



International
Labour
Organization

Trade Union Manual on Export Processing Zones

ACTRAV
Bureau
for Workers'
Activities



Trade Union manual on

**EXPORT
PROCESSING
ZONES**

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Foreword

The ILO Bureau for Workers' Activities has over the past few years developed a programme to support trade unions in their efforts to organize workers in Export Processing Zones (EPZs). This concern for workers in EPZs stems from the fact that they are generally denied the right to organise and decent work deficits are widespread in the zones. However, at the same time one sees a proliferation of these zones throughout the world.

According to the statistics of the ILO, 47 countries had EPZs in 1986. Two decades later, the number of countries with EPZs had increased to 130. During the same period, the number of EPZs worldwide increased from 176 to 3500. Today the conservative estimates of the ILO put the number of workers employed in the zones at over 66 million. So this phenomenon of EPZs is growing fast. This development is linked to the increasing globalisation of production and competition among states to attract foreign direct investments.

With the growth of EPZs, trade unions are endeavouring to make sure that working and living conditions of the workers in these zones meet internationally recognised norms as enshrined in the ILO's international labour standards. This means that basic rights like the respect for freedom of association and collective bargaining, non-discrimination, the rights of workers' with family responsibilities, the right to occupational health and safety, and so on are respected in the zones. This manual is yet another contribution of ACTRAV to assist trade unions to achieve these goals.

The manual is the result of extensive collaboration between ACTRAV and trade unions. Our appreciation first goes to Mr Ramon Vivanco who drafted the manual. Our thanks go to several colleagues in the ITUC secretariat particularly Ms Isabelle Horfelin who made extensive comments on the drafts. We acknowledge Ms Jenny Holdcroft for her invaluable inputs. Our appreciation also goes to colleagues in the ILO Gender Bureau for their useful comments. This manual would not have been possible without the contributions of several national trade union centres that prepared country reports. Our thanks go to Mr Claude Akpokavie, ACTRAV's focal point on EPZs, for his comments and for coordinating the entire project. Finally, we thank the Swedish government that has funded the ACTRAV programme on EPZs.

Ms Maria Helena André
Director
ILO Bureau for Workers' Activities

Preface

Every day, in an increasing number of countries, a group of young people go to work, very often in heavily guarded and fenced workplaces. More often than not, these workers are denied the right to organize. Their work is high-tempo, driven by production quotas they have to meet on a daily basis. They work despite the numerous decent work deficits they endure because they need the jobs to survive. However, so difficult is working in these conditions that in most countries the turnover of these workers is abnormally high. This is the reality of work in Export Processing Zones (EPZs). The workers concerned are generally young women, often poor, and in some regions, internal migrants from the rural areas to the cities.

Even as more and more countries set up these EPZs and governments underline the quantity of jobs they create, trade unions point to these zones as being islands, outside the scope of traditional industrial relations, that concentrate decent work deficits and that are a symptom of the race to the bottom in the global economy. Trade unions have sought to meet the challenge of these zones mainly through two strategies. Firstly, through engaging their governments on the socio-economic policies behind the country's EPZ strategy. Secondly, and more importantly, through efforts to organize EPZ workers who are systematically denied the right to organize. This manual seeks to assist trade union leaders, activists, organizers and trainers in meeting these two challenges.

The idea behind drafting this manual came from discussions held during an international workshop on "Organizing in the Export Processing Zones" which brought together trade union leaders working in EPZs from some 15 countries. Most of the ideas, experiences and strategies presented in this manual stem from two sources, namely the international workshop and from country reports on the situation of EPZs in Nicaragua, Nigeria, Madagascar, Togo, Morocco, India and China. These country reports present an in-depth analysis of EPZs in these countries and the strategies being employed by trade unions to organize workers. Both the manual and the country reports allow ACTRAV to present a dynamic picture on working conditions in EPZs across the world and helps identify trade union strategies that are effective in defending workers' rights in these zones.

The violation of workers' rights in EPZs is primarily a violation of the rights of young women. Traditional organizing strategies have to be complemented by new innovative strategies that are gender sensitive. So the gender dimension of trade union strategies in EPZs is paramount if unions are to be effective in defending workers. Therefore, this manual also challenges trade unions to make gender and non-discrimination central in their structures, policies and organizing strategies.

Claude Akpokavie
Senior Adviser, Bureau for Workers' Activities

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Abbreviations

ACTRAV	ILO Bureau for Workers Activities
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	ILO Committee on Freedom of Association
EPA	Economic Partnership Agreement
EPZ	Export processing zone
ETUC	European Trade Union Confederation
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GUF	Global Union Federation
IFA	International Framework Agreement
IFC	International Financial Corporation
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Metalworkers Federation
ITGLWF	International Textile Garment and Leather Workers Federation
ITUC	International Trade Union Confederation
LDC	Least Developed Country
MAI	Multilateral Agreement on Investment
MERCOSUR	Southern Common Market
NCP	National Contact Point
NGO	Non-Governmental Organization
TUAC	Trade Union Advisory Committee to the OECD
TUCA	Trade Union Confederation of the Americas
WTO	World Trade Organization

Introduction

The conclusions of the workshop on organizing in export processing zones (EPZs) organized jointly by the International Trade Union Confederation (ITUC) and the ILO Bureau for Workers' Activities (ACTRAV) in February 2011 ended with 2 key challenges. Firstly, engaging in the policy debate with governments on EPZ policy. Secondly, organizing workers. The manual responds to these two challenges.

The workshop participants agreed on the need for new approaches that combine traditional methods of organizing with modern tools; the need for strategic organizing objectives defined at national level; the need to reform trade union structures to ensure the involvement of women in leadership, planning and organising; the need of campaigns based on priorities established at national level; and the need of enhanced coordination between national trade unions, the regional and international trade union organisations and ACTRAV. The follow-up to the international workshop centred around five strategic actions, namely networking, capacity-building activities, legal support, research and policy debates on EPZ strategy. This manual is a contribution to the follow-up action plan.

This manual is structured in six chapters covering the main characteristics and features of EPZs, the profile of EPZ workers, Decent Work deficits in EPZs in the light of the ILO Decent Work Agenda, Trade union response at the policy level, trade union organising strategies, International instruments to promote and defend trade union rights and a list of important links and contacts. Every chapter ends with some exercises so that the document can also be used as a training tool.

The “Trade Union Manual on EPZs” contains relevant policy issues to consider in policy debates on EPZs. It aims to assist trade union organizers, negotiators, trainers and legal staff in their activities. The document also aims to give users an overall picture and understanding of the reality of EPZs and to help them develop a gender sensitive trade union perspective and approach to organising in EPZs. The manual also presents a host of international instruments that would be helpful to trade unions in their organizing drive. The manual can be used as a reference document or as an aide in both organizing activities and in engagement with governments. Finally, the manual is also a tool for capacity building and training of trade union activists and organizers.



