to other sectors; the wide range of personnel they employ have differing professional qualifications and occupational interests; there is, at least in large units, a highly structured system of work organization; and as the sector provides an essential service to the public, restrictions

on trade union rights are sometimes deemed necessary by the authorities.

182. At the same time, labour relations systems in the health services have evolved in recent years. Decentralization of bargaining in some countries, such as the United Kingdom, has often required a significant training effort within the organizations concerned and a decentralization of finances as well as responsibilities for the parties.

183. A partnership approach has been tried in New Zealand, where the Public Service Association launched the concept of “Partnership for Quality” in its Health Sector Bargaining Strategy. In the United States, labour–management partnerships have also been introduced in the private health sector. A national agreement concluded between Kaiser Permanente and a coalition of workers' organizations promotes social dialogue and workers' participation as a continuous process going beyond traditional collective bargaining.²⁰

184. In some countries, collective bargaining has provided the means to address very specific workplace issues within larger agreements on terms and conditions of employment. In Bulgaria, the inclusion of issues of violence and stress in the 2004 branch collective agreements was regarded as a major positive development. This addressed measures by employers and trade unions to prevent all forms of discrimination, as well as physical and psychological violence at the workplace. A procedure for dealing with cases of violence was also introduced. The Health and Safety Committees, formed in all health establishments, are required to collect information and investigate all cases of violence at the workplace and to decide on appropriate action. The agreement, which applies to the entire country and to all health institutions, was the result of cooperation between the ILO, the International Council of Nurses (ICN), the World Health Organization (WHO) and Public Services International (PSI) in the framework of the Joint Programme on Workplace Violence in the Health Sector.²¹

185. This does not, however, mean that all difficulties are resolved through social dialogue. Health sector restructuring in Bulgaria following transition

17. See *Social dialogue in the education sector: An overview*, background paper for the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, Geneva, 2006, CEART/9/2006/WG SD.1.

18. Information obtained from <http://www.eurofound.europa.eu/eiro/2006/11/articles/gr0611019i.html>

19. One of the basis principles of the international standard on teachers, the ILO/UNESCO Recommendation concerning the Status of Teachers, 1966.

20. This case is an example of the “new generation” of labour–management partnerships in the United States, based on intensified competition and union revitalization efforts, and in which trade unions agree to support the company and in turn receive recognition as partners. For an overview, see R. Hurd, R. Milkman and L. Turner: *Reviving the American labour movement: Institutions and mobilization*, International Institute for Labour Studies, discussion paper 132 (Geneva, ILO, 2002), pp. 10–12.

21. L. Tomev, N. Daskalova and T. Mihailova: *Social dialogue in the health sector: Case study Bulgaria*, Sectoral Activities Programme, Working Paper No. 235, ILO, Geneva, 2005.

to a market economy in the 1990s was accompanied by a drastic reduction in the number of jobs. Between 1990 and 2002, the sector lost more than 47,500 jobs. Furthermore, wages in public health-care establishments are lower than in the public sector as a whole and below the national average wage.²²

186. The extent to which the right to strike is respected within the health services sector varies widely from one country to another. In some countries, employers and workers are expected to agree voluntarily on minimum services during labour disputes, while other countries make this a legal requirement. Some countries prohibit all strike action in the sector, either on the grounds that the sector performs essential services or as part of a general ban on industrial action in the public sector. For example in Ghana, where bargaining is dominated by wage negotiations, a new labour law has classified many health professions as essential services which are subject to compulsory arbitration.²³

187. Differences between rights accorded to public and private sector workers in the same activity sometimes provoke conflict. Trade unions in Spain demanded the same pay and working conditions for private health workers as for those employed in public institutions, to reflect the fact that workers in private health centres are required to have similar qualifications and skills. The demands resulted in a three-day strike.²⁴

Oil and gas

188. While social dialogue in this sector is not very common, there are some interesting examples of collective bargaining. In Nigeria, a member of the Organization of Petroleum Exporting Countries (OPEC), collective agreements are negotiated at the enterprise level. They generally include wages and other working conditions and are normally determined in the light of a company's financial situation.²⁵

189. In the European Union, a new sectoral social dialogue committee was established for the sector in March 2007. It brings together organizations representing thousands of gas workers across the Union – the European Mine, Chemical and Energy Workers

Federation (EMCEF) and the European Federation of Public Service Unions (EPSU) – and EUROGAS, the EU-level industry organization. The committee will enable the social partners to contribute to policies affecting the sector in the European Union, such as the new energy package and the ongoing liberalization of the gas industry.

Retail

190. The retail sector, an industry with many flexible labour arrangements, is facing a major technological transformation. Some big corporations continue to discourage unionization among their workers. Others, however, are showing flexibility in this regard at their ventures abroad. The United Food and Commercial Workers (UFCW), which has had the aim of unionizing Wal-Mart workers in the United States and Canada, is now expanding its efforts beyond those two countries and looking at future markets in China, Republic of Korea and India. The union's goal is to educate workers about corporate practices before any large foreign enterprise establishes itself in a those countries.

191. The introduction of an alternative to bar coding in the form of radio frequency identification devices (RFIDs), will have a major impact on employment in the sector in the years to come. Incorporating training for this new technology may become an important aspect of collective agreements in the sector. Social dialogue also needs to address the implications of new technologies on employment and jobs, skills and training for employability, maintenance of harmonious labour–management relations, worker privacy concerns and occupational safety and health.²⁶

Shipping

192. Shipping has become a truly global industry. The reasons are the possibility of rapid changes in the ownership and management of ships, the establishment of new registers, technological developments, and the fact that crews consist of seafarers of different cultures and languages. Within a short period, a vessel

22. *ibid.*

23. D.Y. Dovlo: *Social dialogue in the health sector: Case study Ghana*, Sectoral Activities Programme, Working Paper No. 234, ILO, Geneva, 2005.

24. P. Meseguer Gancedo, in an article available in translation at <http://www.eurofound.europa.eu/eiro/2006/01/inbrief/es0601101n.html>

25. S. Fajana: *Industrial relations in the oil industry in Nigeria*, Sectoral Activities Programme, Working Paper No. 237, ILO, Geneva 2005.

26. ILO: *Note on the proceedings*, Tripartite Meeting on the Social and Labour Implications of the Increased Use of Advanced Retail Technologies, TMART/2006/11 (Geneva, 18–20 September 2006).

IV. INDUSTRIAL SECTORS AND CATEGORIES OF WORKERS

Box 4.1

Industrial relations in the Mexican oil industry

Compared with the overall unionization rate of industrial sectors in Mexico, estimated at around 10 per cent, the oil industry is a highly unionized sector. It is estimated that at least 75 per cent of the overall workforce at *Petróleos Mexicanos* (PEMEX) is unionized. In other words, almost 90 per cent of workforce members who are eligible to join the trade union – meaning permanent and temporary employees – are trade union members. It is notable that in the oil industry temporary employees are unionized, whereas in most private sector enterprises they are not.

In 2005, PEMEX implemented nearly 9,000 clauses of collective agreements, relating to matters such as the rationalization of workplaces, retirement, housing, relocation of unionized employees and modifications of conditions of work.

Source: C.R. Castillo: *Excerpts from industrial relations in the oil industry in Mexico*, Sectoral Activities Programme, Working Paper No. 239 (2005), pp. 25, 28–33.

Box 4.2

Organized business in the South African oil industry

The National Petroleum Employers' Association (NPEA) focuses on industrial relations issues, while the South African Petroleum Industries Association (SAPIA) focuses on industrial development and broader coordination of socio-economic issues affecting major oil companies.

The NPEA deals with all activities relating to negotiations in the oil industry at the centralized bargaining forum. The organization was formed as a result of the creation of the National Bargaining Council for Chemical Industries and the petroleum subsector within its framework. The organization is registered with the Department of Labour in accordance with the Labour Relations Act. All the major oil companies are members of the Association.

The SAPIA was founded by six major oil companies in 1994 in order to encourage transparency, increase understanding of the industry's operations and objectives, and further its efforts in environmental conservation. Its amended membership rules allow associate membership in order to facilitate the participation of smaller oil companies. SAPIA has signed a cooperation agreement with the African Mineral and Energy Forum (AMEF) and has also formalized its relationship with Women in Oil and Energy South Africa (WOESA) through a Memorandum of Understanding to promote and sustain empowerment of women in the oil industry. SAPIA is a member of the Business Unity of South Africa, which represents it on the National Economic Development and Labour Council (NEDLAC).

AMEF was set up in 1998 to represent the interests of black people in the key sectors of mining, gas, petroleum and electricity. Its mission is to create an environment in which black entrepreneurs can compete on an equal footing in a globally competitive sector.

WOESA was launched in March 2002 with support from the Minister of Minerals and Energy. It aims to ensure meaningful participation of women in business ventures in the oil, gas and other energy sectors. While its major focus is directed at historically disadvantaged individuals and groups, it does not exclude white women.

Source: S. Miller and T. Van Meelis: *Industrial relations in the oil industry in South Africa*, Sectoral Activities Programme, Working Paper No. 238, ILO, 2005, pp. 12–13.

may be sold to an owner in one country and registered in another. The same vessel will most probably have crew members of several different nationalities and stop over in the ports of many different States. The sector has taken important steps forward in addressing its issues globally. Since 2003, the ILO has adopted three important Conventions in this sector, namely: the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), the Maritime Labour

Convention, 2006, and the Work in Fishing Convention, 2007, as well as guidance with regard to port workers. All of these instruments are the result of international tripartism and clearly require national-level social dialogue to ensure effective national implementation. In addition, the Maritime Labour Convention, 2006, explicitly envisages implementation of aspects of the Convention through collective bargaining agreements.

Box 4.3

The METRO Group Future Store Initiative and social dialogue on RFIDs

The METRO Group, which now utilizes radio frequency identification device (RFID) technology at 22 locations and has 39 partners in the consumer goods industry attaching RFID transponders to pallets destined for the retailer, is among the technology's pioneers in the retailing industry. It reports considerable acceleration of incoming and outgoing goods through the use of this technology.

The company emphasizes its efforts to prepare its workforce for RFID implementation, involving individual employees and works council members from affected stores, outlets and warehouses. All employees from the retail brands and cross-divisional companies concerned with the technology's implementation had undergone comprehensive training, and personnel were kept abreast of RFID developments via the company Intranet and the staff newspaper. In addition to informing its works councils prior to RFID implementation, the company maintains an ongoing dialogue with German trade unions on the issue, giving them guided tours of the future store or making presentations on changes in workplace conditions. Such activities have included members of the German service union ver.di and UNI-Europa. Because RFID introduction alters demands on employees, by eliminating routine warehousing tasks, staff resources can be shifted to higher value-added tasks, including customer advisory services. Staff support measures for the transition include training and career development.

Source: METRO Group Future Store Initiative.

193. A global collective agreement was reached in 2003 between the International Transport Workers' Federation (ITF) and the International Maritime Employers' Committee (IMEC), a global employers' federation, covering wages and working conditions for seafarers. This bargaining has provided the most significant example of transnational union bargaining coordination in existence. The negotiations set the pattern for pay and working conditions for a significant portion of the global seafaring workforce. The parties brought about global wage bargaining by building and enforcing a global consensus among their members in developed and developing countries, around a uniform wage rate.

194. The issue of a minimum wage for all seafarers is also addressed at the international level through the Joint Maritime Commission (JMC), a bipartite standing body of the ILO's Governing Body. The updating of the minimum basic wage figure for able seafarers is done in accordance with the ILO's Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). This is the only international wage-fixing mechanism with a legal basis in an international labour instrument. A JMC Subcommittee on Wages of Seafarers has been established to regularly update this wage figure.

Export processing zones

195. Export processing zones (EPZs) can under certain circumstances provide social and economic opportunities for workers and for a country beyond those that exist in other parts of the economy. However, when rights are denied to those employed in EPZs, the zones become associated with the pressures on workers that may result from the fierce competition to attract capital and production. The ILO defines EPZs as "industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again".²⁷ EPZs are typically labour-intensive manufacturing centres in which a number of major private industrial sectors operate, notably agriculture, banking, call centres, electronic components, food processing, manufacturing, mining, textiles and clothing, timber and tourism.²⁸ Workers in EPZs are sometimes at a disadvantage compared to others when it comes to freedom of association and collective bargaining, as enterprises are often attracted to these zones not only because of lower taxes, but also by deregulation and cost-containment arrangements in the form of weak labour legislation and enforcement. In some instances, these freedoms exist in legislation but not in practice. The use of labour through third-

27. ILO: *Labour and social issues relating to export processing zones*, report for discussion at the Tripartite Meeting of Export Processing Zones-Operating Countries, Geneva, 1998, doc. TMEPZ/1998, p. 3.

28. For a complete list see: *ILO database on export processing zones*, available at <http://www.ilo.org/public/english/dialogue/sector/themes/epz/epz-db.pdf>

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party contracts concluded by employment agencies and subcontracting of work to home-based workers located near the zones also hamper attempts to increase unionization and collective bargaining.

196. The CFA has considered that legal provisions on EPZs should ensure the right of workers to organize and bargain collectively.²⁹ In addition, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.³⁰ Nevertheless, the most frequent observations made by workers' organizations in relation to EPZs concern the principle of freedom of association and effective recognition of the right to collective bargaining.

197. Textile workers make up a large proportion of the millions of workers who are often denied the right to associate freely and negotiate in EPZs. Cases brought before the CFA concerning EPZs in the textile sector include allegations of anti-trade union acts such as harassment, intimidation or violence towards trade unionists in countries including Guatemala, Nicaragua and Sri Lanka.³¹

198. In other situations, for example in the Dominican Republic and Honduras, these freedoms are provided for in the law applicable to EPZs, but the percentage of workers covered is insignificant. In other cases, such as Tunisia, there are examples where many workers are organized and bargain collectively on wages and certain working conditions. Women make up more than 90 per cent of EPZ workers in Jamaica and Nicaragua, and account for 85 per cent in Bangladesh and 75 per cent in Madagascar.³² Furthermore, women are often paid lower wages than men.³³ Although the data are incomplete, the available information indicates that there is a long way to go to overcome legal barriers and realize practical improvements in EPZs around the world.

199. In recent years, some EPZ-operating countries have taken measures in pursuance of the recommendations of the ILO's supervisory bodies.³⁴ In 2004, the Committee of Experts on the Application of

Conventions and Recommendations noted with satisfaction that the Namibian Export Processing Zones Amendment Act, 1996, which had prohibited any industrial action in EPZs, had lapsed automatically and was no longer in force. Turkey repealed the provisions imposing compulsory arbitration in EPZs for the settlement of collective labour disputes. In Sri Lanka, the Guidelines adopted by the Board of Investment were subsequently amended pursuant to the comments of the ILO supervisory bodies, so as to ensure that employees' councils could function independently in EPZs and not undermine the existence and activities of trade unions in the enterprises. The Government indicated moreover that in EPZs two collective agreements were signed in 2004, two in 2005, and six enterprises were in the process of negotiating collective agreements in 2006.

200. In addition to legislative measures, further practical steps have been taken to strengthen freedom of association and collective bargaining rights in EPZs. The Dominican Republic has indicated that it has set up a specialized unit within the labour inspectorate to protect freedom of association in EPZ enterprises, and training workshops are conducted to ensure respect for trade union rights. Nicaragua has indicated that the Ministry of Labour maintains a labour inspectorate in one of its EPZs to ensure that workers are not subject to reprisals for carrying on legitimate trade union activities.

201. The ILO Programme and Budget for 2006–07 created a special programme on EPZs. The focus is on improving the knowledge base, and a task force has been set up to coordinate EPZ-related activities throughout the Office. A public web site including a database on EPZs was developed to this end, as well as an internal Intranet site. Country studies and tripartite round tables (for example in China, Costa Rica, Indonesia, Madagascar and Sri Lanka) were organized. The areas identified for future work include the preparation of a "policy package" with a view to improving the quality of production and employment and fostering decent work in EPZs. Advisory services are provided to promote tripartism and social dialogue in this field.

29. See *Digest of decisions and principles of the Freedom of Association Committee*, op. cit., para. 266.

30. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 46, <http://www.ilo.org/public/english/employment/multi/download/english.pdf>

31. Cases Nos 2179, 2275, 2380.

32. ILO database on export processing zones, op. cit.

33. J.P. Singa: *Liberté syndicale et reconnaissance effective du droit de négociation collective: Mondialisation et dialogue social dans les zones franches d'exportation: Étude de cas*, ILO, Geneva, forthcoming.

34. R. Gopalakrishnan: *Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms*, International Labour Standards Department Working Paper No. 1, ILO, Geneva, 2007.

Informal economy challenges

202. In many countries, the informal economy presents a major challenge to the exercise of the rights to freedom of association and collective bargaining. National legal frameworks for the exercise of these rights, the conventional structures of many workers' and employers' organizations, and formal mechanisms of collective bargaining, are not readily applicable or may exclude those in the informal economy.

203. The term "informal economy" was used at the 2002 session of the International Labour Conference,³⁵ rather than the term "informal sector", as it encompasses all workers and enterprises in economic activities that are not covered, or inadequately covered, in law or in practice, by formal arrangements. They are either operating outside the formal reach of the law, or the law for some reason is not enforced to protect them.