Chapter 1:

Facts and figures on EPZs

EPZs: Definition, origins and forms over time

According to the International Labour Organization (ILO), export processing zones (EPZs) are industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again.

The United Nations Industrial Development Organization (UNIDO) defines an export processing zone as a relatively small, geographically separated area within a country, the purpose of which is to attract export-oriented industries by offering them highly favourable investment and trade conditions as compared with the rest of the host country.

The United Nations Conference on Trade and Development (UNCTAD) defines export processing zones as industrial estates that form enclaves within the national customs territory and are usually situated near an international port and/or airport. The entire production of such zones is normally exported. Imports of raw materials, intermediate products, equipment and machinery required for export production are not subject to customs duty.

The World Bank defines an export processing zone as an industrial estate, usually a fenced-in area of 10 to 300 hectares that is specialized in manufacturing for export. It offers firms free trade conditions and a liberal regulatory environment.

Based on the definitions of international organizations, the key constitutive elements of an EPZ are the following:

- They are industrial zones with special incentives.
- They are relatively small, geographically separated areas within a country, usually near an international port or airport.
- Their purpose is to attract export-oriented industries offering free trade conditions and a liberal regulatory environment.
- The entire production of such zones is generally exported.

Common denominations for export processing zones include references to “geographic or fenced-in areas” and “free trade conditions” to attract “export oriented manufacturers”. The ILO notes around 30 titles used in the world to indicate small differences in terms of concessions and subsidies and regulations.

How have EPZs evolved over time?

The earliest references to export processing zones are Spanish and date from the 13th century when King Alfonso X granted certain commercial privileges to the city of Cadiz. Also in Spain, a free zone was set up in Barcelona that became operational after the Second World War, when a number of automobile plants were established there. Ireland and Puerto Rico are other examples of countries that established EPZs in the late 1950s.

EPZs developed significantly after the Second World War. The big boom came in the 1970s and has continued until today. In Asia, India established the first EPZ in Kandla in 1965, Chinese Taipei in Kaohsiung in 1965, the Republic of Korea in Masan in 1970 and the Philippines in Bataan in 1972. China established five special economic zones (SEZs) in 1980, located on the coast. African countries such as Senegal, Liberia and Ghana established EPZs in the 1970s. Latin America and the Caribbean did the same in the 1970s. For example, Colombia established an EPZ in Barranquilla in 1964, Honduras in Puerto Cortés in 1972, El Salvador in San Bartolo in 1973 and Costa Rica in Santa Rosa/El Roble at the beginning of the 1980s.

EPZs have evolved substantially since their inception - in form and in scope. The types of activity have also evolved and although traditional production of goods such as textiles and clothing is still widespread and common, many new zones specialize in particular goods sectors such as electronics and chemicals, or in service sectors such as IT and financial services. Their physical form now includes not only enclave-type zones but also single-industry, single-commodity, single-factory or single-company zones. Ownership patterns have also changed. Increasingly, there is private involvement as well as governmental. Also, foreign companies and domestic companies tend to coexist in the EPZs. The requirement that all production must be exported has also been relaxed in many new zones and the supply of goods and services to the domestic economy is permitted, upon payment of duties¹. In some cases, governments have also granted EPZ status to a whole country, as for example in Sri Lanka or Honduras in 1998. This means that enterprises all over the country, regardless of their location, can apply for and enjoy export processing zone status.



¹ For example, Kenya and Tanzania allow EPZ companies to sell up to 20% of their annual output to the domestic market, subject to payment of normal input duties and taxes on the products.

Statistical overview of EPZs

According to the ILO there are currently around 3,500 EPZs throughout the world, operating in around 130 countries and territories and employing around 66 million people. The number of countries using EPZs increased to 130 in 2006, up from 116 in 2002 and 25 in 1975. However, these figures should be treated with caution and not taken as an absolute certainty. Given the lack of reliable and comprehensive data on employment trends regarding EPZs, the ILO figures are estimates largely based on secondary sources. Other sources regard these figures as conservative and suggest that the EPZ phenomenon is much more widespread than is visible in official statistics.

Table 1: ILO estimates on employment in EPZs

Geographical area	Estimated number of workers	Number of zones
Asia	55,741,147	900+
Central America and Mexico	5,252,216	155
Middle East	1,043,597	50
North Africa	643,152	65
Sub-Saharan Africa	860,474	90+
United States	340,000	713
South America	459,825	43
Transition economies	1,400,379	400
Caribbean region	546,513	250
Indian Ocean	182,712	1
Europe	364,818	50
Pacific	145,930	14
TOTAL (estimations)	65,980,763	3500+

Table 2: ILO estimates of employment trends in EPZs (2008)

	1975	1986	1995	1997	2002	2006
Number of countries with EPZs	29	47	73	93	116	130
Number of EPZs	79	176	500	845	3000	3500
Employment (millions)	n/a	n/a	n/a	22.5	43	66
– China	n/a	n/a	n/a	18	30	40
– Other countries	0.8	1.9	N.A	4.5	13	26

EPZs are currently found throughout the world and are prevalent in both developed and developing economies. According to the ILO, employment in EPZs increased between 2002 and 2006 from 43 to 66 million people, representing three per cent of the global workforce. By 2006, all regions of the world with the exception of South America had a large presence of EPZs in terms of employment.

The Asian continent has more than 85% of all EPZ workers worldwide. It is estimated that some 40 million people work in EPZs in China alone, and 15 million in other Asian countries. The ILO estimates that there are 6 million such workers in Indonesia, 3.5 million in Bangladesh, 1.1 million in the Philippines, 500,000 each in Malaysia and Thailand, 200,000 in Japan, around 200,000 in Cambodia and 160,000 in Sri Lanka.

Overview of special incentives given in EPZs

Countries generally promote the incentive package through a government agency in charge of stimulating investment. The trade and investment incentives offered vary, depending on the country. Most countries with operating EPZs offer similar incentive packages to investors, providing special economic incentives such as customs-free, tax-exempt and export-oriented manufacturing facilities and services. They also provide streamlined administrative services in the form of a single window or “one-stop shop”. Other incentives include access to cheap utilities such as the supply of water and electricity for free or below the market price, and a strategic location with market access and infrastructure facilities. In addition, some countries grant exemptions from national labour law and regulations. For example, the website² of the Nigeria Export Processing Zones Authority states that “*There shall be no strikes or lock-outs for a period of 10 years following the commencement of operations in the Zone (as contained in Section 18 (5) of NEPZA Act CAP N107 LFN 2004) and any trade dispute arising within a Zone shall be resolved by the Authority*”.