204. In sub-Saharan Africa, workers in the informal economy make up over 90 per cent of the labour force, in Latin America more than 75 per cent, and in East Asia over 50 per cent. In some countries of South Asia, the figure is also over 90 per cent. The majority of these workers are women and young people, and they are among the poorest in society. The informality they face often consists not only of a lack of legal protections but also a lack of collective voice. In general, there is low union coverage and rarely any effective recognition of the right to collective bargaining. The gap in application of labour standards in the informal economy is a reality, leading in many cases to lower wages, lower productivity, longer working hours, hazardous conditions and the abuse of workers.

205. The ILO's mandate is built around labour standards and the need to promote decent working conditions across the globe. This is a universal mandate. If the ILO's objectives are to be realized, labour standards must extend beyond the formal economy to cover all forms of employment in all types of activity. The rights to organize and to bargain collectively are fundamental in this regard.

Difficulties in reaching workers and employers

206. The constraints on the exercise of these rights can be either legal or practical. Legal impediments can, among other things, deny informal workers basic rights and protections or impede their transition into the formal economy. Such restrictions can be of different types. In some countries, the law limits union

membership, union representation or collective bargaining to those in regular employment, or defines workers' organizations as organizations of wage workers. If workers' organizations in the informal economy are not able to acquire legal identity, they face great difficulties in functioning, providing services, and representing their members in collective bargaining.

207. Even in the absence of legal barriers, reaching the informal economy poses serious challenges. In some cases the distance between places of employment can present important logistical problems for union organizers. In many cases workers are employed in geographically dispersed micro units. A related problem is the physical isolation that can affect homeworkers and domestic workers in private households.

208. The informal economy's heterogeneity in employment status and non-stability of employment and enterprises render organizing efforts difficult. Many workers in the informal economy are employed in part-time or casual employment. Many have precarious working conditions, while others shift from job to job depending on economic or social necessities. Some, like the informal economy agricultural workers in many parts of Asia and Africa, change locations and jobs in accordance with the season. It is not uncommon for them to change jobs and to take up employment in another sector of activity during times of illness or economic stress, or even simply because of family ties.

209. Poverty and insecurity also add to the complexities. In general, workers in the informal economy earn significantly less than their formal sector counterparts, and in many cases the financial disparity is growing. In Latin America, the income gap between the formal and informal sectors has increased from 59 per cent to 81 per cent in the last 15 years. When faced with such economic hardship, workers tend to focus more on their immediate day to day survival and less on medium- to long-term commitments. Workers with insecure and casual employment contracts may also be afraid to undertake action that could jeopardize their jobs.

Networks and organizations

210. The challenges facing any organizing effort in the informal economy can appear to be insurmountable in the face of the very nature of the informal economy and the lack of government action or

35. ILO: *Report of the Committee on the Informal Economy, Provisional Record* No. 25, ILC, Geneva, June 2002.

support. Nevertheless, certain successful frameworks have developed with innovative approaches at the grass-roots level.

211. One important element is the growing network of organizations which are decentralized and service-oriented to deal with their members' changing needs. There are many traditional or new forms of local organizations and networks (such as loan or mutual societies and self-help groups) which are mostly governed by social rules. Networks may be invisible but emerge during times of crisis. Examples include organizations of domestic workers in Latin America and the long-standing national organizations of homeworkers in Thailand and the Philippines that are still active and participating in national policy debates on the informal economy.

212. While the work and composition of these organizations naturally vary, broader commonalities are starting to appear. Most organizations offer a wide variety of member services. For example, in Ghana, Malawi, Mozambique and Zambia, the main focus of informal economy networks is on providing training, dispute resolution, social welfare assistance, representation of members, political mobilization and the allocation of market space to vendors.³⁶ Some of these organizations can also offer attractive financial incentives to informal workers or employers by types of cooperative arrangements and pooling of resources. Pooling individual resources increases negotiating power and facilitates recognition as a legal entity. These benefits were recently seen in Benin, where some 1,600 microenterprises successfully came together to form 60 mutual savings and loan associations.³⁷

213. There are, however, key organizational and representation gaps that can only be filled by trade unions and employers' associations, particularly in their capacity as organizations with a specific mandate to negotiate working conditions with the other party and the capacity to reach out to and unite smaller self-interest organizations at higher levels.

The role of trade unions

214. Trade unions have been and continue to be engaged in the informal economy. In India, for

instance, informal economy workers are the source of significant growth in union membership. Unions are also involved in working with and assisting networks of workers in the informal economy. However, the role of unions is not limited to organizing and membership services. They advocate better social protection for workers in the informal economy and for their legal recognition as workers. Several unions are also advocating national policies to halt informalization.

215. Trade unions can offer support and membership to workers in the informal economy directly or through affiliated bodies. In Latin America, for example, the Congress of Argentine Workers (CTA) has extended membership to individual workers without a local or sector trade union. The Argentinian Union of Rural Workers and Stevedores operates a health insurance and unemployment fund and offers services to unregistered and unprotected agricultural workers.³⁸ In Ghana and Zambia, unions have modified their constitutions to extend membership directly to informal economy workers.³⁹ The extension of membership and service to workers in the informal economy can simultaneously serve two objectives: it ensures extension of protection and representation to workers in the informal economy; and it can be a significant step towards formalization of the activities concerned.

216. Trade unions can act as a hub for coordination of efforts by informal economy networks. A challenge for local workers' and employers' organizations is to remain local while maintaining effective and strong bargaining positions which derive from wide membership. Many informal economy networks have found invaluable support in affiliating with larger unions. In acting as an umbrella organization, trade unions offer logistical support, expertise and representation to workers, while allowing the local associations to meet the direct needs of their members. The two can act in concert to provide a broad range of services needed at the local and national levels. The involvement of trade unions enhances legitimacy and standing of local associations and provides a stronger voice for all involved.

217. An example of informal organizations responding to local needs while getting the support of formal trade unions is the case of migrant domestic

36. War on Want: *Forces for change: Informal economy organisations in Africa*, produced in cooperation with Workers Education Association of Zambia and Alliance for Zambia Informal Economy Associations, 2006, available at <http://www.waronwant.org/downloads/informaleconomy.pdf>

37. P. Alby, J.-P. Azam and S. Rospabé: *Labor institutions, labor-management relations and social dialogue* (University of Toulouse, 2005).

38. ILO: *The role of trade unions in the global economy and the fight against poverty*, background paper for the International Workers' Symposium, Geneva, 17–21 October 2005.

39. P. Alby, J.-P. Azam and S. Rospabé: *Labor institutions, labor-management relations and social dialogue*, op. cit.

Box 4.4 Union outreach

Unions that have successfully organized within the informal economy have done so through direct outreach to informal workers, by listening to their needs and developing strategies and services to help them. Initiatives have included facilitating access to credit and markets, improving productivity, negotiating with municipal authorities, addressing health and safety concerns, offering training and skills development, developing cooperative structures, and meeting health-care and social protection concerns. Recruitment and organizing around a broader set of issues tend to flow more naturally and successfully from these service-oriented strategies.

Source: International Labour Organization, Bureau for Workers' Activities. (2005). *The role of trade unions in the global economy and the fight against poverty*, background paper, International Workers' Symposium, Geneva, 17–21 October 2005.

workers in Europe. The Association of Philippine Migrant Workers was established in Belgium in 1983 to meet the representational and social security needs of Filipino domestic workers in Belgium. In 2000, the group organized a symposium which was attended by two largest Belgian trade unions, the General Federation of Labour of Belgium (FGTB) and the Confederation of Christian Trade Unions (ACV–CSC). Both unions have encouraged the membership of undocumented workers. The result is that over 650 migrant Filipino workers, both documented and undocumented, have joined trade unions, giving them a more visible identity and stronger collective voice. Bringing together the three organizations in a way that enables each to retain its own separate identity, has meant that more resources and expertise are made available to the association's members.⁴⁰ The cooperation between the association and trade unions provides the best of both worlds for migrant workers. The small organization assists migrants in local ways, by combining social events with discussions and skills training, and the larger trade unions offer them a voice for negotiations and access to professional services such as health care and legal aid.

The role of employers' organizations

218. Many of the aforementioned difficulties also apply to employers' organizations and the extension of their membership to employers in the informal economy. They, like workers of the informal economy,

are often not organized or, if they are, their associations operate on a small and informal basis. The heterogeneity and decentralized nature of enterprises are obstacles to their coordination. In many instances, the employers' organizations in the informal economy are based on cooperative relationships.

219. Collective bargaining and social dialogue cannot take place without representative workers' and employers' organizations. Strengthening the representation of workers and employers in the informal economy was discussed by the International Labour Conference in 2002. To give effect to the conclusions adopted by the Conference, the ILO's Bureau for Employers' Activities (ACT/EMP) has launched a programme on the informal economy in the Caribbean and Latin America, as well as in Bulgaria, Kenya, Mongolia and Turkey, focusing on the development of a conducive policy and legal environment. The aim is to extend representation of employers' organizations and their role as advocates for small enterprises and operators in the informal economy, by showing that there are several effective forms of intervention by employers' organizations. Lobbying and advocacy by employers' organizations, for example in Bulgaria, Mongolia, Kenya and Saint Kitts and Nevis, have often successfully induced change in policies and legislative provisions. In Kenya, Mongolia and Peru, the emphasis has been on strengthening linkages between informal operators and formal businesses.⁴¹ In several countries, employers' organizations have extended business services to informal and small units. This assistance can come in the form

40. European Trade Union Confederation: *Out of the shadows: Organising and protecting domestic workers in Europe – the role of trade unions*, report based on the proceedings of a conference organized by the ETUC, in collaboration with the International Restructuring Education Network Europe (IRENE) and the Platform for International Cooperation on Undocumented Migrants (PICUM), held 14–15 April 2005, in Brussels. Available at <http://www.etuc.org/a/2809>

41. ILO: *The informal economy*, GB.298/ESP/4, Governing Body, 298th Session, Geneva, March 2007, para. 41.

of information sharing, increased access to finance, insurance, technology and entrepreneurship development. Lessons learned from these initiatives have been reproduced on a CD-ROM to guide future action by employers' organizations.⁴²

Collective bargaining in the informal economy

220. It is necessary to distinguish between two major groups of workers in the informal economy. One comprises workers in non-wage employment relationships: own-account workers, owner-operators of micro- and household-based enterprises, independent artisans and unpaid workers. The other group covers wage workers in enterprises that are unincorporated and operate on very small scale, and often excluded from labour law coverage and enforcement; disguised wage workers such as subcontracted homeworkers, domestic workers hired by private households, and casual and itinerant wage workers with multiple and changing employers. Their nature and mechanism of bargaining will clearly differ. In many instances, it is difficult to know with whom worker organizations should engage in collective bargaining and social dialogue, as various informal associations of employers may also be present.

221. Arguably, the most effective strategy to encourage collective bargaining for workers in the informal economy is to facilitate their transition into the formal economy. Possibilities for collective bargaining increase when enterprises are registered and workers legally recognized as employees. While this is the responsibility of governments, social partners can encourage this movement by lobbying for effective incentives to facilitate integration into the formal economy.

222. Informal economy networks, associations, and non-governmental organizations can also align with formal trade unions to raise their bargaining position with employer organizations. Collective bargaining of this kind is most effective when smaller organizations bargain with larger entities such as governments or national-level employer organizations. Trade unions and employers' associations can also offer strong support in terms of capacity building for collective bargaining and sensitize workers and employers in the informal economy to the advantages of collective bargaining.

The role of governments

223. Trade unions and employers' associations cannot replace governments in creating social, legal and political frameworks that cover all citizens of a country. Governments are in a position to facilitate the transition of workers and employers into the formal economy. While the problem is complex and requires a long-term commitment, there are many positive social and economic benefits to be gained. However, the informal economy will not disappear overnight, and its employment and income potential will continue to be important for many entrepreneurs and workers. In the meantime, governments should build effective legal and institutional frameworks to ensure that the status of employers and workers in the informal economy is recognized and their rights are protected. For example, a number of countries have taken steps to recognize the right of domestic workers to organize. Governments must also ensure that legislation is enforced. This requires investment of adequate resources in strengthening services such as labour inspection.

224. Governments can also encourage unions and employers in the informal economy to engage in public policy debates by developing tripartite consultation and by offering logistical support and training. A good example of tripartite action is found in an ILO/EU project on improving social dialogue to develop strategies to reduce the informal economy in Turkey. Government officials, employers' organizations and trade unions were involved in the project which, in March 2006, culminated in the National Tripartite Declaration on Social Dialogue and Unregistered Employment asserting the joint commitment of all parties to reducing informality.⁴³

225. Some provincial or local governments in developing or transition countries are working directly with informal economy organizations. They have created institutional forums for their negotiations, for example, in Durban, South Africa, where the local government authorities are working in tandem with informal workers' organizations to ensure that its policies are supportive of the informal economy. In Ghana, with help from the ILO, Ajumako and Winneba local governments are seeking innovative ways to help informal businesses. A committee on productive and gainful employment has been established for discussions with informal economy representatives.⁴⁴

42. ILO: *Employers' organizations and enterprise development in the informal economy: Moving from informality to formality*, ACT/EMP, Geneva, 2006.

43. ILO: *The informal economy: Enabling transition to formalization*, background document for the Tripartite Interregional Symposium on the Informal Economy, Geneva, 27–29 November 2007, ISIE/2007/1, para. 56.

44. ILO: *Local economic development in Ghana: Rooting public-private dialogue* (LED Stories), available at <http://www.ilo.org/dyn/empent/docs/F1354139468/LEDstoryGhana.pdf>

226. Last but not least, for freedom of association and collective bargaining to become effective in the informal economy, they must be anchored in the rule of law. The goal here is to reverse a situation in which some workers and entrepreneurs have protection while the majority have none. Here, too, the logical starting point is strong political will.⁴⁵

227. In conclusion, while there are serious challenges to the exercise of the rights to organize and bargain collectively in the informal economy, success can be achieved if appropriate frameworks and strategies are devised. Trade unions can assist by helping to coordinate and bargain for smaller grass-roots networks, or by directly offering membership to workers in the informal economy. Employers' organizations can offer training, business information, access to subcontracts and other incentives, to encourage enterprises to move into the formal economy. Social partners are strong in their demands for the recognition of freedom of association and collective bargaining rights for workers and enterprises in the informal economy. However, it is the role of governments to establish the appropriate legislative frameworks and ensure their effective implementation to protect the rights of workers and employers in the informal economy and to facilitate their gradual regularization. This should secure a country's more inclusive social and economic development.

Representation of migrant workers

228. Increasing labour mobility in the context of globalization has given rise to important challenges regarding the rights of migrant workers to organize and bargain collectively. These challenges are threefold: defending the rights of migrant workers, including those in irregular situations, to organize and bargain collectively; organizing them; and upholding decent work conditions for migrant workers in the same way as for the rest of the workforce. The ILO Multilateral Framework on Labour Migration, adopted in 2006 with the support of both the employer and worker participants, calls for respect of the freedom of association for migrant workers.

229. Migrant labour has become a key element in meeting labour market and productivity needs. Economic globalization, together with technological and

demographic changes, has contributed to the increase in demand for migrant labour in many industrialized and developing countries. The ILO estimates that nearly 90 million foreigners are economically active across the world.⁴⁶ That is almost half of the 191 million people living outside their country of birth or citizenship in 2005. The foreign-born commonly represent 10 per cent of the workforce in Western Europe, and the proportion is higher in a number of countries in other regions. In some countries of the Gulf Cooperation Council, 50 to 80 per cent of the workforce are migrant workers.

230. While the need for migrant workers is likely to increase in industrialized countries faced with declining populations, migration pressures on the "supply side" are also expected to grow as possibilities for employment and economic survival at home remain scarce. Many people need to migrate because of persistent poverty, growing unemployment, the loss of traditional trading patterns, and what has been termed a growing crisis of economic security in their own countries.⁴⁷

231. Attention is being directed towards deliberately facilitating labour mobility in regional economic integration processes, such as the East Africa Community (EAC), Southern Africa Development Community (SADC), and the Common Market of the Southern Cone (MERCOSUR) in the Americas. Legal regimes for freer circulation of labour are being elaborated within these multi-country economic co-operation arrangements. Efforts are under way to revive earlier accords on labour mobility in Central Africa and West Africa. The Association of South-East Asian Nations (ASEAN) recently adopted a declaration on the protection and promotion of the rights of migrant workers. The European Union is engaged in an important process of further facilitating internal circulation and establishing common parameters for access to employment by third-country nationals, namely those who are not nationals of one of the EU member countries. A central element of negotiation in all these initiatives is the nature and content of the applicable labour rights.

45. Further information on the role of governments can be found in: J.-L. Daza: *Informal economy, undeclared work and labour administration*, ILO, Geneva, 2006; and G. Casale et al.: *Showcasing tools and experience in labour administration and the informal economy*, Paper No. 9 (Social Dialogue, Labour Law and Labour Administration Department, ILO, Geneva, 2005).

46. ILO estimates cited in *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session, Geneva, June 2004, p. 7.

47. P. Stalker: *Workers without frontiers – The impact of globalization on international migration*, ILO, Geneva, 2000.

Constraints on trade union rights

232. In a number of countries, legislation still limits the right of migrant workers to organize. In some, only citizens are allowed to form trade unions. In some others, freedom of association is denied to migrant workers in irregular or unauthorized status. Some union constitutions also make membership of migrant workers subject to a number of conditions. Migrant workers may be concentrated in jobs not sought after by nationals, in isolated workplaces, or in sectors that are not protected by labour legislation (agricultural or domestic workers in some countries) or in other situations in which organizing by trade unions is difficult.

233. In some cases, migrant workers may come from societies which lack a strong trade union tradition, or where workers' organizations have been associated with ruling parties or regimes, rather than acting as trade unions at the service of workers. Migrant workers without authorization for employment are easily intimidated by the threat of possible deportation.⁴⁸ These factors often make it more difficult to organize migrants into unions.

234. In many countries, the persistence of dual labour markets and expanding numbers of precarious jobs which national workers are reluctant to take are realities. Small and medium-sized companies and labour-intensive economic sectors do not have the option of relocating operations abroad. In response to economic pressures they try to cut their operational costs or subcontract. In a number of countries, these measures are expanding the number of jobs at the bottom of the employment scale. Such jobs tend to be less attractive to national workers. The long-term trend towards informalization of low-skill and poorly paid jobs is reflected in situations in which irregular migrants are preferred as they are compelled to work for lower wages, for short periods during production peaks, or to take on physically demanding and hazardous jobs.

235. Nonetheless, increased labour mobility objectively presents opportunities for upholding and extending the actual practice of freedom of association and collective bargaining. The increasing numbers of migrant workers are an important natural potential for trade union membership. The substandard working conditions and pay, combined with possible abuse, that might be faced by migrant workers provide strong arguments for unions to organize those workers.

236. There are also potential benefits for governments in increasing legal avenues for migration on the

basis of labour market needs, namely in broadening the base of social security and tax contributions and reducing the scope for trafficking and smuggling. Respect for migrant workers' rights will also reduce unfair competition to the benefit of employers that respect labour legislation.

Applicability of labour standards

237. In a few countries, restrictions on trade union membership generally remain, particularly for migrant workers in irregular or unauthorized situations. Many of the reports, representations and complaints addressed to the ILO supervisory bodies concerning migrant workers are cases of alleged violations of their freedom of association rights.

238. The ILO's Committee on Freedom of Association (CFA) has on several occasions underscored the universal applicability of the right to freedom of association. For instance, in Case No. 2121 with regard to Spain, where a new law made the exercise of trade union rights by foreigners conditional on their authorized presence in Spain, the CFA recalled that Article 2 of Convention No. 87 recognizes the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing.

239. Another case concerning the protection of migrant workers against anti-union discrimination was brought before the CFA in relation to the United States (Case No. 2227). It concerned the remedies available to undocumented workers dismissed for attempting to exercise their trade union rights. The CFA invited the Government to explore all possible solutions, in full consultation with the social partners concerned, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination.

240. Legislation in a number of countries explicitly limits the rights of migrant workers to hold office in trade unions. The CFA has on several occasions observed that countries have taken steps in recent years to ensure that non-nationals of a country not only have the right to join trade unions but also to hold trade union office. The promotion of equality between nationals and migrant workers within workers' organizations themselves is a fundamental step towards the effective recognition of the right to collective bargaining. In Austria, the Industrial Relations Act has recently been amended to allow foreign workers to stand for election to works councils. With regard to Jordan, the ILO's supervisory bodies took note of the Government's statement to the effect that the Ministry

48. See for example A. Linard: *Migration and Globalisation – The New Slaves*, ICFTU, Brussels, July 1998.

of Labour has supported the efforts of the General Federation of Jordanian Trade Unions (GFJTU) to reach out to migrant workers by helping to establish migrant workers' committees in the EPZs associated with the GFJTU. In Lesotho, the new Labour Code allows foreigners with five years of residence to become trade union officials. In Luxembourg, the new Labour Code which came into force in 2006 reflects the progress made since 2003 in enabling workers who are not nationals of European Union States to belong to joint works committees. In Mauritania, the Labour Code has been amended so that trade union officers may be foreign nationals who have exercised the occupation defended by the trade union within the country for at least five consecutive years.

241. At a regional level, the Inter-American Court on Human Rights on 17 September 2003 issued a sweeping advisory opinion that clearly reinforces the application of international labour standards to non-national workers, particularly those in irregular status.⁴⁹ The Court found that non-discrimination and the right to equality are applicable to all residents regardless of their immigration status, and States thus cannot restrict the employment or labour rights of unauthorized workers, including their equal rights to social security; and that once the employment relationship is initiated, unauthorized workers are entitled to the full panoply of labour and employment rights available to authorized workers. The Court decided unanimously that “the migratory status of a person cannot constitute a justification to deprive him of the enjoyment and exercise of human rights, including those of a labor-related nature. When assuming an employment relationship, the migrant acquires rights that must be recognized and ensured because he is an employee, irrespective of his regular or irregular status in the State where he is employed. These rights are a result of the employment relationship.”

Transformations in trade union approaches

242. The trade union movement has always played an important role in promoting the integration of migrant workers into host country societies. When organized in trade unions, migrant workers can participate in discussions affecting their role in society and their contribution to economic and social progress; they can take part in the elaboration of trade union policy, they can vote to elect their representatives and, in most

countries, are eligible for leadership positions. Trade union organizations in destination countries across the world have, however, shifted in their attitudes towards labour migration twice in the last four decades. From the 1950s to the 1970s, most trade unions in western destination countries had established special departments to support migrant workers and protect their rights, produced publications in the various languages spoken by the immigrant communities, and recruited them massively into their organizations. Some of the present leaders and executives of trade union federations in Europe are themselves former migrants.

243. Trade unions generally gave migrant workers a platform from which to make themselves heard. In 1974, an international trade union conference on migrant workers highlighted the need to adopt fresh international standards designed to ensure that migrant workers and national workers were treated equally in the host country and called for regularization of unauthorized migrant workers.⁵⁰

244. However, this positive attitude towards the admission of migrant workers was affected by the economic crisis in the 1970s and by the resulting unemployment that spread across most of the industrialized world. In order to protect jobs and conditions of work, trade unions became increasingly aligned towards restrictive immigration policies on the grounds that the economy might not be able to accommodate potential migrant workers owing to reduced work opportunities. However, irregular migration rose as restrictive immigration policies were put in place, and the trade union movement was confronted with a dilemma: organizing workers in an irregular situation was perceived as being tantamount to renouncing restrictions on the inflow of migrant labour at a time when unemployment was affecting both national and migrant workers in different sectors. The majority of national trade union organizations in industrialized countries opted to support proposals for sanctions against employers recruiting irregular migrant workers. The apparent support by many trade union organizations for restrictive labour migration policies, however, tended to deter the newly arrived irregular migrant workers from joining the trade union movement. Many of these migrants turned to church-related migrant service programmes and migrant associations that were providing services and assistance, as well as promoting the rights of migrant workers.

245. Nevertheless, over the last decade, the attitude and engagement of the trade union movement as a

49. Inter-American Court of Human Rights: *Juridical condition and rights of the undocumented migrants*, Advisory Opinion OC-18/03 of 17 Sept. 2003, requested by the United Mexican States.

50. This conference preceded the adoption by the ILO of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

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whole has clearly given priority to organizing migrant workers and promoting their rights, regardless of their immigration status. Major policy shifts, followed by extensive organizing drives among migrant workers, have been conducted by mainstream trade unions and national confederations across Europe as well as in Africa, the Americas and Asia.

Contemporary action by national federations

246. Today, national labour confederations and sectoral unions in a number of countries (for example, Argentina, Belgium, Canada, France, Germany, Ireland, Italy, Republic of Korea, Mauritius, Mexico, Netherlands, Portugal, South Africa, Spain, Sweden, United Kingdom and United States) have full-time staff dealing with migrant workers and promoting non-discrimination; all are active in policy advocacy for improved protection of rights and decent work conditions for migrants. The main global and regional trade union confederations and a number of national federations have issued new calls for ratification of the ILO Conventions on migration for employment, as well as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁵¹ For instance, in Ireland and Italy, the national trade union confederations are at the forefront of new national campaigns for ratification of the ILO and UN Conventions on migrant workers.⁵²

247. In the United States, the question of whether or not to organize irregular Mexican farm workers was the subject of a major debate in the formation of the United Farm Workers (UFW) organization in the mid-1970s, while the Arizona Farm Workers and the Mid-West Farm Workers unions were established with explicit agendas of including undocumented workers in their ranks. In 2001, the United States trade union centre AFL–CIO adopted a new policy stance on immigration. It is now formally calling for general regularization of migrant workers, and for the repeal of “employer sanctions” against those who hired unauthorized migrant workers (because sanctions were found to have resulted in widespread discrimination in hiring), as well as urging its affiliated unions to undertake national organizing drives among migrant workers, whether authorized or not.

248. Trade unions in Belgium recently announced that they would offer membership and protection to

undocumented workers. While renewed attention to the rights of migrant workers may be more visible in some industrialized countries, trade union bodies in other regions are also increasing their activities to address labour migration issues. In the Dominican Republic and other countries in the Caribbean, organizing and supporting Haitian migrant workers, which has long been a concern of church and activist groups, is now part of the agenda of national trade union organizations.

249. In a novel approach, the Korean Congress of Trade Unions (KCTU) co-sponsors, with church and other organizations, the “Joint Committee for Migrants in Korea”. It aims to assist and support migrants of diverse nationalities in the Republic of Korea and to combat discrimination against these workers, many of whom are in irregular situations. The KCTU has established a division of work among its constituent trade unions whereby each one assists with the translation of materials and provides services for a specific linguistic or national group of migrants.

250. In Africa, the leadership of national trade union federations in some 40 countries in 2004 adopted a plan of action under the auspices of the ICFTU’s African Regional Organisation that called for African trade unions to advocate with governments to adopt laws protecting migrant workers in line with ILO instruments, to negotiate with employers to improve working conditions, and to organize the unorganized, including migrant workers in irregular situations.

251. Tripartite consultations on labour migration were held recently in Africa, Asia, Europe and South America. Delegates representing governments, employers and trade unions agreed on joint policy recommendations to adopt national legislation and policies that ensure the protection of migrant workers.

Global Union federations

252. Reflecting the increased concern from national affiliates, Global Union federations (GUFs) are now giving specific attention to issues of migrant workers. PSI convened specialist consultations and prepared a handbook on dealing with migrant workers in the 1990s. In June 2003, representatives of agricultural trade unions from Egypt, France, Germany, Republic of Moldova, Netherlands, South Africa, Spain, Sweden, Ukraine and United Kingdom took part in

51. See web site of the ITUC: www.ituc-cis.org. Some 200 articles and items posted on the site relate to trade unions and migrant workers; search by key word “migrants”.

52. For a recent global overview of evolving trade union views and activities, see ILO: “Migrant workers”, Labour Education 2002/4, No. 129, available in English, French and Spanish at: www.ilo.org/actrav/

Box 4.5
ILO action on freedom of association for migrant workers

The ILO is producing a trade union manual on migrant workers and provides technical support to trade union efforts to organize migrant workers. The International Training Centre of the ILO in Turin is also contributing to capacity building by developing toolkits and organizing special courses on labour migration issues. It has integrated migrant workers' issues in the courses aimed at workers' organizations, with particular reference to their rights to freedom of association. Social dialogue is promoted in all activities related to labour migration undertaken by the Office. In addition to the direct involvement of social partners in all technical cooperation activities, the Bureaux for Employers' Activities and for Workers' Activities have contributed to enhancing social dialogue in labour migration issues, both as a tool and a strategic objective of the Organization. The International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) are directly engaged with the Office in labour migration issues. The ITUC has pledged to campaign for the promotion of migrant worker Conventions and the ILO multilateral framework for a rights-based approach.

With ILO support, the Malaysian Trade Unions Congress in March 2005 organized a conference to strengthen linkages with trade unions in source countries (Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines and Viet Nam) and thereby protect the rights of migrant workers in Malaysia. In Thailand, the ILO has held seminars to enhance the capacity of trade unions to organize migrant workers from neighbouring Myanmar, Cambodia and Lao PDR in 2005–06. In 2006, the General Federation of Bahrain Trade Unions organized a meeting on Defending and Promoting the Rights of Migrant Workers in the Gulf Cooperation Council States jointly with the International Confederation of Arab Trade Unions (ICATU), the ITUC and the ILO. In 2007, the Asian and Pacific Regional Organisation of the ITUC organized the first ever international trade union meeting between trade unions from sending countries in Asia and from receiving countries in the Middle East.

a conference organized by the International Union of Food and Agricultural Workers (IUF) and its German affiliate, Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU).⁵³ The aim of the conference was to draw up a Charter of Rights for Migrant Workers in Agriculture for unions to campaign around. Central to the Charter are the statements that “No worker is an illegal worker” and that all migrant workers “have the right to decent work and equal treatment.”⁵⁴

253. In 2003, the International Federation of Building and Wood Workers (now Building Workers' International – BWI) prepared a global study on migrant and cross-border workers. The study includes recommendations to “alert trade unions to the pool of potential members represented by irregular migrant workers in the construction industry” and to “develop working relationships with international and national agencies working to combat the exploitation and abuse of migrant workers who are forced to move via illegal channels.”⁵⁵

254. Before their merger in 2006, both the International Confederation of Free Trade Unions

(ICFTU) and the World Confederation of Labor (WCL) had made migrant workers a major priority of policy and practical activities. The ICFTU drew up a plan of action in 2001 which included explicit calls on unions worldwide to undertake special campaigns to organize migrant workers. Advocacy and services addressing migrant workers are among the five main thematic priorities for the new International Trade Union Confederation (ITUC).

Lines of action to defend trade union rights

255. Trade unions need to retain the initiative and leadership in defending the rights of migrant workers to freedom of association and collective bargaining, whether documented or not. Trade union positions are still evolving towards a coherent and widely followed international trade union strategy on labour mobility and rights for migrant workers, generally with an emphasis on three main lines of priority action:

53. Web sites respectively at: <http://www.iuf.org/www/en/> and <http://www.igbau.de/db/v2/frameset.pl>

54. A Charter of Rights for Migrant Workers in Agriculture, available at: [http://www.iufdocuments.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=927&view_records=1&ww=1&en=1\\$](http://www.iufdocuments.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=927&view_records=1&ww=1&en=1$)

55. Web site at: <http://www.ifbww.org/index.cfm?n=2&l=2>

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- (a) giving attention and resources to organizing migrant workers in existing trade unions;
- (b) advocating adoption and implementation of relevant international standards concerning migrant workers; and
- (c) ensuring participation of trade unions in national policy-making concerning labour migration and in the implementation of policies.

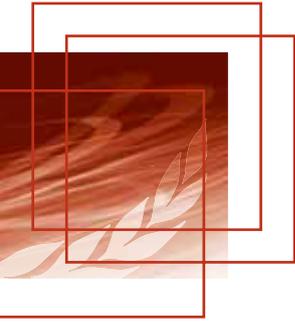
256. Protection of all workers, in an age of international labour mobility, imposes an urgent organizational and political agenda on trade unions. Trade unions have a fundamental role to play in providing moral, political and practical leadership to defend the labour and human rights of migrant workers, in particular their rights to organize and bargain collectively.

In this regard, the public positions and action taken by trade unions against xenophobia, racism and violence is enhancing their credibility with migrant workers.

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257. This limited review of the situation and prospects regarding freedom of association and collective bargaining for certain sectors and categories of workers gives some good examples of progress upon which the considerable amount of work that remains to be done can be built. The following chapter illustrates some of the work the ILO has been able to do to assist the tripartite constituents in its member States to give effect to these fundamental rights.





Chapter V

An overview of technical cooperation

258. The ILO Declaration on Fundamental Principles and Rights at Work recognizes the shared responsibility of the ILO and its member States to promote freedom of association and collective bargaining. Assistance is provided in the form of advocacy, awareness raising, training, advisory services and technical cooperation for the development of institutions and capacity building.¹ This chapter looks at examples of such technical assistance provided by various ILO units and departments. A table in Appendix VII also provides broad information on projects under the Declaration Programme.

259. The impact of ILO assistance and technical cooperation often hinges on the ability to address the complex root causes of problems. Sustainable change generally requires a long-term commitment by several key players; in particular it requires the cooperation of local actors and genuine political support. Capacity building can also be done by creating networks of national experts who can replicate less costly training programmes in future. The availability of information materials, publications and studies must continue beyond the lifespan of a project to ensure that momentum is maintained after its completion.

260. Equally important is effective tripartism in ILO technical cooperation, to ensure participation of employers' and workers' organizations, as well as governments, at all phases of technical cooperation, from planning, through implementation to evaluation. This requires the full involvement of the ILO's Bureaux for Employers' and Workers' Activities and their specialists in the field throughout the entire process.

261. Technical cooperation projects aim to ensure sustainable results through six closely inter-related instruments of change, namely: labour law reform; building capacity of labour administrations; strengthening employers' and workers' organizations; developing tripartism and institution building; dispute prevention and settlement; and advocacy and information. A technical cooperation project may impact several of these areas.

Labour law reform

262. National legislation has an essential role in safeguarding the rights to freedom of association and collective bargaining. The ILO works with member States that want to bring their national laws into line with international labour standards. The development of appropriate legal frameworks to govern relations between employers, workers and governments, and sound functioning of industrial relations, help to ensure the rule of law in the labour market.