² <http://www.nepza.gov.ng/faqs.asp#lockups>

Box 1: Incentives offered to investors in Nigeria

Below is the text dealing with incentives under the Nigerian Export Processing Zones Decree:

18. Incentives and related matters.

- 1) Approved enterprises within the Zones shall be entitled to the following incentives
 - a) legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the Zones;
 - b) repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;
 - c) remittance of profits and dividends earned by foreign investors in the Zones;
 - d) no import or export licences shall be required;
 - e) up to 25 per-cent of production may be sold in the customs territory against a valid permit, and on payment of appropriate duties;
 - f) rent free land at construction stage, thereafter rent shall be as determined by the Authority;
 - g) up to 100 per-cent foreign ownership of business in the Zones allowable;
 - h) foreign managers and qualified personnel may be employed by companies operating in the Zones.
- 2) The Authority shall be the only agency qualified to -
 - a) give all approvals; and
 - b) cancel all licenses.
- 3) The Authority shall simplify all procedure necessary for authorisation of investments in a Zone and state by Order from time to time its requirements for the grant of authorisations for investments in a Zone.
- 4) Operations within a Zone shall commence on the date when the construction of the perimeter fence and gate of the Zone have been completed and the Authority has assumed duties.
- 5) **There shall be no strikes or lockouts for a period of 10 years following the commencement of operations within a Zone and any trade dispute arising within a Zone shall be resolved by the Authority;**

Management

A zone authority with offices at both national and zone level generally manages an EPZ. The zone authority usually has a number of specialized departments, in some exceptional cases including a department for labour and industrial relations, and is often self-sufficient - though with some degree of governmental involvement, given the incentives and concessions granted. The EPZ authority normally offers a one-stop shop to investors in order to obtain approvals and complete procedures for starting operations.

Why do governments create EPZs?

The objective of governments in creating EPZs is to attract foreign direct investment into their economies. Governments compete with each other to do so. EPZs are a means of offering attractive packages to the investors. The main reasons why governments seek and wish to attract foreign investment are generally to:

- create jobs and raise standards of living
- transfer skills and expertise to local human resources
- boost the export sector
- earn foreign exchange
- create backward and forward linkages
- introduce new technology
- invigorate less-developed regions
- stimulate sectors regarded as strategically important to the economy
- kick-start the economy as a whole.



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Most developing country governments also embrace an EPZ development strategy in order to provide a link to foreign markets and global production networks, and as a way of overcoming lagging economic growth. EPZs offer a channel to the world market and governments regard the potential employment creation in EPZs as essential for absorbing excess labour supply, for example when informal employment is widespread.

Enterprises and EPZs

Several factors seem to influence the choice of an enterprise for a production platform such as an EPZ. These factors include:

- the generosity of the incentives on offer
- relatively low labour costs
- the labour relations environment
- political and social stability
- the availability of appropriate human resources
- strategic location close to the markets or partner firms
- the quality of the infrastructure
- the supply of raw materials
- existing trade agreements
- undervalued currency that renders costs lower and raises export competitiveness.

Corporations that control global production chains generally invest and produce in EPZs because they enjoy preferential trade access and different incentives, including lax labour standards and regulations. Foreign investors select EPZs that give them access to their most important current markets and are strategically located in relation to their target markets.

Companies that use labour-intensive and low-technology production processes tend to see labour as a cost to be contained and as a result, they generally have high labour turnovers, absenteeism and labour unrest. Companies in this category tend to invest in EPZs that grant them generous packages with tax and duty concessions, low wages, lax labour legislation, absence of trade union organizations and a weak system of labour administration.

EPZ economic sectors, investors and export markets

Many countries that operate EPZs are specialized mainly in apparel and textile production. However, several countries have diversified their EPZ production in the last years. Costa Rica, for example, has diversified exports from apparel to other manufactured products including electronics and pharmaceuticals. In India, textiles remain a core sector but production is also focused on food and electronics. Other countries such as Ghana or Malaysia are focused on high-tech agro-food processing.

This diversification trend may be attributable to various factors. For example, the termination of the Multi Fibre Arrangement (MFA) at the end of 2004 may have been an important reason. The development of EPZs over recent years has also been characterized by a diversification of investors. For example, more and more Asian firms are investing in South and Central America and Africa. Also, investors from the Gulf countries and elsewhere are investing more and more in Africa.

The table below lists some countries and information regarding their main investing countries, economic activity sectors and export markets.

Country	Main investing countries	Main sectors	Main markets
Egypt	US, Canada, Cayman Islands, Japan, Bermuda, Germany, Spain, Turkey, Cyprus, India	Services, oil and gas, electrical, construction, chemicals, marble, media	Spain, Cyprus, Greece, China, France, UAE, Canada, Morocco
Tunisia	France, Italy, Belgium, UK, Japan, Switzerland	Mechanical and electrical industries, leather, tourism, automobile components	France, Germany, India, Turkey, Iran, Morocco
Ghana	Malaysia, Lebanon, UK, Austria, UAE, Germany	Textiles, agro-food processing, pharmaceuticals, jewellery, ceramic manufacturing	Togo, US, UK, Nigeria, France, Belgium, Japan
Namibia	Japan, Republic of Korea, Germany, US, South Africa	Food processing, mining, tourism, fisheries	South Africa, Angola, UK, US
Mauritius	South Africa, Singapore, India, Malaysia, France	Food, flowers, textiles, leather products, optical goods, toys and carnival articles	US, Japan, Middle East countries, Oceania, Europe
Jordan	Jordan, The Netherlands, Turkey, Israel, Denmark, Taiwan	Manufacturing services, tourism	US, Israel, Egypt
UAE	UAE, France, UK, China	ICT, media, tourism, marketing	Sweden, Denmark, France, The Netherlands
Maldives	US, Japan, China	Fisheries, banking and financial services	Italy, Germany, UK, Japan, China
Singapore	Japan, US, Mexico, Canada, Chile, Australia, New Zealand	Food processing, textiles, chemicals, electronics components	US, ASEAN countries, Gulf States, European Union
Malaysia	Japan, UK, Germany, Italy, Finland, Taiwan, Switzerland	High-tech, food processing, pharmaceuticals	Japan, US, Germany, Republic of Korea

Country	Main investing countries	Main sectors	Main markets
Thailand	EU, US, Taiwan, Singapore	Agricultural products, minerals and ceramics, plastic, electronics	Republic of Korea, The Netherlands, Austria, Malaysia, Japan, India, US
El Salvador	US, Republic of Korea, Dominican Republic, Germany, Guatemala, Italy	Clothing, medical products, tuna fishing, aeronautics	US, Japan, Costa Rica, Honduras, Germany
Costa Rica	US, Republic of Korea, Mexico, Singapore, Italy, Guatemala	Mechanical and electrical machines, pharmaceuticals, textile, plastic and rubber	US, EU
Dominican Republic	US, Dominican Republic, Republic of Korea, France, Taiwan, Canada	Textiles, electronics, pharmaceutical, agro-food processing	US, Switzerland, Puerto Rico, Ecuador, UK
Mexico	US, Canada, Sweden, EU, Japan	Machinery, electrical appliances and electronics, automotive sector, food canning	US, UK, France, Canada, EU, Japan
Bolivia	Germany, Belgium, Luxembourg, Spain, Australia, Republic of Korea, Chile	Leather, textiles	US, Chile, Peru
Brazil	Brazil, US, Portugal	Electronics, motorcycles, mechanical products, shoes, leather	US, France, Portugal, Canada, Spain, South America
Nigeria	EU, US, China, South Africa, Lebanon, Republic of Korea	Communication industries, agro-allied industries, electrical and electronic products, catering services	EU, US, China, South Africa, Republic of Korea, UEMOA, India

³ West African Economic and Monetary Union: Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Togo.