263. An example is provided by the project on strengthening labour relations in East Africa (SLAREA). Following economic reforms, three East African countries (Kenya, United Republic of Tanzania and Uganda) needed to enhance the effectiveness of their labour laws and labour market institutions in their liberalized market economies. Supporting the governments' commitment to bring about change, the project assisted in drafting the new labour laws that were subsequently adopted in the United Republic of

1. Technical assistance and technical cooperation projects related to freedom of association and collective bargaining are implemented by many different units in addition to the Declaration Programme, including the International Training Centre of the ILO in Turin, the International Labour Standards Department, the Bureau for Workers' Activities, the Bureau for Employers' Activities, Social Dialogue, Labour Law and Labour Administration Department, Sectoral Activities Branch, the Multinational Enterprises Programme, and the regional structures of the ILO.

Tanzania and Uganda, incorporating the fundamental principles and rights at work. The new laws allow for a sound industrial relations environment and extend freedom of association to categories of workers for whom it was previously denied or restricted.

264. Significant steps in this area were also taken in Benin, Burkina Faso, Mali, Niger, Senegal and Togo, through the programme to support the implementation of the Declaration (PAMODEC). Tripartite meetings were held to examine labour codes, consultations took place to adopt applicable legislative amendments where necessary, and copies of newly adopted codes were distributed. In Togo, for example, studies were carried out on the socio-economic impacts and working conditions of the country's industrial zone. Further studies on Togolese labour legislation and its conformity with international standards resulted in a new Labour Code. The evaluation report of the first phase of the PAMODEC project noted that a practical guide was needed to assist labour ministries on the revision of laws that do not conform to ILO standards.

265. In south-eastern Europe, socio-economic changes led to the need for certain countries to modify their legislation in order to encourage economic growth. This involved incorporating international labour standards in national legislation. In Ukraine, a law on social dialogue was drafted with the assistance of the ILO. When this law comes into force, it will create a sound framework for tripartite dialogue.

266. Steps towards labour law reform are currently being taken in Bahrain and Oman. These countries are in the process of modernizing their labour relations systems in order to promote greater economic openness and higher productivity through the Project for Promoting Fundamental Principles and Rights at Work and Social Dialogue. This pilot project makes national legislators aware of international labour standards and promotes the involvement of the social partners in the drafting process. Legislative reforms should ensure the protection of the fundamental rights of vulnerable groups in the region, such as migrant workers.

267. Technical cooperation projects have also made important contributions to the ratification of Conventions Nos 87 and 98. For example, Uganda in 2005 ratified Convention No. 87 after receiving technical assistance through the SLAREA project. In Kuwait, the Government ratified Convention No. 98 after the Fourth Regional Workshop on the ILO Declaration and International Labour Standards. Kuwait has now ratified both Conventions Nos 87 and 98. Armenia and Montenegro also ratified these Conventions after technical cooperation with the ILO.

Capacity of labour administrations

268. In addition to appropriate legislation, both support and enforcement mechanisms are needed to ensure the full implementation of freedom of association and collective bargaining principles. Some labour administrations may lack essential resources to carry out these functions in an effective or consistent manner. An important component of technical cooperation is therefore the building of institutional capacity to enable governments to implement labour legislation and deal with industrial relations disputes. Technical assistance is also offered to train the judiciary and labour inspectors on the ILO's fundamental principles and rights.

269. The Project on Principles and Rights at Work in the context of the Inter-American Conference of Ministers of Labour of the Organization of American States (OAS) is an excellent example of the way in which cooperation between ministries can lead to information sharing and capacity building. In Peru, the project has taken steps to improve the Government's capacity to respect freedom of association and collective bargaining rights. Work has been carried out through the ILO Subregional Office to modernize labour inspection systems, and to make the labour inspection information system operational in a number of regions throughout the country.

270. The projects in Viet Nam and Morocco have paid close attention to the role of government officials who have the front-line responsibility for implementing labour law. They have focused on improving the capacity of labour inspectors and their national systems to enforce the law and provided resource guides for the social partners. The ILO has provided technical and material support to train labour inspectors. Viet Nam now has permanent industrial relations advisory services in seven provinces, while in Morocco, more than 80 per cent of all labour inspectors have received training.

271. In East Africa, the SLAREA project has invested substantial resources in upgrading the capacities of labour administrations, and provided material support and training to strengthen labour inspection services. Initial data indicate that there has been an increase in the number of inspections conducted, as well as improvements in the quality of inspections. High-level meetings were held with the aim of giving greater national prominence to ministries of labour. Without strong government partners in the equation, the ability of the social partners to influence economic and social policies is limited.

272. The ILO's International Training Centre in Turin plays an important role in building the capacity

of labour administrations and the judiciary through training activities on freedom of association and collective bargaining. In Brazil, within the context of a Protocol of Understanding signed between the Turin Centre and the Superior Labour Court of Brazil, training for judges and jurists has been carried out annually since 2004 in different provinces, with an average of 400 participants in each round. Almost all the members of the Court have been trained in Turin or Geneva on freedom of association principles and standards. Increased knowledge of fundamental principles and rights by the judiciary is expected to lead to a better application of those rights and principles in their judgements.

273. Parliamentarians must be equally sensitized to the importance of labour standards for their legislative activity. Their involvement also helps to sustain the impact of projects beyond their completion. Recognizing the fundamental role of parliaments in the ratification of Conventions and in adapting national legislation to international standards, the Turin Centre has been organizing courses on freedom of association and collective bargaining for parliamentarians. Two such activities were held in 2005 in Senegal and Uruguay and a similar activity was scheduled for Bahrain in 2007.

Strengthening employers' and workers' organizations

274. Building the capacity of the social partners is an essential component of ILO technical assistance. Employers' and workers' organizations alike need a solid knowledge base and capacity to exercise the fundamental principles and rights at work in an effective manner. Collective bargaining requires a considerable degree of sensitization of the social partners and training for their representatives. Beyond this, training helps the participants to engage in informal consultations and create a network of national experts on labour standards.

275. The ILO has been active in the dissemination of labour standards to both workers' and employers' organizations through the Bureau for Workers' Activities (ACTRAV) and the Bureau for Employers' Activities (ACT/EMP) as well as other departments and field offices working closely with them. The Turin Centre also reaches out to employers' and workers' organizations. For example, a course on the right to unionize in the informal economy was organized in

Bangkok in 2005. Activities were held in Antananarivo in November 2006 for workers in the Indian Ocean region. On the employers' side, the Turin Centre organized training activities on the principles of freedom of association, such as the course organized in Kiev in 2006 for Ukrainian employers' associations, and on the supervisory bodies that receive complaints regarding violations of ILO Conventions.

276. ACTRAV is the ILO department that works directly with workers' organizations in over 80 member States to improve their capacities through technical assistance, training and field work, acting in partnership with trade unions to help them tackle difficult issues and challenges. Specialists in the sub-regional offices have provided continuous support to trade unions in their activities to represent workers' interests. Their services include the production of manuals, audiovisual aids, information kits and workers' educational material; training in negotiation and trade union operation skills; and support to various trade union campaigns on youth, gender, and other topical issues.

277. The assistance given to the Trade Union Congress of the Philippines (TUCP) is one example of ACTRAV's activities. The TUCP faced serious obstacles when it tried to recruit and unionize EPZ workers in the Philippines. With ILO technical assistance, the TUCP established a broad-based coalition of trade unions, groups working in the informal economy, non-governmental organizations (NGOs) and government agencies. As a result of efforts by the TUCP and its partners, union monitors have assessed working conditions in over 70 companies and activities are ongoing to spread awareness of ILO fundamental principles. To date, over 133 companies in the EPZs have been unionized by the TUCP and many workers who were once vulnerable to poor labour standards are now covered by one of the 17 collective bargaining agreements negotiated in this area.²

278. ACT/EMP has been helping employers' organizations to build their capacities in various areas in order to better meet the needs of their members and to adapt to the changing face of the labour market. Many ACT/EMP activities relate to the exercise by employers of freedom of association and collective bargaining rights. These activities have yielded several positive outcomes, including better outreach by employers' organizations to small and medium-sized enterprises. An example of this is the launch of the "Small Enterprise Strategy" by the Federation of Kenyan Employers (FKE).³

2. ILO: *ILO programme implementation 2004–05*, Governing Body, 295th Session, Geneva, March 2006, p. 36.

3. *ibid.*, p. 37.

279. In accordance with the action plan adopted by the Governing Body in March 2005, the Office has tried to support organizing and bargaining for vulnerable groups and to develop the capability of workers' and employers' organizations to reach out to the informal economy. The project for poverty reduction among unprotected informal economy workers through trade union-cooperative joint action (SYNDICOOOP) is one example of the ILO activities in this area. It started as a joint initiative by ACTRAV, the International Cooperative Alliance (ICA) and the International Confederation of Free Trade Unions (ICFTU) to strengthen informal sector unions and protect their members. It encourages dialogue between key actors such as trade unions, cooperatives, government representatives and spokespeople from the informal economy. These exchanges have led to innovative strategies for introducing better labour standards into the informal economy. Other positive results include the creation of a revolving loan programme which encourages solidarity and collective action.

280. A second component of technical cooperation activities for vulnerable groups has comprised training, capacity building and direct cooperation for social partners with specific reference to the protection of migrant workers' rights. The Office has helped trade unions to organize migrant workers and to provide them with legal and social services. Guidance is also provided through an ILO manual that has been developed to help trade unions meet the unique needs of migrant workers. The results of these initiatives are already evident. Trade union materials developed recently in a number of countries refer to Conventions Nos 97 and 143 as regards equal treatment for migrant workers, including their rights to join trade unions and stand for election to union office.

281. Collective bargaining requires certain skills. An example of ILO assistance in this area is provided by the Joint Union and Management Negotiation Skills Training Workshops, which have been held for labour leaders and employers. Many of the industries chosen to participate in these workshops had a history of conflict between the social partners. The training is intended to transform conflictual relationships into cooperative and mutually beneficial ones. In 2007, training workshops were held separately for the tea and sugar industries in Malawi, for the sugar and commercial industries in Swaziland, and for the retail and mining industries in Zambia.

282. In many countries, trade union pluralism prevails, but in certain cases there are problems in determining the representative trade unions and employers' organizations. Starting in 2000, the ILO has

helped Benin to establish criteria and methods for determining trade union representation. A ministerial decree has set a threshold for trade union representation and there have been two major ballots under the new procedures. The ILO is currently working with the national authorities in Benin to share the knowledge acquired in this area with other French-speaking countries through the PAMODEC project. In Senegal, where the Labour Code did not originally provide a methodology in this area, the project has led to the consensual adoption of criteria for determining the representativeness of trade unions at the national, sectoral and enterprise levels. These criteria are now reflected in law.

283. Developing the capacity of the social partners was also a central component of the ILO Declaration projects in Indonesia, Morocco and Viet Nam. The projects provided training for thousands of trade union members on new labour laws and basic negotiation and bargaining techniques. In Morocco, the project delivered training directly to workers and established a network of trainers among trade union officials. In Indonesia, the ILO ran a training course for emerging trade union leaders. The projects also provided valuable support to employers' organizations and facilitated social dialogue. In Viet Nam and Indonesia, for example, intensive work was carried out with targeted employers to develop their negotiation and bargaining skills and to help them realize productivity gains through effective labour-management cooperation at the enterprise level. In both countries, the participants reported significant improvements in productivity and their organizational capacity.

284. In East Africa, SLAREA's training activities highlighted the roles and services of workers' and employers' organizations. Most employers' and workers' organizations in Kenya, the United Republic of Tanzania and Uganda have experienced an increase in their capacities as social partners and as service providers to their members. In Kenya and the United Republic of Tanzania, SLAREA has also made important contributions to the revitalization of labour colleges and training institutions with modernized curricula.

Tripartism and institution building

285. Tripartism is the cornerstone of the ILO. Technical cooperation projects are elaborated in consultation with the social partners. The initial step has been to conduct a national survey of the obstacles to implementing the principles and rights concerned. This is normally done by an independent consultant

who works with the tripartite constituents in the country concerned in order to determine the legal and practical obstacles and formulate appropriate solutions. The active participation of the tripartite constituents who are to be the beneficiaries of the project ensures its success.

286. In Jordan, following an intensive tripartite training programme and exposure to European experiences, the ILO project worked with the tripartite constituents to develop the legal framework and structure of a tripartite labour advisory committee, which was ultimately created in 2006. The project continues to provide support in training the members of the committee and its secretariat.

287. Some countries have not had a long history of tripartism. For example, the First National Tripartite Workshop on the Humanization of Liberia Labour Force was held in Monrovia in 2006. Its participants included government officials, parliamentarians, employers' and workers' representatives, and NGO activists. The workshop's objectives included an analysis of the situation with regard to the fundamental principles and rights at work in Liberia. It led to the adoption of the Tripartite Resolution on the Humanization of Liberia Labour Force which recommended, among other things, that the Government repeal legal provisions not in conformity with ILO Conventions Nos 87 and 98, and engage in a National Labour Conference for the purpose of reforming the Liberian Labour Code.

288. In 2005, the Office held a tripartite seminar on the situation of rural workers, with a particular focus on freedom of association. The seminar was attended by participants from Swaziland, Zambia and Zimbabwe. Its purpose was to raise awareness of government officers and employers' and workers' representatives on the mutually beneficial relationship between organizing and development; to improve the capacity of participants to support the formation and development of viable organizations in rural areas; and to facilitate the development of action plans for that purpose. Much more attention will have to be paid to such efforts if the capacity for collective bargaining is to extend beyond traditional sectors.

289. The project on the Promotion of Management–Labour Co-operation (PROMALCO) has had the long-term objective of making effective management–labour cooperation the leading paradigm for employment relations in the Caribbean. The project's interactive CD-ROM, *Tools for the High Road to Productivity and Competitiveness*, which has been widely disseminated in the Caribbean, is a compilation of practical guides, manuals and case studies. These include: “Building Labour–Management Partnerships

– A Practical Guide”; “International Labour Standards as Strategic Management Tools”; “Enterprise Partnerships”; “Guide to Building Trust”; and “New Issues in Collective Bargaining”.

290. Various sectoral action programmes are built around social dialogue and include capacity building for collective bargaining. For example, the Hotel, Catering and Tourism Action Programme has linked national vocational training programmes in Egypt with social dialogue at the workplace. In a tripartite meeting in Egypt on the tourism industry, the improvement of institutionalized labour–management relations at company and hotel level was discussed. In order to facilitate training activities, training manuals are being developed and a toolkit on implementing social dialogue in tourism is being made available. In Barbados, where tourism is a major sector, the aim is to maximize the contribution of this sector to social and economic development by using social dialogue as the entry point for addressing decent work deficits.

291. Efforts by the ILO International Migration Programme in cooperation with the ILO International Training Centre in Turin facilitated the formation of national tripartite migration policy consultation mechanisms in 12 countries in East Africa, West Africa and the Maghreb in 2005–06. In Europe, a major EU-supported ILO project, “Promoting Equality in Diversity: Integration in Europe”, has supported non-discrimination and integration of migrant workers, including recognition of their rights to organize and bargain collectively.

Dispute prevention and settlement

292. Recent technical cooperation projects in a number of countries are strengthening the capacity of governments and social partners to deal effectively with industrial disputes through predetermined channels. There is considerable demand by the ILO constituents for activities related to dispute prevention and dispute settlement. Efficient collective bargaining is a major means of dispute prevention. In Senegal, for example, ILO technical cooperation relating to collective bargaining has helped to modernize job classifications and led to more harmonious industrial relations. The original job classifications dated back to before the country's independence and had remained in force while economic transformations and other factors altered the nature and structure of national employment. This was a potential source of conflict between enterprises and workers. The Government and the social partners in the construction and public

Box 5.1
Technical cooperation and tripartism in Sialkot

Sialkot in Pakistan has grown into an industrial centre as a result of export production for the global markets. An area of expertise in Sialkot has been the production of sports goods, in particular soccer balls. Respect for international standards became a priority following national and international concerns about the existence of child labour in the region. In response, the Sialkot Chamber of Commerce and Industry began work with the ILO to address this issue. Multinational companies importing Sialkot goods were also involved and talks led to the 1997 *Atlanta Agreement*. This involved not only the multinationals and their national suppliers but also smaller producers. Sialkot became a success story for the ILO by ensuring that every part of the supply chain complied with international standards on child labour.

In 2006, there were allegations of a recurrence of child labour and discrimination against trade unionists. The Government of Pakistan, its social partners and other stakeholders asked the ILO to broker a new understanding between Sialkot and the international buyers of its exports. Intensive discussions in 2006 and 2007 with all key stakeholders (including representatives of international sporting brands, the international trade union movement, as well as other UN agencies, in addition to the national tripartite constituents) resulted in an agreed "Sialkot Initiative" that foresees moving beyond the prevention of child labour to include all core international labour standards, including freedom of association and collective bargaining, as well as provisions for strengthening government labour inspection, promoting effective social dialogue and helping manufacturers to meet broader standards of compliance. A tripartite committee in Sialkot governs the implementation of this pilot initiative. The first task of the committee has been to hold workshops in 2007 on labour inspection reform and ways of improving social dialogue in Sialkot.

works sectors, aware of these difficulties, requested ILO/PAMODEC assistance. A process of study and analysis was initiated which led to the development of tripartite national expertise on job classification and the preparation of an occupational directory for the construction and public works sector. A collective agreement on job classifications was eventually negotiated and signed in November 2006.

293. In view of the situation in Colombia, which is referred to earlier in this Report, the Governing Body of the ILO approved a Special Technical Cooperation Programme for Colombia. In this context, a number of seminars were held during the period 2004–07 to promote collective bargaining and dispute settlement. The seminars focused on new techniques in conflict resolution and included a module of seven case studies dedicated exclusively to Colombian experiences. The module was widely circulated in the country.