Exercises

This exercise will help you to understand EPZs in your country and will give you an overall picture of the main characteristics and facts related to them.

1) Write a brief description of the evolution of EPZs in your country

.....

.....

.....

.....

.....

.....

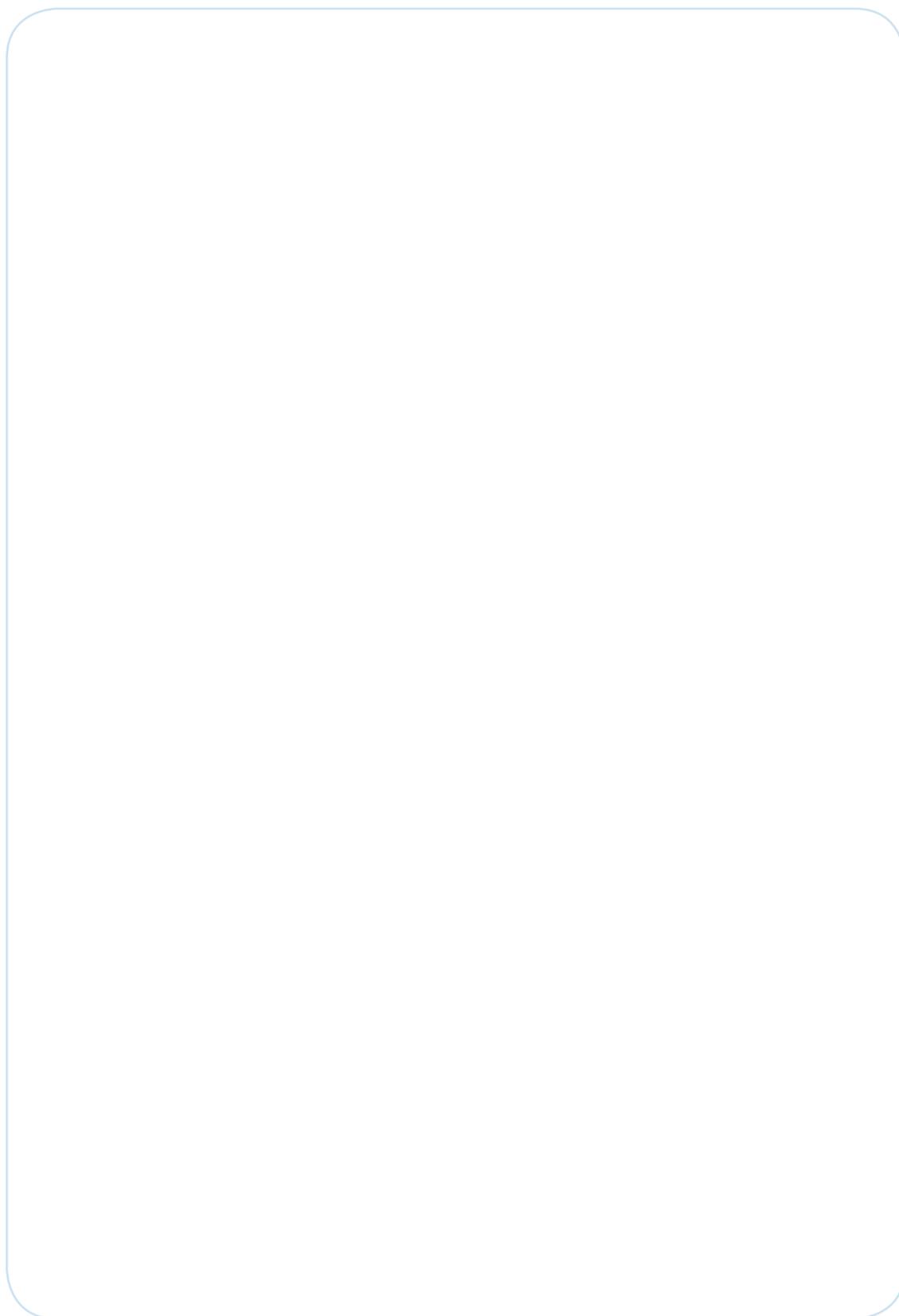
.....

.....

2) Complete the following points:

- Number of EPZs in your country
.....
- Location of EPZs in your country
.....
- Number of companies operating in EPZs in your country
.....
- Activity sectors in EPZs in your country
.....
- Legal basis/Acts establishing EPZs in your country
.....
- Incentives granted to foreign investors by your country
.....
- Number of workers in export processing zones, by gender
.....
- Employment created in recent years
.....
- Origin of EPZ-operating companies
.....
- Main markets of EPZ-operating companies
.....
- Main multinational companies supplied by companies operating in EPZs
.....

- 3) Draw an organizational chart of the management of the EPZs of your country, including government departments.





Chapter 2:

The Profile of workers in EPZs

The great majority of workers in EPZs are poor, young women. They are also often internal migrants from rural areas to urban areas. For many of them, this is their first experience of the urban labour market, and they have no knowledge of trade unions. EPZ female workers are generally at the lower end of the global value chain and face numerous problems, including insecure jobs, inadequate maternity protection, sexual harassment or the lack of a voice in trade union structures. Employers generally prefer young women because they are considered fast, patient and dexterous, and suitable for the labour-intensive practices and repetitive nature of the work in EPZs. They are less likely to have children, and less likely to complain or to join a trade union, and consequently they cause fewer problems for the employer. Regarding trade union membership, EPZ female workers are very often not aware of a trade union's functions. And where they are union members, they are generally underrepresented. This typical profile of EPZ workers - female, young, migrant and poor, with no trade union experience and no knowledge of their rights – places them a multiple disadvantage situation that turns into an exposure of exploitation of all sorts.

Women workers

The vast majority of workers in the EPZs worldwide are women, with a share of 70% and in some cases 90% of the workforce, especially in the garment and electronics sectors. The reasons generally stated by employers for preferring female employees in the EPZs are that they are cheaper in terms of labour costs, show great endurance in the monotonous production work, and are less prone to organize in trade unions. EPZs have improved female access to jobs in developing countries. However, female workers in EPZs are generally at the lower end of the occupational and skills hierarchy. Usually, they cannot secure jobs in skill-intensive companies and their wages are much lower than those of male workers.