294. In Cambodia, the ILO is helping to build an effective dispute prevention and settlement system. With funding from the US Department of Labor, the project is developing mechanisms and processes, as well as tripartite capacity, to prevent and resolve disputes. The project is pursuing these goals through capacity building for relevant government ministries, the development of a statistical database on labour disputes, and training for labour inspectors. Conciliation is being encouraged through the training of government conciliators. The project is

also developing a framework for mediation through the establishment of an independent tripartite Arbitration Council, the development of administrative support for the Arbitration Council, training and mentoring for arbitrators, training of relevant stakeholders on arbitration procedures, and the dissemination of public awareness materials. The Arbitration Council is viewed as a major landmark in the development of sound labour relations in Cambodia. During its first nine months, the Council heard and completed 31 cases, involving enterprises employing more than 30,000 workers.

295. In southern Africa, the ILO has implemented a major project to strengthen conflict resolution institutions in Botswana, Lesotho, Malawi, Namibia, Swaziland and Zambia. Dispute resolution agencies in all six countries were under-resourced and had difficulties in carrying out effective labour inspection, mediation and arbitration. The project included training of conciliators and arbitrators through the ILO-sponsored postgraduate programme in dispute resolution for officials from Botswana, Lesotho, Namibia and Swaziland, who were trained in their own national labour law as well as international labour standards and aspects of labour relations, labour economics and human resources management.

Box 5.2 Promotion of conflict management systems in southern Africa and development of enterprise-based competitiveness

This project, financed by the Swiss Government, was completed at the end of 2006. The mid-term evaluation report of the project provides an indication of the achievements to date and makes recommendations to assure further success.

- In Angola, the goals were substantially achieved in a difficult environment. Angola's existing labour law discouraged collective bargaining. The project analysed the shortcomings and proposed amendments to legislation, which were largely supported by the social partners. The commitment of the Minister of Labour to hasten the process was appreciated. The project aimed to elaborate a strategic implementation plan, fostering understanding of collective bargaining, and assisting with training for prosecutors, arbitrators and social partners.
- In Mozambique, the goals were substantially achieved. Some training was provided and legal amendments establishing an entirely new dispute settlement system were tabled. The implementation of the new system is a challenge: it requires the stakeholders, and particularly the Government, to set up appropriate structures and allocate substantial resources. The project could assist that process, advising on steps to be taken, timelines and resource requirements, and provide training for social partners, arbitrators and others.
- In Zimbabwe, the objectives were substantially achieved. Legal reforms were promulgated, the dispute settlement system reformed, training material developed, arbitrators trained and library resources installed. Nevertheless, obstacles slowed the implementation process; some were removed during the evaluation. The Minister of Labour agreed to hold a high-level seminar on social dialogue in August 2005, and to make the necessary legal changes to promulgate the Codes and Guidelines. The social partners and the Government urged that continued support be given by the project. The evaluation recommended further focusing on training (including negotiation skills for social partners).
- In Swaziland, the objectives were substantially achieved. The labour law reform was passed by Parliament and the institutional arrangements of the dispute settlement mechanism are in place. Guidelines were approved, training material developed and some training organized. Most importantly, the project helped to set up a unique meeting at a high political level with the social partners to discuss social dialogue. The discussions led to an understanding to develop a focused agenda. The tripartite process needs sustained support, as it is a window of opportunity with high potentials.
- In Namibia, the goals were substantially achieved. The general labour law reform was finally passed by Parliament. A new dispute settlement institution was envisaged. Despite delays, the Government had shown commitment by setting up an electronic case management system and by providing training. Having invested much time and resources, the project could phase out its activities and focus on strategic advice to establish the new institutions and provide training.
- In Lesotho, the objectives were achieved. The evaluation found that the project outcomes worked well and are sustainable. Activities were accordingly phased out.
- In Botswana, outputs were substantially achieved. The legal reform was promulgated, albeit prematurely before the necessary institutional arrangements were in place. This project had to adapt itself and provide the necessary assistance. Codes and training material were developed and training organized. The project had to shift its focus to support implementation.

Everywhere, stakeholders highly commended the project and its staff. In many cases, they considered the project to be the start of a process away from antagonism towards dialogue and a search for "win-win" situations. The project itself was dialogue-based and facilitated the convergence of opinions and helped stakeholders to take ownership.

In sum, the project impacted on labour disputes, the relationship between the social partners and the wider socio-economic field. Results are more sustainable in countries which joined early on. Further assistance may be needed for countries that joined the project at a later stage.

Advocacy and information

296. The effects of advocacy and sharing information on the promotion of freedom of association and collective bargaining should not be underestimated. Products and activities such as videos, radio programmes and media training workshops, provide good opportunities to disseminate information and promote sustainability. News coverage, television debates and printed publicity material such as calendars have made the fundamental principles and rights at work more visible. The resulting improvement in public knowledge means that individuals are informed of their rights and of the means to defend them. Raising awareness among workers and employers about their rights and obligations also helps to consolidate the achievements of a project and to generate local demand for continued progress towards the realization of fundamental principles and rights at work.

297. An effective strategy for spreading information has been to use local language radio and newspapers. This was the case in West Africa, where PAMODEC reached across language barriers by transmitting radio programmes in the local dialects. The project also took advantage of publicity opportunities by printing the fundamental principles and rights on airport boarding cards.

298. The Office is responding to continual requests for promotional materials and information kits. The ILO's Caribbean Office is developing brochures to raise the visibility of the fundamental principles and rights at work in the subregion. The goal is to highlight links between these principles and rights and the social and labour aspects of the Caribbean Single Market and Economy (CSME). The project has also developed a web page on the same subject; this has been integrated into the CSME web site to ensure sustainability after the completion of the project.

299. The major project entitled "Awareness-Raising on the Declaration on Fundamental Principles and Rights at Work" was initiated to support the communications needs of the technical cooperation projects by promoting a better understanding and more accurate reporting on relevant issues. Developing strong partnerships with the media, the project activities contributed to positioning the ILO as an authoritative source of information for the media on the world of work. For example, in February 2006, the ILO undertook a six-month campaign in Uganda to promote and publicize the main provisions of the new laws. The campaign comprised a three-pronged sensitization and awareness-raising strategy involving tripartite awareness-raising workshops, the development of promotional materials, and the media. At the start

of the campaign, only persons who had participated in the labour law review had any knowledge of the law. Following the campaign, an evaluation survey found that approximately one third of the workforce was aware that new labour laws were in place, had information on their basic provisions, and knew where they could be obtained.

300. A broad awareness-raising campaign is being implemented in Morocco, where Parliament enacted a new Labour Code in June 2004. The ILO is helping to ensure awareness of and compliance with the new Code by developing a bilingual information CD in French and Arabic, as a reference tool aimed at management, unions, labour inspectors and students. It links provisions of the Labour Code with related government and ministerial decrees and court decisions and provides greater clarity on the new provisions, with key answers to more than 100 frequently asked questions.

301. Cooperation has also developed with the international media. A broad partnership was in place with the BBC World Service Trust has resulted in numerous radio and television programmes, as well as specialized web sites. Programmes and live broadcast events have been developed with the BBC's Spanish, Brazilian and Arabic language services. In Brazil, the partnership resulted in 36 local journalists being trained on fundamental principles and rights at work. These journalists have subsequently produced numerous radio programmes and newspaper articles on relevant topics.

302. The awareness-raising project also contributed video news releases to CNN for broadcast (eight in 2006). Several pieces developed by the ILO have been broadcast on CNN as part of its "World Report" series.

Donor support

303. Since the establishment of the Declaration Programme, about US\$58 million has been received to implement projects related to freedom of association and the effective recognition of the right to collective bargaining. The bulk of these funds were received between the years 2000 and 2003. Since then, there has been a gradual decline in expenditure by the Declaration Programme on activities directly linked to freedom of association and collective bargaining, from a peak of some US\$10 million in 2003 to approximately US\$2.5 million in 2007. By contrast, total extra-budgetary approvals for all ILO technical cooperation projects reached an all-time peak of US\$243 million in 2006 – an increase of some 60 per cent from the 2004 total of US\$152 million. Funding

Box 5.3 Promoting sound industrial relations at the workplace and strengthening the capacity of industrial relations actors in Viet Nam

This project has made a significant contribution to a gradual change in the awareness, legislation and practice of freedom of association and collective bargaining in Viet Nam. Examples of the project's activities include:

- Helping the University of Labour and Social Affairs establish the first Industrial Relations Department in Viet Nam. The project both funded and gave technical support to the preparation of the first curriculum by a team of eight faculty members of the University and an ILO expert. Students learn the latest industrial relations skills and develop their own tools and knowledge for further work in this field.
- In late 2006, the Viet Nam National Assembly officially approved the revision of Chapter 14 of the Labour Law. The project supported this process by sponsoring consultation meetings with stakeholders as well as providing experts to give technical support. One of the outcomes is the extension of the right to strike to workers in non-union enterprises. The ILO has been requested to provide technical assistance in the overall revision of the Labour Law, which should be concluded by the end of 2008.
- National Promotion of Collective Bargaining. A pilot project on collective bargaining started in the high-risk strike areas in the southern part of Viet Nam, with the participation of tripartite partners at national and local levels. The pilot project aims to set up a model for collective bargaining and social dialogue that can be replicated throughout the country. Against the background of increased tension in labour relations and the growing number of strikes in those areas, the social partners consider this initiative to be essential. They have indicated that social dialogue, better communication and collective agreements will create more productive workplaces in the current context of rapid economic development.
- Building up tripartite consultation. The project established tripartite committees in seven provinces to provide local support for the implementation of the project. These were the first official tripartite mechanisms at the provincial level in Viet Nam. Their members have now taken their own initiatives to carry out numerous training for worker and management representatives at local levels. For example, in Ho Chi Minh City they have created a taskforce called the "Interdisciplinary Strike Resolution Task Force" that mediates strikes and interacts with the police if necessary. Tripartite visits to factories take place to ensure that labour laws are being implemented correctly.

from four main donors – United States, Netherlands, United Kingdom and Italy – remained significant. During this time Sweden, Norway and the European Commission emerged as the three major supporters of the promotion of decent work in the development cooperation agenda.

304. The above figures suggest that while donor States are recognizing the overall importance of technical cooperation projects, the focus on promoting freedom of association and collective bargaining as a specific goal is not being maintained. Funds available for technical cooperation and assistance on freedom of association and collective bargaining have not been anywhere close to the funding for the elimination of child labour or forced labour.

305. The Independent Declaration Expert-Advisers recommended that sufficient regular budget resources should be allocated for the effective implementation of activities in this area. They also recommended that an appeal should be launched to the donor community for substantial and durable extra-budgetary support for technical cooperation in order to meet the high and ever-increasing demands expressed by

governments and employers' and workers' organizations for capacity building activities related to freedom of association and the right to collective bargaining.

Evaluations and the lessons learned

306. The first generation of ILO Declaration technical cooperation projects has led to a number of positive outcomes. Technical cooperation is a long-term and complex process that requires flexibility and constant evaluation. At times the process requires a change in attitudes and deeply rooted social practices. Time and resources are needed to achieve results. The success of technical cooperation projects in this area depends greatly on the political will to implement change and on the continued support of the international community. Progress so far has depended on the generous support of a few donors. Regular budget resources cannot meet the existing demands, even with the combined efforts of various departments and field offices.

307. All the technical cooperation projects under the Declaration Programme have undergone independent

Box 5.4

“Better Factories Cambodia” – A pioneering project

In 2001, the ILO was requested to play a facilitating role to improve working conditions in the Cambodian garment industry, which employs over 340,000 (mostly female) workers and accounts for 80 per cent of the country's exports. The ILO started this unique experiment by setting up a team of independent labour monitors to make unannounced visits to the garment factories and to check on conditions relating to freedom of association, wages, working hours, sanitary facilities, machine safety and noise control. The project rapidly evolved to offer individual factories complementary direct remedial assistance, as well as capacity building for trade unions, employer representatives and the Government. Six years on, this initiative has achieved striking results. The project is implementing a three-pronged strategy of monitoring and reporting on working conditions in factories according to national law and core international labour standards, helping the factories to improve working conditions through workplace cooperation, and facilitating dialogue between the social partners and international buyers to ensure a rigorous, transparent and continuous cycle of improvements and cross-border cooperation. Each factory involved in the programme is establishing a Productivity Improvement Consultative Committee (PICC) to reinforce dialogue on a range of issues. At the industry level, the project is guided by a Project Advisory Committee (PAC), which consists of three representatives each from the Government of Cambodia, the Garment Manufacturers Association of Cambodia (GMAC), and the Cambodian trade union movement. Although the project may not be the only cause, it is worth mentioning that unionization has increased from 25–30 per cent in 2001 to 43 per cent in 2006.¹ In the meantime, Cambodia has demonstrated strong and sustained economic and employment growth, driven in large part by the performance of the garment sector.

¹ *Cambodia: Women and work in the industry*; a study jointly developed and implemented by ILO Better Factories Cambodia, The World Bank Justice for the Poor Program, CARE International and UNIFEM, 2006, p. 25.

final evaluations; most of them have also undergone mid-term evaluations.⁴ The table on technical cooperation in Appendix VII includes some of the findings of these evaluations as regards impact and sustainability. The most recent impact assessment in 2007 was based on a detailed case study in four countries. The following paragraphs provide a brief synopsis of the overall findings.

308. The Declaration Programme has drawn on the ILO's expertise to help governments, employers and workers in more than 50 countries across the world to play a constructive role in modern and democratic labour relations systems. It has been able to support governments by facilitating the drafting and adoption of legislation, while promoting the participation of all the tripartite partners in the process of developing legislative policy.

309. ILO technical cooperation projects have paid close attention to the role of the government officials who have the front-line responsibility for applying – and in some cases enforcing – labour law. The projects have focused in particular on labour inspectors, helping to improve their systems and their capacity not only to enforce the law but also to operate as an information resource for both employers and workers. In many cases the projects have provided labour inspectors with the basic equipment required to carry out their work.

310. ILO projects have helped to establish and to improve the work of labour dispute resolution bodies. In some cases, a process of institutionalizing the social dialogue was initiated. ILO projects provided training and support for those with responsibility for labour dispute resolution, including members of the judiciary, and have been able to develop the skills of those who use dispute resolution services.

311. In all cases, the projects sought to build the capacity of employers' and workers' organizations to better represent their constituencies, to assume fully their role in modern systems of industrial relations, and to contribute to the realization of fundamental principles and rights at work. By supporting each of the tripartite partners, and by working with them to design and deliver project activities, technical cooperation projects have contributed to the establishment of good governance and democracy.

312. The projects supported or provided training for thousands of trade union members, informing them about new labour laws and educating them on basic negotiation and bargaining techniques. The projects likewise supported or trained thousands of employers on the same topics, and facilitated tripartite discussions on a range of issues.

313. The ILO's technical assistance aims for outcomes that will be sustainable. A key indicator of

4. See the EVAL site at <http://www.ilo.org/intranet/english/bureau/program/eval/index.htm> for summaries of some of these evaluations.

sustainability is the decision to both ratify the relevant ILO Conventions and fulfil international obligations by revising national legal frameworks. Several of the recent ratifications of Conventions Nos 87 and 98 have involved ILO advice and assistance. Labour laws have been reformed in over a dozen countries.

314. Strengthening the institutional capacity of governments, employers and workers is essential for new legislation to have a positive effect in practice. Training plays a major role in this regard. By training trainers and facilitating the integration of industrial relations into university curricula or trade union training courses, for example, the projects have worked to help countries to develop sound industrial relations practices that will endure beyond the lifespans of the projects themselves. Reports received from beneficiary governments and from employers' and workers' organizations indicate that ILO technical cooperation has had a significant impact in terms of improving their institutions. In all the project countries, those who have been involved directly with the project have passed on their knowledge and skills, or used them in ways that suggest that the outcomes will be sustainable.

315. The ILO's projects have also worked to achieve long-term sustainability by focusing on awareness raising among workers, employers and the general public. A successful strategy in many cases has been to use local language radio and newspapers to disseminate information. Raising awareness helps to consolidate the project's achievements and to generate a local demand for continued progress.

316. Many challenges remain, as the majority of workers in many developing countries are in the informal economy, where labour laws often are not applied. To counter this problem, ILO assistance must be available to trade unions and employers' associations to help them improve their outreach. Projects need to ensure that labour laws cover workers in all sectors. For example, in many cases, workers in agriculture and export processing zones (EPZs), or migrant workers, are excluded. The projects may need to have components for such sectors and categories of workers. In the case of migrant workers, it may be more efficient to address the right to freedom of association and collective bargaining together with the right to non-discrimination and the elimination of forced labour and trafficking.

317. With regard to the actual implementation of technical cooperation projects, efforts have been made to involve the ILO's ACTRAV and ACT/EMP and their specialists in the field offices from the initial stages of project design. This has been done through consultations on the draft project documents and, in some cases, through their participation in project

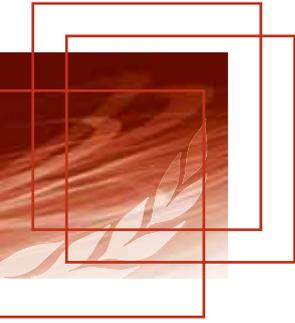
design missions (for example, in southern Africa). Once a project has begun, the chief technical adviser is required to keep the ACTRAV and ACT/EMP specialists informed of planned activities. Such cooperation and coordination should be maintained and improved. This is essential for the sustainability of project activities in the long term. The work of these projects should be an integral part of the work of ILO specialists in the field.