Overtime working is constant and widespread in EPZs around the world. As a result, female EPZ workers, especially if they are young women, suffer increased vulnerability to harassment during working hours or attacks when going to work or when returning home late in the evening or at other unsocial hours. This situation may be aggravated by poor transport services, which oblige them to walk long distances to reach work, often having to leave home very early in the morning and return late at night. Due to the nature of the work they perform in EPZs, women workers frequently resign or leave their jobs, so there

is a high labour turnover. The lack of effective social protection provisions implies that female workers cannot be economically independent after leaving their jobs, and the lack of training puts them at a disadvantage position when seeking other jobs or opting for self-employment.

Childcare is one of the biggest concerns for women workers. It is usually unavailable or inadequate, and the costs are prohibitive for women workers. Many countries have regulations that prohibit children from entering industrial areas. Creche services are therefore provided at the community. This fact, together with other domestic burdens may be the cause of late arrival at work, absenteeism and high labour turnover, all of which are frequent among female EPZ workers.

Women EPZ workers often do not have access to affordable, good-quality food in sufficient quantity. As a result, they are prone to illness and are often undernourished. Health services are not always available in the EPZs. Where they are, they are often limited, and seldom equipped to deal with women's specific health problems. Sexual harassment is widespread in EPZ companies. Sexually harassed women in EPZs do not have independent and confidential services where they can express their complaints and concerns, and EPZ administrations may not wish to provide a counselling service for female workers who are being harassed or sanction the supervisors who harass workers.

Young workers

Most of the workers in EPZs are young women with no previous experience in the formal labour market. They are generally motivated by the desire to escape poverty. They do not know about their rights and do not have previous trade union experience. The low level of union membership among them means that they are often deprived of the protection, information and training afforded by trade union representation and advocacy. They are therefore open to exploitation. EPZ employers are reluctant to employ workers who are older than 23 years. There is the idea that younger workers are more docile and work faster with their hands. So generally, workers who are older than 23 years are hard to come by as they are forced out for age reasons – that is, if they have not been forced out when they want to get married, when they have a baby or when they get active in trade union activities. One employee in an Indonesian embroidery company says: *“My employer tells me and other workers very harshly what to do and if we refuse, we are told off”*.

Impoverished workers

Most EPZ workers come from low-income families and very few have had previous training. So the jobs they take up in the EPZs are poorly paid and involve very few skills. Sometimes, female workers are single mothers, and they may have to provide significant support to their relatives out of their low wages. An ILO study revealed that in Guatemala, 45 per cent of female workers were single mothers whereas in Nicaragua 66 per cent of the female workers interviewed in the survey said they had more than three dependants. Many workers board in lodgings near EPZs and share rooms with other workers in congested living quarters, with inadequate water and sewerage facilities, unsanitary conditions and a lack of privacy. Women with children have difficulty in combining domestic responsibilities and work, and many do not have access to childcare, as it is often expensive and they

cannot afford it on their low salaries. Many EPZ workers are far away from their families and lack the support of family networks or an established community. A young woman from an EPZ in Madagascar says that she earns the equivalent of 20 euros per month and “*I do not have the money for basic foodstuffs and the bus fare, so I have to walk to the EPZ every day*”.

Migrant workers

Many EPZ workers around the world are internal migrants. Unemployment and increasing poverty have prompted them to seek work elsewhere, often in response to false promises of good wages and work benefits. They see no option but to seek work away from their homes as migrant workers. They normally come from rural areas and are not familiar with urban conditions. They have no knowledge on labour law and their rights. In some countries, for example in Sri Lanka, migrant workers are also looked down upon for different cultural reasons. This status exposes them to exploitation and marginalization. They are denied the right to form and join trade unions, suffer threats and physical harassment from employers if they attempt to do so and generally suffer appalling working conditions with very little social protection. The relevant ILO instrument dealing with the discrimination problems encountered by EPZ female migrant workers is the fundamental ILO Discrimination (Employment and Occupation) Convention, 1958 (No.111)⁴. This fundamental convention defines discrimination as any distinction, exclusion or preference



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⁴ For more information, see the following chapter on “Working conditions in EPZs in the light of the ILO Decent Work agenda”



Chapter 3:

Working conditions in EPZs in the light of the ILO decent work agenda

The ILO Decent Work Agenda⁵

The ILO Decent Work Agenda seeks to pursue the objectives of full and productive employment and decent work for all at the global, regional, national, local and sectoral levels. Decent work sums up the aspirations of people in their working lives. According to the ILO, this means opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men. Decent work therefore has four interdependent pillars, namely:

- Employment creation
- Full respect for Rights at work
- Extension of Social Protection
- Promotion of Social Dialogue.

The ILO's Decent Work Agenda has been universally endorsed by the international community. The United Nations has adopted resolutions that commit Member States to promote employment and decent work for all. A wide range of regional integration groups, international agencies, international financial institutions and private transnational corporations have all endorsed the goal of decent work. Hence, the decent work agenda is a legitimate and fair basis for evaluating working conditions in EPZs. This chapter therefore provides a guide to help trade unions to assess the extent to which EPZs in their countries meet the universally accepted standards of decent work.

⁵ <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

Employment issues in EPZs

Decent work implies that workers have adequate work of an acceptable quality, with a level of remuneration sufficient to ensure that they and their dependants enjoy an acceptable standard of living, above the poverty line. The quality of employment created in EPZs is generally low and the quantity very unstable. These jobs are highly dependent on external factors, such as economic crises, external demands, the level of investment or the existence of bilateral or regional trade arrangements.

Policies aimed at improving the quality and productivity of employment in the EPZs need to be judged against the number of jobs created, destroyed or changed in both qualitative and quantitative terms and against the impact on main vulnerable groups, such as women or migrants. In this regard, companies operating in EPZs must play a key role in creating productive and qualitative work.

A productive and competitive economy needs a well-trained and adaptable workforce. Policies providing access to vocational education, technical training and lifelong learning enhance the employability and adaptability of the workforce. This is very important for the workforce of companies operating in EPZs, where high turnover and very poor levels of skills acquisition are common.

Box 2: Some relevant ILO instruments on employment

Employment Policy Convention, 1964 (No. 122): This priority Convention requires ratifying states to declare and pursue an active policy designed to promote full, productive and freely chosen employment.

Private Employment Agencies Convention, 1997 (No. 181): This Convention requires ratifying states to ensure that private employment agencies respect principles of non-discrimination. The Convention provides for cooperation between private and public employment services, general principles to protect job-seekers against unethical or inappropriate practices, and protection of workers under subcontracting arrangements and workers recruited from abroad.

Employment Relationship Recommendation, 2006 (No. 198): This Recommendation provides that Member States should formulate and apply a national policy for the protection of workers in an employment relationship. The national policy should include measures to provide guidance on establishing the existence of an employment relationship and on the distinction between employed and self-employed workers, and to combat disguised employment relationships, such as contractual arrangements where the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee.