318. It is crucial to secure stronger, better-focused and more transparent tripartite participation in the definition and design of project activities at the national and regional levels. This will boost commitment and improve the chances of achieving sustainability. Efforts should be made to extend dialogue and outreach to include all key ministries, parliamentarians and relevant civil society organizations that can contribute to the success of the project, without hampering the role of the tripartite constituents directly involved. In order to create a nurturing environment for freedom of association and collective bargaining, all parties must commit themselves to sustainable change through cooperation and capacity building.

319. The implementation of the Action Plan has also highlighted some practical issues that need to be addressed. The ILO Declaration Expert-Advisers have commented on the complications that exist in this regard. These include: the involvement of many units and departments, with no single unit in charge of design and implementation of technical cooperation and technical assistance in this field; lack of donor interest partly because of the topic and partly because of the lack of a coordinating unit; the need to redefine the points of entry, not necessarily starting from ratification or from sectors and groups of workers that are difficult to organize, but from industrial relations and collective bargaining or sectoral activities, or strengthening existing workers' and employers' organizations.

320. On the other hand, the involvement of various units at ILO headquarters and in the field, and the development of various tools related to these rights and principles, have contributed to the success of the activities. What has been done has encompassed both large projects and small-scale assistance through advisory services. The diversity of the ILO's means of action is helpful. In view of the reluctance of some constituents to engage in activities on freedom of association, the ILO should be able to provide tailor-made activities, both large- and small-scale. A realistic plan of action in this area would need to take all these elements into account and consider what aspects can be further improved over the next four years.





Chapter VI

Looking forward: A plan of action for the next four years

321. Before sketching out elements of a plan of action, it is useful to recall the context in which it will apply. As noted at the beginning of this Global Report, the year 2008 marks a number of important occasions. Ten years have passed since the adoption of the Declaration on Fundamental Principles and Rights at Work, and 60 years since the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). At the same time, the ILO's Decent Work Country Programmes (DWCPs) are taking off at national level, and the International Labour Conference is discussing how to strengthen the ILO's capacity to deliver better on its mandate. In this contextual framework, the Governing Body of the ILO in November 2008 will consider for adoption a plan of action on freedom of association and collective bargaining for the next four years, taking into account the Conference discussion on this Report.

322. This Report has noted that over the ten years since the adoption of the 1998 Declaration, there have been new ratifications of the two Conventions Nos 87 and 98. However, some countries with large economies and populations have yet to ratify and, in many of them, no active efforts appear to be under way to bring about ratification. Furthermore, ratification, though important, is not in itself enough. Legislative reforms, measures to increase the capacity of all three social partners to promote the principles and rights concerned, and efforts to enhance public awareness of their importance, are all essential. While quantitative measures are notoriously weak in this area, it is absolutely clear that many workers and employers do not enjoy the right to organize and bargain collectively. Various measures are necessary to extend these rights to more people, in order to ensure their universal application.

323. Some important inroads have been made, notably promotion of the same rights by a number of

multilateral organizations and international actors in their policies and approaches (for example, development finance institutions (DFIs) and through regional and bilateral trade agreements, as well as initiatives such as international framework agreements (IFAs) and corporate social responsibility (CSR). The important, but ultimately limited, technical cooperation provided by the ILO has also had its impact. The ILO must build on all such initiatives, and must be available to assist other actors, by all ways and means within its mandate.

324. Experience on technical cooperation under the Declaration Follow-up led the group of Independent Expert-Advisers, who had since 2000 been reviewing the annual reports of governments on the progress made towards better respect and implementation of fundamental rights, to comment that although situations may vary from one country to another, strategies for the promotion of the fundamental principles and rights should take into consideration a number of elements:

- (a) the interrelation of the four fundamental principles and rights at work, which reinforce one other in practice, and the key role of freedom of association in this respect;
- (b) the need to assess both legal and practical situations, and for all three social partners, in particular governments, to address the existence of problems related to the implementation of these principles and rights;
- (c) the need to promote the ratification of Conventions Nos 87 and 98, which now risk lagging behind the other fundamental Conventions;
- (d) the need for increased provision of technical cooperation to help realize fundamental principles and rights at work in an integrated manner, within the DWCPs;
- (e) the need for training and capacity building to enable employers' and workers' organizations to

effectively promote fundamental rights and participate throughout the implementation process, and to share successful experiences in this respect;

- (f) the need to maintain attention to specific industrial sectors and categories of workers and employers requiring such attention, and to extend freedom of association and collective bargaining rights to those who do not enjoy them.

325. Since the first Global Report on this subject in 2000, what is required has been clear: promoting ratification and effective implementation of the international labour standards related to freedom of association and the right to bargain collectively; services to constituents in areas that help them give effect to these principles; and measures to strengthen the ILO's knowledge base to facilitate this work and its advocacy functions. This basic agenda was most recently underlined by the ILO Governing Body in November 2007, in its consideration of the paper on collective bargaining and the Decent Work Agenda.¹ In the same spirit, and in the light of the findings of this Report, future action will need to continue to concentrate on three key areas described below.

326. *Ratification and effective implementation of the relevant Conventions.* The Office has already used information available to it through the annual review procedures under the Declaration to develop baselines for all member States that have not yet ratified Conventions Nos 87 and 98. A number of in-depth case studies of selected volunteering countries have been concluded to show different approaches and their impact in achieving respect, promotion and realization of the fundamental principles and rights at work. A further step can be taken to facilitate an exchange of knowledge and experience between the non-ratifying countries on a regional or subregional basis with a view to improving the promotion and observance of these principles and rights. This work should include national tripartite reviews and dialogues in the countries concerned, supported by the Decent Work Country Programmes and carried out in close collaboration with the International Labour Standards Department, the Labour Law, Labour Administration and Social Dialogue Department, the Bureaux for Workers' and Employers' Activities, various subregional offices, and the Declaration Programme. Such activity would raise awareness and knowledge and promote dialogue on freedom of association and collective bargaining among the national tripartite constituents, promote the ratification and

implementation of the relevant ILO fundamental Conventions, and identify practical steps that can be taken to improve freedom of association and collective bargaining within the DWCPs.

327. *Service to constituents.* As in the past, this should focus on areas essential for creating enabling conditions for the effective implementation of the rights to organize and bargain collectively. These areas are: the establishment of an enabling legislative framework, including provision for participatory drafting of labour law; strengthening the capacity of employers' and workers' organizations to organize their members and bargain collectively; developing facilitative and supportive labour administrations, including in the operation of tripartite and bipartite bodies; and strengthening enforcement through labour inspection and judicial bodies, as well as machinery to facilitate labour dispute resolution. Attention would be given to policies and strategies that involve the participation of employers' and workers' organizations, reaffirming the principles for establishing genuine, independent and representative organizations. Technical assistance should be provided to ensure effective use of freedom of association and collective bargaining as a tool to address key elements of the Decent Work Agenda around rights and representation at work, employment, productivity, working conditions and social protection.

328. *Improving the ILO's knowledge base in promoting the rights to organize and bargain collectively.* This will involve working closely with constituents to develop reliable methods of measuring the extent to which freedom of association and collective bargaining are realized in practice, so that developments in different countries can be tracked over time. It also requires information collection and analysis of key trends and emerging issues in both the private and public sectors. Specific areas for attention include ways in which the exercise of the rights to organize and bargain collectively impact on socio-economic outcomes; and specific issues in the public sector and other selected sectors, including those where the rights are restricted or have proved difficult to exercise. Improving the ILO knowledge base in this way would also help to expand and focus its advocacy work with diverse partners, ranging from the immediate ILO constituents to parliamentarians and other policy-makers, as well as partner agencies within the multilateral system.

329. The structural changes that have been brought about by globalization have major repercussions on

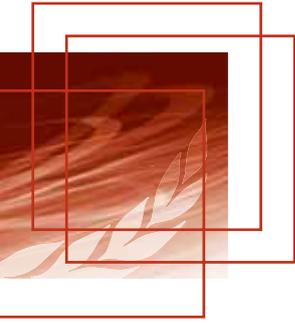
1. ILO: *Collective bargaining and the Decent Work Agenda*, Governing Body, 300th Session, Geneva, November 2007, GB.300/ESP/1.

VI. LOOKING FORWARD: A PLAN OF ACTION FOR THE NEXT FOUR YEARS

the conditions and terms under which people work. The ILO is called on to take up the challenge. The promotion and realization of freedom of association and the effective recognition of the right to collective bargaining are at the heart of the ILO mandate. Freedom of association is essential to human rights and democracy, and to sound social and economic

development. Tackling this challenge is itself an opportunity to promote decent work, as freedom of association and collective bargaining are also means to seek optimum solutions to other issues in the world of work. The ILO, with the support and participation of its constituents, will continue to build on the progress achieved so far.





Appendices

Appendix I. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

- (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;
- (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these

objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

- (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex. Follow-up to the Declaration

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e) of the Constitution; and the global report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e) of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.

4. Adjustments to the Governing Body's existing procedures should be examined to allow Members

which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global report

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the

Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. It is understood that:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

In faith whereof we have appended our signatures this nineteenth day of June 1998.

The President of the Conference,
Jean-Jacques Oechslin.

The Director-General of the International
Labour Office,
Michel Hansenne.

Appendix II

Text of the substantive provisions of Convention No. 87¹

Convention concerning Freedom of Association and Protection of the Right to Organise²

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948,

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session,

Considering that the Preamble to the Constitution of the International Labour Organisation declares “recognition of the principle of freedom of association” to be a means of improving conditions of labour and of establishing peace,

Considering that the Declaration of Philadelphia reaffirms that “freedom of expression and of association are essential to sustained progress”,

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation,

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

Part I. Freedom of association

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

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

Article 4

Workers’ and employers’ organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers’ and employers’ organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers’ and employers’ organisations.

Article 7

The acquisition of legal personality by workers’ and employers’ organisations, federations and

1. The full text of the Convention, including the final provisions is available at <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=011948087@ref&chspec=01>
2. This Convention came into force on 4 July 1950.

confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification

of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term “organisation” means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Part II. Protection of the right to organise

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Appendix III

Text of the substantive provisions of Convention No. 98¹

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively²

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to –

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers'

organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

1. The full text of the Convention, including the final provisions is available at <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=011949098@ref&chspec=01>

2. This Convention came into force on 18 July 1951.

Appendix IV

Table of ratifications to Conventions Nos 87 and 98 and annual reports submitted under the Declaration follow-up (as at 1 January 2008)

No. 87 – Freedom of Association and Protection of the Right to Organise Convention, 1948

No. 98 – Right to Organise and Collective Bargaining Convention, 1949

Explanation of symbols in the table

✓: Convention ratified ✗: Convention not ratified n/a: Not applicable

Member States	Ratifications		2008 annual report submitted ¹	Member States	Ratifications		2008 annual report submitted ¹
	C.87	C.98			C.87	C.98	
Afghanistan	✗	✗	yes	Cambodia	✓	✓	n/a
Albania	✓	✓	n/a	Cameroon	✓	✓	n/a
Algeria	✓	✓	n/a	Canada	✓	✗	yes
Angola	✓	✓	n/a	Cape Verde	✓	✓	n/a
Antigua and Barbuda	✓	✓	n/a	Central African Republic	✓	✓	n/a
Argentina	✓	✓	n/a	Chad	✓	✓	n/a
Armenia	✓	✓	n/a	Chile	✓	✓	n/a
Australia	✓	✓	n/a	China	✗	✗	yes
Austria	✓	✓	n/a	Colombia	✓	✓	n/a
Azerbaijan	✓	✓	n/a	Comoros	✓	✓	n/a
Bahamas	✓	✓	n/a	Congo	✓	✓	n/a
Bahrain	✗	✗	yes	Costa Rica	✓	✓	n/a
Bangladesh	✓	✓	n/a	Côte d'Ivoire	✓	✓	n/a
Barbados	✓	✓	n/a	Croatia	✓	✓	n/a
Belarus	✓	✓	n/a	Cuba	✓	✓	n/a
Belgium	✓	✓	n/a	Cyprus	✓	✓	n/a
Belize	✓	✓	n/a	Czech Republic	✓	✓	n/a
Benin	✓	✓	n/a	Democratic Republic of the Congo	✓	✓	n/a
Bolivia	✓	✓	n/a	Denmark	✓	✓	n/a
Bosnia and Herzegovina	✓	✓	n/a	Djibouti	✓	✓	n/a
Botswana	✓	✓	n/a	Dominica	✓	✓	n/a
Brazil	✗	✓	yes	Dominican Republic	✓	✓	n/a
Bulgaria	✓	✓	n/a	Ecuador	✓	✓	n/a
Burkina Faso	✓	✓	n/a	Egypt	✓	✓	n/a
Burundi	✓	✓	n/a	El Salvador	✓	✓	n/a
Brunei Darussalam	-	-	yes				

FREEDOM OF ASSOCIATION IN PRACTICE: LESSONS LEARNED

Member States	Ratifications		2008 annual report submitted ¹
	C.87	C.98	
Equatorial Guinea	✓	✓	n/a
Eritrea	✓	✓	n/a
Estonia	✓	✓	n/a
Ethiopia	✓	✓	n/a
Fiji	✓	✓	n/a
Finland	✓	✓	n/a
France	✓	✓	n/a
Gabon	✓	✓	n/a
Gambia	✓	✓	n/a
Georgia	✓	✓	n/a
Germany	✓	✓	n/a
Ghana	✓	✓	n/a
Greece	✓	✓	n/a
Grenada	✓	✓	n/a
Guatemala	✓	✓	n/a
Guinea	✓	✓	n/a
Guinea-Bissau	✗	✓	yes
Guyana	✓	✓	n/a
Haiti	✓	✓	n/a
Honduras	✓	✓	n/a
Hungary	✓	✓	n/a
Iceland	✓	✓	n/a
India	✗	✗	yes
Indonesia	✓	✓	n/a
Iran, Islamic Republic of	✗	✗	yes
Iraq	✗	✓	yes
Ireland	✓	✓	n/a
Israel	✓	✓	n/a
Italy	✓	✓	n/a
Jamaica	✓	✓	n/a
Japan	✓	✓	n/a
Jordan	✗	✓	yes
Kazakhstan	✓	✓	n/a
Kenya	✗	✓	yes
Kiribati	✓	✓	n/a
Korea, Republic of	✗	✗	yes

Member States	Ratifications		2008 annual report submitted ¹
	C.87	C.98	
Kuwait	✓	✓	n/a
Kyrgyzstan	✓	✓	n/a
Lao People's Democratic Republic	✗	✗	yes
Latvia	✓	✓	n/a
Lebanon	✗	✓	yes
Lesotho	✓	✓	n/a
Liberia	✓	✓	n/a
Libyan Arab Jamahiriya	✓	✓	n/a
Lithuania	✓	✓	n/a
Luxembourg	✓	✓	n/a
Madagascar	✓	✓	n/a
Malawi	✓	✓	n/a
Malaysia	✗	✓	yes
Mali	✓	✓	n/a
Malta	✓	✓	n/a
Marshall Islands	✗	✗	New member
Mauritania	✓	✓	n/a
Mauritius	✓	✓	n/a
Mexico	✓	✗	yes
Moldova, Republic of	✓	✓	n/a
Mongolia	✓	✓	n/a
Montenegro	✓	✓	n/a
Morocco	✗	✓	yes
Mozambique	✓	✓	n/a
Myanmar	✓	✗	yes
Namibia	✓	✓	n/a
Nepal	✗	✓	yes
Netherlands	✓	✓	n/a
New Zealand	✗	✓	yes
Nicaragua	✓	✓	n/a
Niger	✓	✓	n/a
Nigeria	✓	✓	n/a
Norway	✓	✓	n/a
Oman	✗	✗	yes
Pakistan	✓	✓	n/a

APPENDIX IV

Member States	Ratifications		2008 annual report submitted ¹	Member States	Ratifications		2008 annual report submitted ¹
	C.87	C.98			C.87	C.98	
Panama	✓	✓	n/a	Sudan	✗	✓	yes
Papua New Guinea	✓	✓	n/a	Suriname	✓	✓	n/a
Paraguay	✓	✓	n/a	Swaziland	✓	✓	n/a
Peru	✓	✓	n/a	Sweden	✓	✓	n/a
Philippines	✓	✓	n/a	Switzerland	✓	✓	n/a
Poland	✓	✓	n/a	Syrian Arab Republic	✓	✓	n/a
Portugal	✓	✓	n/a	Tajikistan	✓	✓	n/a
Qatar	✗	✗	yes	Tanzania, United Republic of	✓	✓	n/a
Romania	✓	✓	n/a	Thailand	✗	✗	yes
Russian Federation	✓	✓	n/a	The former Yugoslav Republic of Macedonia	✓	✓	n/a
Rwanda	✓	✓	n/a	Timor-Leste	✗	✗	yes
Saint Kitts and Nevis	✓	✓	n/a	Togo	✓	✓	n/a
Saint Lucia	✓	✓	n/a	Trinidad and Tobago	✓	✓	n/a
Saint Vincent and the Grenadines	✓	✓	n/a	Tunisia	✓	✓	n/a
Samoa	✗	✗	yes	Turkey	✓	✓	n/a
San Marino	✓	✓	n/a	Turkmenistan	✓	✓	n/a
Sao Tome and Principe	✓	✓	n/a	Uganda	✓	✓	n/a
Saudi Arabia	✗	✗	yes	Ukraine	✓	✓	n/a
Senegal	✓	✓	n/a	United Kingdom	✓	✓	n/a
Serbia	✓	✓	n/a	United Arab Emirates	✗	✗	yes
Seychelles	✓	✓	n/a	United States	✗	✗	yes
Sierra Leone	✓	✓	n/a	Uruguay	✓	✓	n/a
Singapore	✗	✓	yes	Uzbekistan	✗	✓	yes
Slovakia	✓	✓	n/a	Vanuatu	✓	✓	n/a
Slovenia	✓	✓	n/a	Venezuela	✓	✓	n/a
Solomon Islands	✗	✗	yes	Viet Nam	✗	✗	yes
Somalia	✗	✗	yes	Yemen	✓	✓	n/a
South Africa	✓	✓	n/a	Zambia	✓	✓	n/a
Spain	✓	✓	n/a	Zimbabwe	✓	✓	n/a
Sri Lanka	✓	✓	n/a				

¹ ILO: Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports, Governing Body doc. GB.301/3, 301st Session, Geneva, March 2008.

Appendix V

Resolution of 1952 concerning the independence of the trade union movement

Adopted on 26 June 1952

Whereas the International Labour Conference at its recent session has formulated in international Conventions and Recommendations principles for the establishment of freedom of association and good industrial relations,

Whereas a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country,

Whereas the relations between the trade union movement and political parties will inevitably vary for each country, and

Whereas any political affiliation or political action by the trade unions depends on national conditions in each country,

Considering nevertheless that there are certain principles which should be laid down in this regard which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of the workers,

The International Labour Conference at its 35th Session adopts this twenty-sixth day of June 1952 the following resolution;

1. The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.

2. The trade unions also have an important role to perform in cooperation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.

3. To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.

4. A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.

5. When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country.

6. Governments in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

Appendix VI

Resolution of 1970 concerning trade union rights and their relation to civil liberties

Adopted on 25 June 1970

The General Conference of the International Labour Organization,

Considering that the preamble to the Constitution of the International Labour Organization proclaims recognition of the principle of freedom of association as one of the objectives of the Organization,

Considering that the Declaration of Philadelphia, an integral part of the Constitution, proclaims that freedom of expression and of association are essential to sustained progress and refers to other fundamental human rights inherent in human dignity,

Considering that the International Labour Organization has laid down basic standards of freedom of association for trade union purposes in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),

Considering that without national independence and political liberty full and genuine trade union rights could not exist,

Considering that trade unions, provided they enjoy their full rights, are an essential factor for the attainment of the objective of economic, social and cultural progress stated in the Constitution of the ILO,

Considering that the rights of workers' and employers' organizations and of human beings in general flourish in a climate of social and economic progress,

Considering that the advancement of the rights of workers' and employers' organizations is linked both to national social and economic development and to national, regional and international legislation,

Considering that, according to Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948, workers, employers and their organizations should respect the law of the land in exercising the rights provided for in that Convention, but the law of the land should not be such as to impair, nor should it be so applied as to impair, the guarantees provided for in the Convention, and that this principle should also be respected when trade unions assume responsibility in the interests of the common welfare,

Recalling earlier calls by the Conference for reinforcing the action and machinery of the International

Labour Organization for the protection of trade union rights, more particularly the resolution concerning freedom of association, adopted on 9 July 1964, and the resolution concerning action by the International Labour Organization in the field of human rights and in particular with respect to freedom of association, adopted on 24 June 1968,

Considering the evolution which has taken place in various fields and the fact that the present session of the Conference has dealt with the question of protection and facilities afforded to workers' representatives,

Regretting that forty-five Members of the International Labour Organization have not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948, and that thirty-two Members have not yet ratified the Right to Organise and Collective Bargaining Convention, 1949, and deploring that some of these States violate and infringe the principles laid down in these instruments,

Deploring also that amongst the member States which have ratified these Conventions some do not yet apply them fully and others violate them,

Considering that the supervisory machinery of the ILO, and particularly the Governing Body Committee on Freedom of Association, on the basis of existing standards, has taken supplementary decisions concerning infringements of trade union rights which refer also to specific civil liberties,

Considering that the possibilities of protecting trade union rights would be strengthened if the ILO gave the widest publicity to these decisions,

Considering that the question of the protection of civil liberties as such comes within the purview of the United Nations on the basis of the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and that the speedy ratification and application of these Covenants is of the utmost importance as a means of reinforcing the protection of trade union rights,

Considering that there exist firmly established, universally recognized principles, defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations, enunciated in particular in the Universal

Declaration of Human Rights and the International Covenants on Human Rights, but that the observance of the standards embodied in the Covenants will become a binding obligation for States only when the Covenants are ratified and enter into force,

Considering that war, colonial or neo-colonial domination and racial discrimination are major obstacles to the welfare of workers and a flagrant impediment to the work of the International Labour Organization,

Considering that international measures to provide more effective protection for specific civil liberties by the United Nations would reinforce the action of the International Labour Organization for the protection of trade union rights;

1. Recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:

- (a) the right to freedom and security of person and freedom from arbitrary arrest and detention;
- (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;
- (c) freedom of assembly;
- (d) the right to a fair trial by an independent and impartial tribunal;
- (e) the right to protection of the property of trade union organizations.

3. Reaffirms the ILO's specific competence within the United Nations system in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties.

4. Emphasizes the responsibility of the United Nations for protecting and promoting human rights in general political freedoms and civil liberties throughout the world.

5. Expresses its deep concern about and condemns the repeated violations of trade union rights and other human rights.

6. Calls upon all member States which have not done so to ratify and apply the United Nations Covenants on Civil and Political Rights and on Economic,

Social and Cultural Rights, and invites the United Nations also to seek this.

7. Invites the Governing Body to pursue energetically the efforts of the ILO with a view to total decolonization along the lines of the Declaration adopted on this subject by the United Nations.

8. Invites the Governing Body to extend and expand its efforts to eliminate the discriminatory practices on the basis of race, colour, sex, religion, nationality, political and trade union opinion which still exist in several countries, including countries and territories under a colonial regime or foreign domination in any form.

9. Reaffirms its belief in the principles which inspired the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and strongly urges that all member States which have not already done so ratify these Conventions and, pending ratification, that they ensure that the principles embodied in these Conventions are observed and that they respect the principles enshrined in these Conventions in the enactment of their national legislation.

10. Invites the Governing Body of the ILO to take as soon as possible the necessary steps, pursuant to the resolution of 1964, with a view to including in the Constitution of the ILO the essential principles contained in these Conventions concerning trade union freedom.

11. Invites the Governing Body to instruct the Director-General to publish and distribute widely in a concise form the supplementary decisions taken by the Committee on Freedom of Association.

12. Invites the Governing Body to ensure wider knowledge of ILO principles and standards concerning trade union rights, using to this end, in particular, regional conferences, seminars, programmes for workers' and management education, etc.

13. Invites the Director-General of the ILO to express the support of the ILO for the action of the United Nations in the field of human rights and to draw the attention of the appropriate United Nations bodies to the relationship which exists between trade union rights and civil liberties.

14. Invites the Governing Body to undertake all efforts with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights.

15. Invites the Governing Body to instruct the Director-General to undertake further comprehensive studies and to prepare reports on law and practice in matters concerning freedom of association and trade

union rights and related civil liberties falling within the competence of the ILO, with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense; for this purpose particular attention should be given to the following questions:

- right of trade unions to exercise their activities in the undertaking and other workplaces;
- right of trade unions to negotiate wages and all other conditions of work;
- right of participation of trade unions in undertakings and in the general economy;
- right to strike;
- right to participate fully in national and international trade union activities;
- right to inviolability of trade union premises as well as of correspondence and telephonic conversations;

- right to protection of trade union funds and assets against intervention by the public authorities;
- right of trade unions to have access to media of mass communication;
- right to protection against any discrimination in matters of affiliation and trade union activities;
- right of access to voluntary conciliation and arbitration procedures; right to workers' education and further training.

16. Invites the Governing Body, taking into account the studies and reports prepared by the ILO, to place on the agenda of a forthcoming session of the International Labour Conference one or more questions which could be the subject of new instruments with a view to enlarging trade union rights, taking into account those civil liberties which are a prerequisite for their exercise.

Appendix VII

Summary information on technical cooperation projects

Project/region	Need	Response
<p>Better factories Cambodia (January 2001–January 2009)</p>	<p>Better working conditions in factories.</p>	<p>Independent labour monitors, direct remedial assistance, capacity building for tripartite constituents.</p>
<p>Factory improvement programme, Viet Nam and Sri Lanka (pilot programme from October 2004–July 2005)</p>	<p>Seven focus areas: Workplace cooperation, quality, productivity, cleaner production and continuous improvement, human resource management, health and safety, and workplace relations.</p>	<p>Each of the seven areas comprised a two-day, off-site training seminar delivered by a topic expert and attended by two managers and two workers from each factory, as well as in-factory assistance involving a minimum of four visits.</p>
<p>Strengthening labour relations in East Africa (SLAREA) Kenya, United Republic of Tanzania, Uganda 2001–06</p>	<p>Realization of freedom of association, through the application of ILO Conventions Nos. 87 and 98.</p>	<ol style="list-style-type: none"> 1. Widely disseminated new labour laws that are consistent with ILO Conventions Nos 87 and 98 on freedom of association principles. 2. East African governments perform their functions of prevention and settlement of labour disputes more effectively. 3. Workers' organizations able to organize and bargain collectively. 4. Employers' organizations perform their functions of human resources management, conflict resolution, and collective bargaining more effectively.

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Examples of impact	Sustainability	Funding
<p>A 28% increase in employment levels, unionization has increased from 25–30% to 43% since project start date, improved working conditions in garment industry.</p>	<p>Most staff are Cambodian nationals. Current funding plans aim for the project to be self-supporting by 1 January 2009. This requires the commitment of the social partners, buyers and consumers.</p>	<p>USDOL, USAID, French Development Agency (AFD), Cambodian Government, Garment Manufacturers Association of Cambodia (GMAC), international buyers.</p>
<ol style="list-style-type: none"> 1. Establishment of factory improvement teams in each of the factories. 2. Reduction in end-line production defects of on average 67%. 3. Raised awareness across all levels of factories of quality and productivity. 4. Enhanced worker safety and an overall better working environment, including wage increases of up to 25% in some factories. 	<p>In the second round of the programme in 2006, the number of participating factories doubled, and the involvement of multinational enterprises may drive the programme's expansion to their large network of supplier factories in both Viet Nam and elsewhere in the region. The payment of fees also represents a step away from the programme's reliance on international aid funding towards self-sufficiency.</p>	<p>USDOL.</p>
<p>Uganda: Revitalization of tripartite Labour Advisory Boards and Uganda Management Institute; new labour laws adopted in 2006; ratification of C.87 in 2005. Kenya: Revitalization of tripartite Labour Advisory Boards and Tom Mboya Labour College. United Republic of Tanzania (mainland): Revitalization of tripartite Labour Advisory Boards and TUCTA Labour College and the Institute of Social Work; new labour laws adopted in 2004. United Republic of Tanzania (Zanzibar): New labour laws adopted in 2005. Introduced Best Employer and Best Union of the Year Awards.</p>	<p>SLAREA has produced sustainable results (ratified ILO Conventions, revised national labour laws and various supporting material), results with potential for contributing to sustainability of achievements (training material, manuals, trainers) and results with uncertain sustainability (industrial peace and labour–management initiatives). SLAREA can therefore only claim partial sustainability of its achievements.</p>	<p>USDOL, US\$5,044,963.</p>

Project/region	Need	Response
<p>Strengthening industrial relations/ labour capacity in Morocco 2002–08</p>	<p>Improve industrial relations in Morocco, especially in target regions.</p>	<ol style="list-style-type: none"> 1. Improved performance of the labour inspectorate in ensuring compliance with the Labour Code. 2. Strengthened capacity of tripartite partners for labour–management committees, collective bargaining and dispute prevention and resolution.
<p>Promoting fundamental principles and rights at work in Ukraine 2001–05</p>	<p>Respect for fundamental principles and rights in the workplace.</p>	<ol style="list-style-type: none"> 1. Labour law reform efforts assisted. 2. More efficient and effective labour inspection systems. 3. Improved practice of freedom of association and collective bargaining.
<p>Consolidating the legal and institutional foundations of social dialogue in Ukraine 2006–07</p>	<p>Continuation of previous technical cooperation work to promote fundamental rights and principles at work through institution building and tripartism.</p>	<p>Working with social partners and relevant government officials to ensure that impacts achieved in the previous project are sustained.</p>
<p>Promoting sound industrial relations at the workplace and strengthening the capacity of industrial relations actors in Viet Nam 2002–06</p>	<p>Improved workplace cooperation between labour and management in target enterprises.</p>	<ol style="list-style-type: none"> 1. Institutions and capacity of social partners to support and promote cooperation established and strengthened. 2. Operational plan for workplace cooperation and dispute prevention in selected private enterprises and selected provinces implemented. 3. Coherent industrial relations policy framework developed.

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Examples of impact	Sustainability	Funding
<ol style="list-style-type: none"> 1. In 2005, a programme of 37 activities was designed and implemented, focusing on training on the new labour code and the creation of a trainers' network for tripartite partners of each project. 2. 536 workers' delegates and union stewards have been trained on the labour code key provisions through 23 workshops given by the Workers' Trainers Network (RFS). 3. Upgraded regional employment centres (furniture and equipment). 4. Core group of 60 young emerging union leaders from the private sector trained in communication, social dialogue and collective bargaining, and on developing and experimenting a joint training package to support the implementation of enterprise committees introduced by the 2004 labour law reform. 5. Some 18 regional workshops have been held on labour inspection methodology for 280 labour inspectors. 	<p>Overall sustainability appears likely. Short-term sustainability depends on a commitment from the Government to move forward with training and institutionalization of new procedures in inspection and conciliation. Long-term sustainability requires tripartite social cooperation to institutionalize changes.</p>	<p>USDOL, US\$2,972,432.</p>
<ol style="list-style-type: none"> 1. Development of a new labour code. 2. Preparation of new draft of the law on collective agreements. 3. Development of draft laws on employer' organizations and social partnership. 4. Ratification of the ILO's Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). 5. Development of master collective bargaining agreements. 6. Institutionalizing tripartism. 7. Development of a computerized labour inspection system – equipment and training were provided. 8. Establishment of information and consultancy desks within the regional labour inspectorates to help advise employers and workers on their rights and obligations under the national labour legislation. 9. Total of 62 seminars held with over 3,300 participants. 	<p>Capacity building: Project has worked with trade unions and employer organizations to build their capacity to replicate key project outputs.</p> <p>Training: A number of trainers have been directly trained by the project to pass knowledge on to a wider group of stakeholders.</p>	<p>USDOL, US\$2,300,141.</p>
<p>The project has held 11 major events, including seminars, round tables and consultations for over 1,000 participants. The project has assisted in organizing seven other major ILO activities in Ukraine. Ten publications were produced on international labour law and social dialogue with an overall print of 2,500 copies.</p>	<p>It is too early to gauge the sustainability of project impact.</p>	<p>Germany, 660,000 euros.</p>
<ol style="list-style-type: none"> 1. Revisions of labour code provisions on strikes. 2. Industrial relations advisory service centres established in seven provinces. 3. Provision of analytical tools to help beneficiaries understand changes in the labour market. 4. Core group of 50 trainers in seven provinces trained on core industrial relations skills, intended to be transferred to union and enterprise managers. 5. Active labour–management committees in 70 target enterprises. 6. Updated collective agreements in almost 70% of target enterprises. 7. At the enterprise level, the project increased the percentage of targeted enterprises with active labour–management committees (from a baseline of 59% to 80%, and conciliation councils from a baseline of 59% to 72%). There has also been a continued reduction in the number of strikes at targeted enterprises by 80%. 	<p>The training of local social partners was accomplished so that local personnel can continue transferring essential skills to union officials and enterprise managers, encouraging sustainable change. The structures, concepts and practices established are being passed on to the social partners, who are increasingly willing to fund activities or pay for services. Training is being extended beyond the 70 target enterprises, with government-funded support.</p>	<p>USDOL, US\$1,667,494.</p>

Project/region	Need	Response
<p>Improving labour systems in Southern Africa (ILSSA) (Botswana, Lesotho, Namibia, Swaziland, Malawi) 2004–08</p>	<p>1. Increased compliance with national labour laws. 2. Improved labour–management relations.</p>	<p>1. Increased knowledge among workers and employers of rights, obligations and services under national labour laws. 2. More effective use of the labour inspection system. 3. Increased use of the dispute prevention and resolution systems.</p>
<p>Strengthening social dialogue and tripartism in South-East Europe 2003–2006 (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Rep. of Macedonia, Rep. of Moldova, Romania, Serbia and Montenegro)</p>	<p>Better respect of freedom of association and collective bargaining. Promotion of social dialogue.</p>	<p>Strengthening capacities of labour administration, and of employers' and workers' organizations, to play their role in social dialogue and implementation of labour laws. Promoting ratification of Conventions Nos 144 and 150.</p>
<p>Promoting and realizing fundamental principles and rights at work with the Indonesian national police (2003–05)</p>	<p>To raise the awareness of police officers to the fundamental principles and rights at work. To ensure the Indonesian National Police have an organizational understanding and institutional capacity to act upon their responsibilities in the handling of the law-and-order aspects of industrial disputes.</p>	<p>The project undertook training for middle-ranking police officers as “master trainers”. The master trainers then trained police officers in nine provinces. Training included role play, case studies, simulation and discussion over a period of three days. Promotional material and guidelines were produced to raise awareness of police and social partners.</p>