Human Resources Development Convention, 1975 (No. 142): This Convention requires ratifying states to develop policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.

Quantity of employment

Governments' strategy to expand the presence of EPZs in their countries seeks to attract foreign investment and through that, to create employment. Job creation has therefore been an important factor motivating governments to promote EPZs. These zones therefore tend to create many jobs, as may be seen above in Tables 1 and 2.

However, EPZs do not generally represent a major percentage of the total employment in a country. Estimates are that EPZ jobs account for less than 0.5% of global employment. Some examples of countries that have experienced significant EPZ employment growth between 2002 and 2006 are the Philippines (37%), Sri Lanka (56%), Vietnam (788%) or Morocco (103%). China, for example, experienced a growth in employment of 11.56% between 1995 and 2005, contributing to 49% of total employment growth in the country. In India, while more than 1 million people were employed in an EPZ in 2005, this represented only 1% of manufacturing employment. In Costa Rica, employment in EPZs represented in 2005 only 2.09 % of the active population, more than in most of the Latin American countries, except for the Dominican Republic (4.83%), Honduras (2.16%) and Mexico (3.41%).

EPZs employed around 116,000 workers in 2006 in Madagascar, 9,828 workers in Ghana, 44,000 in Lesotho and 29,000 in Namibia. In Morocco, the EPZ of Tangiers employs around 48,000 people of whom 60% are women. Prospects for the development of the Tangiers EPZ exist and this may create 80,000 jobs in the future, rising to 200,000 by 2020. In Togo, the number of jobs has grown steadily since 1994 and was around 9,500 in 2010. In Nicaragua, the number of jobs rose from 8,000 to 70,000 between 1965 and 2010. However, the global crisis and the volatility of the investments have strongly and negatively affected employment, with the loss of 20,000 jobs in only two years, and



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the prospects are that only 4,000 of the jobs lost will be recovered. On the other hand, the authorities expected the creation of 10,000 new jobs, bringing the total of EPZ jobs in the country to 80,000 jobs, due to a 12% increase in exports in 2010.

Employment creation and destruction have also taken place due to the existence of international free trade agreements. In this regard, in Madagascar a significant reduction in activities and jobs in EPZs has taken place due to the withdrawal of trade concessions by the US under the African Growth and Opportunity Act (AGOA), with a loss of almost 30,000 jobs. On the other hand, some countries have seen possibilities for employment creation thanks to regional trade agreements. In Nicaragua, new investments were expected in EPZs due to the signature in 2005 of the CAFTA-DR (Central America-Dominican Republic Free Trade Agreement).

In some countries, companies already operating in the country have simply shifted their operations to the EPZ, in order to benefit from the attractive incentives on offer. The result of this is that while the statistics of employment in EPZs increase, net creation of employment in whole of the economy is nil. Such a trend was observed in Mexico in the 1990s. This shift in employment from manufacturing industries outside EPZs to the zones was described as the '*maquiladorisation*' of the Mexican economy.

Quality of employment

Quality of employment implies that the jobs meet the standards of the ILO's Decent Work Agenda. It means that they provide opportunities for work that is productive, and deliver a fair income, with security in the workplace. It also means that a job ensures social protection for families, prospects for personal development, freedom for workers to express their concerns, organize and participate in the decisions that affect their lives. And it means work that ensures equality of opportunity and treatment for all women and men workers.

However, decent work deficits are widespread in EPZs across the world. For instance, in Sri Lanka, working conditions are so harsh that women do not work for longer than five years in the EPZs, and the turnover of workers is very high. In Morocco, contracts are not always written and when they are, they are fixed-term contracts. In Madagascar, the EPZs are characterized by a high degree of employment security because 85% of workers are hired on a contract, but the turnover in the companies is very high, reaching 11,000 in 2005 and 7,000 in 2006. In Nigeria the bulk of workers in EPZs are casuals with no security of employment. In Togo, existing statistics state that only 2,387 workers out of the total workforce of 9,087 were declared to the "National Fund for Social Security" in 2009, with only 1,331 workers having their declarations up-to-date. This situation stems from the fact that the turnover is very high, with temporary jobs representing half of the posts. Essentially, temporary, seasonal or daily workers occupy posts that are linked to the normal activities of the companies.

Research undertaken by the International Textile, Garment and Leather Workers' Federation (ITGLWF)⁶ covering Indonesia, the Philippines and Sri Lanka, uncovered evidence of widespread precarious work and poor quality jobs in EPZs. In Indonesia, it found that a high percentage of workers in a number of factories were employed on short-term contracts. At two factories in Tangerang that supply apparel to one of the world's largest sportswear brands and to two US brands respectively, 80% and 50% of the workforce respectively was employed on short-term contracts. In a third company, around 1,900 workers were employed on temporary contracts. It was also found that the use of contract workers was spread across most production positions and not limited to any specific role or level of responsibility.

In the Philippines, the researchers found that 25% of the workers were employed precariously. Over one-third of whom were employed through a private employment agency. Other agency workers were employed through the DOLE Public Employment Service Office. All the casual and short-term contract workers surveyed were found to be carrying out core business activities, yet were being denied regular employee status as provided for in article 280 of the Labour Code of the Philippines. The findings also suggest that employers are systematically circumventing the law in order to avoid regularizing their workforce. The research findings show that no casual or temporary worker surveyed was employed beyond the 6-month point, although some were rehired on new contracts. The short-term nature of their employment means that all casual and temporary workers are essentially subject to a probationary period for their entire employment period.

According to the International Metalworkers' Federation (IMF)⁷, the most exploited workers in Batam EPZ in Indonesia are outsourced workers. They are hired through a labour agency and usually sign a contract with the agency, which holds them liable should they lose their job, sometimes at fees five to ten times their normal wage. Should they become ill or pregnant, or are injured on the job, the company will immediately release them and the labour agency will likely fine the employee for breach of contract. The FSPMI⁸ union federation has been successful in negotiating an end to all these types of contract for outsourced employees. In FSPMI-organized plants, these contracts no longer exist. The critical factor that explained the successes of the FSPMI in organising EPZ workers and successfully defending their rights has been reforms undertaken within the union. The union reformed its structures to promote representation and activism by women. This played a significant role in increasing the union's capacity to organise EPZ workers.

Vocational training and skills development

In Sri Lanka and Mexico, institutes have been established to improve the technical and vocational skills of EPZ workers and in Madagascar, 63% of enterprises in EPZs conduct internal training programmes as compared to 30% in the rest of the country. In China, the situation varies depending on the region and the zone. In locations such as economic and technology development zones and high-tech industrial development zones, employers are more inclined to provide training.

⁶ The ITGLWF is now part of the trade union **IndustriALL**, following the merger of unions in the mining, energy and manufacturing sectors.