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Examples of impact	Sustainability	Funding
<ol style="list-style-type: none"> 1. Audits of Ministries of Labour in Swaziland, Botswana, Lesotho and Namibia. 2. Labour law reform in Zambia. 3. Assessment of labour court and office of labour commissioner in Botswana. 4. Review of Lesotho Labour Code. 5. Review of labour legislation in Malawi. 6. Review of Zambia Factories Act. 7. Strategic Plan for Zambian Federation of Employers developed. 8. Review of Swaziland Industrial Court. 9. Development of an electronic records system for the retention of inspection records in Botswana, Namibia, Swaziland and Lesotho. 10. Legal provisions providing for collective bargaining in the public sector and a draft Constitution for a public sector bargaining council were prepared in Botswana. 11. Labour inspection policy, inspection guidelines, inspection forms and code of conduct developed for Lesotho. 	<p>Sustainability outlook is mixed. There has been progress toward greater use of national consultants, rather than international experts. Trained trainers have been delivering training, and both employers' and workers' organizations are making continuing use of information and material obtained in the course of ILSSA training. But the scale and the significance of the various capacity deficits across the subregion could threaten the sustainability of project gains.</p>	<p>USDOL, US\$4,048,325.</p>
<p>Bulgaria: In 2006, amendment of the Collective Labour Disputes Act that removed some restrictions to the exercise of the right to strike; the National Institute for Mediation and Arbitration is now operational.</p> <p>Rep. of Moldova: The law on the Tripartite Commission for Consultation and Collective Bargaining has been amended and the new Commission is in place.</p> <p>The former Yugoslav Rep. of Macedonia: The Labour Relations Act was amended in 2005 and the Confederation of Employers was registered as an independent association of employers.</p> <p>Montenegro: 2004 labour law amendment leading to registration of the Union of Employers of Montenegro.</p> <p>Croatia: Developed definition of trade union representativity; social partners received assistance to strengthen collective bargaining capacity in 2006.</p> <p>Romania: Judges trained on C.87 and C.98; reform of part of social dialogue law.</p> <p>Bosnia and Herzegovina: Ratification of C.150.</p>	<p>The reinforcement of social dialogue institutions will contribute to sustainability as it encourages an ongoing process of tripartite discussion on the social and economic choices necessary for the transition.</p>	<p>Belgium, France, Italy – US\$1,070,000.</p>
<ol style="list-style-type: none"> 1. Development of the Guidelines on the Conduct of Indonesian National Police in Handling Law and Order in Industrial Disputes. 2. Declaration of a joint agreement between the Indonesian national police and social partners to create harmonious and productive industrial relations in Indonesia through the application of the police guidelines. 3. Distributed 25,000 copies of the Guidelines to officials of relevant police units. 4. Distributed 1,000 copies of the Guidelines to social partners. 5. Trained 30 middle-ranking police officers as master trainers on industrial disputes. 6. Master trainers have trained 739 police officers and 85 social partners. 7. Publication of the Training Manual on Fundamental Rights at Work and Police Role in Industrial Disputes. 	<p>Whilst a number of police officers have been trained, the sustainability of the project outputs will require ongoing and regular training to ensure application and implementation of the Guidelines. It is possible that further assistance in the form of financial and human resources may be needed to achieve the objective.</p>	<p>USDOL, US\$500,000.</p>

Project/region	Need	Response
<p>Principles and rights at work, Inter-American Conference of Ministers of Labour of the Organization of American States (OAS) (Argentina, Antigua and Barbuda, Bahamas, Belize, Bolivia, Brazil, Barbados, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Honduras, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Mexico, Nicaragua, Panama, Peru, Paraguay, El Salvador, Suriname, Trinidad and Tobago, Uruguay, United States, Saint Vincent and the Grenadines, Bolivarian Republic of Venezuela) 2001–07</p>	<p>While there is a high rate of ratification across the Americas of the ILO's eight core Conventions, their implementation and full respect has not always been assured. Additional support was therefore needed to ensure the full implementation of the ILO's core Conventions.</p>	<ol style="list-style-type: none"> 1. Create the conditions that will support sustainable economic and social development in the Americas – based on respect for fundamental principles and rights at work. 2. Provide a research base demonstrating the central relevance these rights hold for the region's development goals. It aims to carry out this research in tandem with the action plans and structures adopted by the Labour Ministers' conference. 3. Carry out training activities to strengthen the capacity of labour ministries to effectively implement labour laws and labour standards embodied in the ILO Declaration on Fundamental Principles and Rights at Work, as well as in other areas of labour administration.
<p>Improvement of labour relations and the promotion of women's economic equality in Colombia 2002–05</p>	<p>Improved labour relations between social partners.</p>	<ol style="list-style-type: none"> 1. Greater use of core international labour standards to improve labour relations. 2. Increased capacity of social partners to engage in healthy labour relations, negotiate collectively, and develop workplace cooperation. 3. Improved systems and procedures for the settlement of labour disputes in selected regions and sectors.
<p>Programme to support the implementation of the Declaration (PAMODEC) 2000–06 (Benin, Burkina-Faso, Mali, Niger, Senegal, Togo)</p>	<p>Better implementation of ratified core Conventions.</p>	<p>Laws in accordance with core Conventions. Better understanding of Conventions and laws among social partners, judges, labour inspectors and the general public.</p>
<p>Programme to support the implementation of the Declaration (PAMODEC) 2006–09 (same countries as PAMODEC I plus Cameroon, Chad, Congo, Côte d'Ivoire, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Madagascar, Mauritania and Central African Republic)</p>	<p>As for PAMODEC I.</p>	<p>Same objectives as PAMODEC I: Paying more attention to freedom of association and collective bargaining, and to non-discrimination.</p>

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Examples of impact	Sustainability	Funding
<ol style="list-style-type: none"> 1. Analysed application of national labour laws in the context of hemispheric integration. 2. Implemented a database of technical assistance to promote improved donor and recipient government collaboration. 3. Conducted labour administration diagnostics in Nicaragua, Honduras, Paraguay, Trinidad and Tobago, Saint Lucia, Peru and Ecuador, and developed action plans. 4. Disseminated guides: For example, in 2006 the System of Labour Administration in Suriname was published which provides a concise and authoritative guide to the labour administration systems. 5. Implemented horizontal cooperation activities between governments. 6. Assistance with implementation of labour administration action plans in Honduras, Nicaragua, Ecuador, Jamaica and Peru. 	<p>The sustainability of the project will be ensured by existing subregional working groups, ministries of labour or other appropriate forums or machinery devoted to follow-up of recommendations made throughout the project period. The sustainability of the project's activities will be further ensured through technical cooperation projects that may be generated with support from this project.</p>	<p>USDOL, US\$1,299,810.</p>
<ol style="list-style-type: none"> 1. Development of training programmes on new bargaining techniques and conflict resolution. 2. Development of a system to record collective agreements at the national level. 3. Inclusion of a manual on fundamental principles and rights at work in Judicial Academy curriculum. 4. Development of training methodology entitled Business Management Programme with a Gender Focus (PROFEM). 5. The Colombian case studies involving labour relations experiences have been widely promoted and have had a substantial impact. Over 2,500 copies of the case studies have been distributed. 	<p>Sustainability of training is likely because the groups and institutions trained plan to continue training using their own resources. However the sustainability of social dialogue is uncertain following the project's closing.</p>	<p>US\$2,000,000.</p>
<p>Burkina Faso: Adoption of a new labour code. Senegal: Adoption of collective agreements in several sectors. Niger: A bill on labour law review was elaborated along with a preliminary decree for the application of the labour code. Impact also achieved through development of criteria for trade unions representativeness; training of 4,800 people in 160 seminars; broadcasting of 27 TV debates on principles and rights at work.</p>	<p>The results obtained in PAMODEC I can be sustained thanks to different networks set up by project coordinators in different countries. However, sustainability can only be achieved through continued political will. The success of the project led to further national requests for technical cooperation which resulted in PAMODEC II being funded by the donor. <i>See below for countries included.</i></p>	<p>France, US\$3,040,000.</p>
<p>It is too early with respect to the second phase of PAMODEC, which became operational in 2007, to gauge project results.</p>	<p>It is too early to gauge the sustainability of project impact.</p>	<p>France, US\$5,000,000.</p>

Project/region	Need	Response
<p>Project for promoting fundamental principles and rights at work and social dialogue in Bahrain and Oman (2006–08)</p>	<p>Modification of labour legislation to reflect international labour standards.</p>	<ol style="list-style-type: none"> 1. Develop legislative and administrative frameworks that reflect the fundamental principles and rights at work. 2. Ensure the Ministries of Labour in Bahrain and Oman have a better understanding and institutional capacity to play a role in the adaptation, implementation and monitoring of the core international labour standards. 3. Ensure employers and trade union members have a better understanding and institutional capacity to represent their constituents and defend their interests. 4. Strengthen tripartism and social dialogue.
<p>Strengthening the social partners' capacity for the promotion of social dialogue in Jordan (Phase I: 2002–06). A new three-year project started in September 2007 which will continue to build on earlier project impact.</p>	<p>Need to develop a functioning and effective industrial relations environment by building the capacity among social partners at various levels and revising the national labour legislation.</p>	<ol style="list-style-type: none"> 1. Labour relations environment strengthened. 2. Adequate legal framework promoted. 3. Sustainable and effective social dialogue mechanism established. 4. Collective bargaining enhanced at national, sectoral and enterprise levels.
<p>A partnership approach to improving labour relations and working conditions in the Bangladesh garment industry March 2002–June 2005</p>	<p>To increase productivity by applying relevant national labour laws and international best practices in the garment industry in Bangladesh.</p>	<ul style="list-style-type: none"> • Building the capacity of Bangladesh Garment Manufacturers and Exporters Association (BGMEA) to lead the industry to improvements. • Training to promote and monitor national laws and international best practices. • Training factory management and workers on the relevant issues. • Developing a monitoring system to measure progress in a representative number of garment factories. • Showing a positive link between improved labour relations and working conditions on the one hand and increased productivity on the other.
<p>Raising public awareness and support for implementation of the ILO Declaration on Fundamental Principles and Rights at Work</p>	<p>To create awareness on the new labour legislation and provide support to government, workers and employers in gaining a better understanding of the new labour legislation and its importance.</p>	<p>The awareness-raising project worked with a number of international media organizations to reach the maximum audience. Media partners at the international level included BBC World, BBC World Service (radio programmes), BBC Bengali Service, BBC Brazil Service, BBC Indonesian Service, BBC Mundo (Spanish), BBC Arabic, BBC Caribbean Service and CNN. The project also worked directly with over 170 media organizations, as well as developing radio and TV programmes for broadcast on Declaration issues and project activities directly in 68 countries.</p>

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Examples of impact	Sustainability	Funding
<p>Oman: A detailed programme for training 100 newly recruited labour inspectors in Oman was implemented. Support is being offered to workers in their transition from workers' committees to trade unions (development of union mandates, constitutions, internal regulation, and so on).</p> <p>Bahrain: The technical advisory report to the Bahrain Chamber of Commerce and Industry (BCCI) was finalized. It included an assessment of the performance/capacity of the BCCI as a social partner and recommendations for improvement and elements of a strategy defining their socio-economic role and involvement in labour market reforms. Bahrain also passed a new trade union law, permitting the establishment of the General Federation of Trade Unions (GFTU). Training also offered to parliamentarians on freedom of association, particularly in relation to the public sector.</p>	<p>It is too early at this stage to assess the sustainability of the impact.</p>	<p>USDOL, US\$300,000.</p>
<p>Drafting of revised labour legislation which is expected to be tabled with Parliament in the near future.</p> <p>Regulations for a tripartite labour advisory committee were drafted and an agreement on establishing the committee was signed in May 2007.</p> <p>Capacity building of labour administration/inspection department and establishment of a training centre.</p>	<ul style="list-style-type: none"> • The development of national experts. • The establishment of a well-resourced training room is likely to strengthen both the reputation and the sustainability of the project activities. • The creation of the National Committee should ensure that the effect of some of the core actions of the project is unlikely to be lost. 	<p>USDOL, US\$1,387,240; new project funded by Spain, 1,000,000 euros.</p>
<ol style="list-style-type: none"> 1. Trained 400 factory managers on labour relations and working conditions. 2. The project also catalysed the training of over 72,000 factory workers, using methods as varied as formal classroom sessions, educational posters, videos, live street theatre, and audio broadcasting during working hours. 3. The project improved individual factories by highlighting issues needing improvement, developing a Workplace Improvement Plan (WIP) for each issue, and advising factory managers on how to make each improvement. Overall, the project achieved almost 2,400 complete improvements and almost 1,400 partial improvements in 302 factories. 	<p>Overall, sustainability of the project's results is uncertain. The Government of Bangladesh, the BGMEA and buyers all benefit from having such a project in Bangladesh. However, short-term sustainability depends on continued donor interest. Long-term sustainability would probably require a greater involvement of local unions and international buyers.</p>	<p>USDOL, US\$1,505,756.</p>
<p>Uganda: Promotional materials were developed; 4,000 posters, 1,000 T-shirts; 600 copies of questions and answers on the new labour laws, 600 copies of new labour laws; 800 fact sheets on the laws. Texts for the brochures on the Employment, and Occupational Safety and Health Acts were prepared.</p> <ul style="list-style-type: none"> • Total of 17 workshops were conducted in 16 districts, attended by 539 participants. • Radio talk shows were conducted in selected radio stations. • Two broadcast events were conducted in March and August 2006. <p>Brazil: Radio programmes were distributed to over 1,300 community stations, 36 journalists trained on Declaration issues.</p> <p>Indonesia: 300 journalists trained to understand labour issues, 16 video news releases produced.</p>	<p>Awareness raising is not a one-off activity; it should be an ongoing process. The work started by the ILO is an initial campaign that should be continued by the agency responsible for the enforcement of the labour laws in each country. All the social partners should participate in sensitizing their own members; implementation of the labour laws requires the support and cooperation of all the partners.</p>	<p>USDOL, US\$6,000,000.</p>

Project/region	Need	Response
<p>Programme for the Promotion of Management–Labour Cooperation (PROMALCO) Caribbean 2001–06</p>	<p>To promote management–labour cooperation, proactive labour policy, improved industrial relations, enhanced labour market efficiency and to advance good labour standards.</p>	<p>Enriching social dialogue and trust as basis for building social partner activity, cross-border networking by social partners.</p>
<p>Strengthening and improving labour relations in Timor-Leste (SIMPLAR) 2001–06</p>	<p>To contribute to Timor-Leste's social and economic progress through the establishment and operation of an effective labour relations system.</p>	<p>Strengthen employers' and workers' organizations and contribute to the development of the labour relations and minimum wage boards. Assist in the creation of an arbitration system and a dispute resolution system.</p>
<p>Promoting democracy through fundamental principles and rights at work and tripartism, Nigeria Declaration Project (NIDEC) 2000–05</p>	<p>To promote the application of the fundamental rights and principles through mechanisms focusing on guaranteeing the basic rights of workers and improving the workplace environment.</p>	<p>Reform of the existing labour laws and strengthening of local capacity to adopt a tripartite approach to the resolution of labour problems through social dialogue.</p>

APPENDIX VII

Examples of impact	Sustainability	Funding
<p>Training: 2,500 persons trained in productivity issues, over 100 CEOs, HR managers, 100 trade unionists underwent training in labour-management relations.</p> <p>Enterprise response: For example, Trinidad Cement Limited built the concepts of PROMALCO into its operating philosophy. The Caribbean Communications Network (CCN) formally endorsed ILO/PROMALCO principles. Benchmarking tool for enterprises was developed.</p> <p>Information dissemination: Development of an interactive CD-ROM which contains all the products of PROMALCO. Over 2,500 CD copies have been distributed to constituents.</p>	<p>Local task forces did not materialize in most countries. However, direct involvement of social partners will improve the ability of those social partners to continue project activities after the project is concluded.</p>	<p>USDOL, US\$3,852,096.</p>
<p>Labour boards: Three tripartite labour boards: the National Labour Board, the Labour Relations Board and the Minimum Wages Board were formed in 2005.</p> <p>Legislation: SIMPLAR made substantive contributions to at least eight legislative initiatives, including revision of the labour code.</p> <p>Capacity building: Strengthening of capacity for labour inspectors and dispute resolution officers.</p>	<p>Objectives partially realized. The time frame for capacity development in post-conflict environments should be based on a long-term programme and strategy and should ensure sustained engagement.</p>	<p>USDOL, US\$756,170.</p>
<p>Labour law reform: The new labour laws should have a long-lasting effect on tripartite partners in labour negotiations, labour standards, occupational safety and health, and employee compensation.</p> <p>Capacity building: Capacity building of employers' and workers' organizations included the establishment of web sites and improvements to member communication.</p>	<p>Even though the project did not develop or implement a formal sustainability plan, revision of the labour laws with the assistance of the project can have sustained impact.</p>	<p>USDOL, US\$1,779,428.</p>