⁷ The IMF is now part of the trade union **IndustriALL**, following the merger of unions in the mining, energy and manufacturing sectors.

⁸ Federasi Serikat Pekerja Metal Indonesia



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Workers' rights in EPZs

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

Freedom of association and the right to collective bargaining is a fundamental human right. In this regard, the Universal Declaration of Human Rights of 1948⁹, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, explicitly recognize the freedom of association and the right to form and join trade unions. These rights are human rights. They are universal and indivisible and derive from the inherent dignity of the human being.

The Preamble to the Constitution of the International Labour Organization indicates that recognition of the principles of freedom of association is vital for the improvement of the conditions of labour and the achievement of universal and lasting peace. The ILO Declaration of Philadelphia, which is appended to the Constitution of the ILO, reaffirms that the freedom of association is essential to sustained progress. Freedom of association is therefore a constitutional obligation of all ILO Member States.

⁹ Article 23.4 states that "everyone has the right to form and join trade unions for the protection of his interests".

The two main instruments of the ILO that promote and protect the freedom of association are the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No.87) and the Right to Organize and Collective Bargaining Convention, 1949 (Convention No.98).

However, the right to freedom of association and to collective bargaining is violated in almost all EPZs across the world. Even though EPZ operating countries that are Member States of the ILO have committed themselves by virtue of their membership of the Organization to observe the principles of freedom of association and collective bargaining, this is the one category of rights that poses most problems in EPZs. Many countries do not comply with the principles of these instruments in law or in practice. Freedom of association and the right to collective bargaining remain one of the main concerns of EPZs around the world and constitute one of the most important decent work deficits.

Generally, workers in EPZs are denied their right to freely organize. Where workplaces are unionized, trade unionists in EPZs face harassment, intimidation, threats, discrimination and unfair dismissals. The level of bargaining capacity is very low and weak, with problems of recognition of trade unions as bargaining agents. In some cases, substitute organizations are imposed - experimental bodies that clearly violate the principles enshrined in ILO Conventions 87 and 98.

For instance, in Madagascar, trade union activity is very weak, with a membership rate of just 14% and only one of 62 EPZ enterprises being party to a collective agreement. In Togo, only 15.63% of workers are unionized and only three trade unions have been created since 2009. In Nigeria, a large proportion of EPZ workers remain unorganized. In Mauritius, union membership levels in the EPZs are below 12%. In Namibia, employers are very hostile towards trade unions, refusing to recognize them or let them carry out their activities in workplaces or to engage in collective bargaining with them. In Belize, there are no unions. The systematic violation of workers' fundamental rights such as the right to organize, to strike and to collective bargaining is the general rule. In Honduras, only 1.5% of workers are unionized and less than 0.5% are covered by collective agreements. In Jamaica, there are no trade unions in EPZs, due to anti-union practices. In Costa Rica there is virtually no worker organization in EPZs and the few unionized workers face harassment and unfair dismissal. In Nicaragua, the unionization rate is slightly higher. There are around 43 trade union Organizations in the EPZs. Of a total of 150 companies, more than 28 have trade union presence. In the Philippines, fewer than half of the companies surveyed in recent trade union research had unions.

Box 3: Key ILO instruments on freedom of association and collective bargaining**Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87)¹⁰**

The Convention declares that:

- Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.¹¹
- Workers and employers' organizations shall not be liable to be dissolved or suspended by administrative authority¹².
- Trade unions are free to create federations and confederations, which in turn, can affiliate at the international level¹³.

The Convention guarantees to all workers¹⁴, without distinction whatsoever, the right to establish and join organizations of their own choosing without previous authorization. Article 2 of the Convention guarantees this right and Article 10 defines the term "organization" under the Convention as any organization of workers for furthering and defending the interests of workers.

The Convention guarantees to workers' organizations the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their own programmes¹⁵.

The Convention calls upon public authorities to refrain from any interference that would restrict this right or impede the lawful exercise thereof¹⁶. The Convention provides that the conditions for acquisition of legal personality by workers' organizations should not be of such character as to restrict the rights guaranteed under articles 2, 3 and 4¹⁷.

The Convention commits Member States, for which the Convention is in force, to take all necessary and appropriate measures to ensure that workers may freely exercise the right to organize and provides that the law of the land shall not be such as to impair nor should it be applied in a manner so as to impair the rights guaranteed under the Convention¹⁸.

¹⁰ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>

¹¹ Art 2 of ILO Convention 87.

¹² Art 4 of ILO Convention 87.

¹³ Art. 5 of ILO Convention 87.

¹⁴ The Convention makes an exception in the case of members of the armed forces and the police by providing that, the extent to which the Convention shall apply to armed forces and the police, shall be determined by national laws or regulations in Art. 9.

¹⁵ Art. 3.1 of ILO Convention 87

¹⁶ Art. 3.2 of ILO Convention 87

¹⁷ Art 7 of ILO Convention 87.

¹⁸ Articles 1, 3 and 8 of ILO Convention 87.

The right to strike

The right to strike has not been explicitly written into the Convention. However, the right of workers and their organizations to strike has always been considered by the ILO as a legitimate means of defending their economic and social interests. Both the CEACR and the CFA have extensively recognized the right to strike¹⁹. This right is considered to be an intrinsic corollary of the right to organize guaranteed by Convention 87. Articles 3, 8 and 10 of the Convention which guarantee trade unions the right to organize their administration and activities and to formulate their programmes and further the interests of workers have been interpreted as being inclusive of the right to strike²⁰.

The Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98)²¹

The Convention:

- extends worker protection against acts of anti-union discrimination²²
- encourages and protects the process of voluntary negotiation between workers and employer organizations to regulate terms and conditions of employment by means of collective agreements²³.

The Convention²⁴ guarantees workers adequate protection against acts of anti-union discrimination in respect of their employment and provides that such protection shall apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he/she shall not join a union or shall relinquish trade union membership; or 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.²⁵

¹⁹ See the 1996 CFA Digest, para. 474; and, for example, 302nd Report, Case No.1809, para. 381; 304th Report, Case No.1863, para. 356; 307th Report, Case No.1850, para. 120; 308th Report, Case No.1900, para. 183; 311th Report, Case No.1934, para. 126; 324th Report, Case No.2072, para. 587; 327th Report, Case No.1581, para. 111; 328th Report, Case No.2116, para. 368; 332nd Report, Case No.2258, para. 522; and 335th Report, Case No.2305, para. 505.)

²⁰ See **CFA's conclusions on Case No 893 (Canada)** - Report No 204, November 1980. Para 124. ; Case No 1071 (Canada)- Report No 214, March 1982. Para247. ; Case No.1247/Alberta. *Report No 241, November 198. Para 131 and 140.* ; and Case No 1954 (Côte d'Ivoire) - Report No 311, November 1998. Para 405.

²¹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>

²² Art 1 of ILO Convention 98.

²³ Art 4 of ILO Convention 98

²⁴ Like Convention 87, Convention 98 provides, in Art. 5 that, the extent to which the guarantees in the Convention shall apply to the armed forces and the police shall be determined by national laws and regulations. It also clarifies in Art. 6 that the Convention does not deal with the position of public servants in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

²⁵ Art 1 of ILO Convention 98

The Convention seeks to protect workers' organizations against acts of interference by employers' organizations or employers' agents or members in their establishment, functioning and administration and clarifies that acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations or to support workers' or other organizations by financial means or other means, with the object of placing such organizations under the control of employers' or employers' organizations shall be deemed to constitute acts of interference. The Convention calls for the establishment of machinery appropriate to national conditions, where necessary, to ensure respect for the right to organize guaranteed under the Convention²⁶.

Freedom of association is a force for social progress, brings economic and social benefits and is an enabling right that makes it possible to promote and realize decent working conditions. The rights enshrined in ILO Conventions 87 and 98 are prerequisites for sound social dialogue and are enabling rights to achieve decent work. In those workplaces where trade unions exist, working women's maternity rights are better protected, social protection systems are in place, the eight-hour workday and weekly rests are respected and there is no place for child labour.

Regarding EPZs, the most difficult area, the biggest concern and the highest priority for the trade union movement is to secure the right of workers to form and join independent trade unions and to bargain collectively with employers operating there. On the assumption that EPZs without a trade union presence may attract more investment, many governments have deprived EPZ workers of their right to organize or have established limitations on its exercise. Often, EPZ workers cannot effectively exercise their freedom of association because employers adopt practices against workers who engage in trade union activities, including dismissals, transfers, blacklisting or physical violence. Trade unions often cannot function effectively because the law imposes unjustified requirements for their recognition as bargaining agents or restricts collective bargaining issues. In many cases, the law prohibits EPZ workers from resorting to industrial action.

Review of key violations of ILO Conventions 87 and 98 in EPZs

Despite the fact that freedom of association and the right to collective bargaining are founding principles of the ILO, these rights are often violated in EPZs across the world. Some of these key violations concern restrictions on unionization in the zones, limitations on access to workers in the zones, restrictions on the right to strike, interference of EPZ authorities or governments in the affairs of trade union organizations, acts of anti-union discrimination against trade union leaders and sympathisers and violations of collective bargaining rights. Below are some country examples of these violations.

²⁶ Articles 2 and 3 of ILO Convention 98

Legal restrictions on unionization

The supervisory bodies of the ILO have emphasized that any kind of legal restriction that would effectively nullify the right of EPZs workers to establish and join unions of their own choosing is not consistent with the requirements of ILO Convention 87, in particular, with Article 2 of the Convention, which guarantees to all workers, without distinction whatsoever, the right to form and join Organizations of their own choosing. The observations of the supervisory bodies of the ILO also state that such restrictions are not permissible, for either economic or other reasons, even as a temporary measure. The main shortcomings regarding legal restrictions on unionization in EPZs are exemptions from the application of labour laws in force, implied legislative restrictions on unionization, ambiguity regarding the application of labour legislation and legislative restrictions on union membership.

In Namibia, section 8(1) of the Export Processing Zones Act, 1995 stipulated that the provisions of the Labour Act (Act 6 of 1992) that recognize the right of workers to form trade unions, shall not apply to EPZs. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) emphasized the importance of the need for all workers, without distinction whatsoever, including those of the EPZs, to fully enjoy the rights enshrined in ILO Convention 87. Employers in Namibia have generally been very hostile towards trade unions, refusing to recognize them or let them carry out their activities in workplaces or to engage in collective bargaining with them.

In Togo, an agreement entered into force in June 1996 concerning relations between employers and workers in the Togolese EPZ. Chapter V of the agreement contained the procedure for election of staff representatives but made no reference to trade union organizations. The CEACR asked the Togolese government to specify whether trade unions have the right and possibility of presenting candidates as trade union delegates with a view to representing workers from EPZs.

In Egypt, the provisions of the 2002 Special Economic Zones Law exempt newly established investment companies from legal provisions on the right to organize. Reports show that many labour regulations are poorly enforced and anti-union acts are rife. Union organizers face harassment, intimidation and administrative penalties in their efforts to organize workers.



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Box 4: Jurisprudence of the ILO Committee on Freedom of Association (CFA) on restrictions on unionisation

- Article 2 of convention No.87 is designed to give expression to the principle of non-discrimination in trade union matters and the words ‘without distinction whatsoever’ used in the article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality or political opinion to all workers without distinction whatsoever²⁷ and workers in EPZs, like other workers, should enjoy the trade union rights provided for by the freedom of association conventions²⁸.
- The CFA has recalled that the standards contained in convention No.87 apply to all workers ‘without distinction whatsoever’ and has requested many governments to amend the legislation in order to guarantee the workers concerned the right of association and collective bargaining in accordance with conventions Nos. 87 and 98²⁹.
- 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. The CFA considers that legal provisions on EPZs should ensure the right to organize and bargain collectively³⁰.
- The formalities prescribed by national regulations concerning the constitution and functioning of workers’ and employers’ organizations are compatible with the provisions of the convention No.87 provided that the provisions in such regulations do not impair the guarantees laid down in convention No.87.³¹
- Although the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organizations³². The formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations. Any delay caused by authorities in registering a trade union constitutes an infringement of article 2 of convention No. 87³³.
- The establishment of a trade union may be considerably hindered, or even rendered impossible, when legislation fixes the minimum number of members of a trade union at obviously too high figure, as is the case, for example, where legislation requires that a union must have at least 50 founder members³⁴. The CFA also considers that a minimum membership requirement of 30 per cent of the workers concerned to establish an organization is too high³⁵. However, the legal requirement that there be a minimum number of 20 members to form a union does not seem excessive and, therefore does not in itself constitute an obstacle to the formation of a trade union³⁶.

²⁷ See the 2006 Digest, para. 209 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf and also see the 1996 Digest, para. 205; and 308th Report, Case No. 1900, para. 182.)

²⁸ See the 2006 Digest, para. 264. See also the 1996 Digest, para. 240; 302nd Report, Case No. 1826, para. 411; and 337th Report, Case No. 2327, para. 195.

²⁹ See the 2006 Digest, para. 265.

³⁰ See the 2006 Digest, para. 266.

³¹ See the 2006 Digest, para. 275.

³² See the 2006 Digest, para. 276.

³³ See the 2006 Digest, para. 279.

³⁴ See the 2006 Digest, para. 284.

³⁵ See the 2006 Digest, para. 288.

³⁶ See the 2006 Digest, para. 292.

Access to EPZs

Access for trade union representatives to workers in EPZs is essential in order to ensure that EPZs workers enjoy freedom of association in practice. Such access is particularly necessary in light of the fact that workers in many EPZs are physically isolated from other industrial workers and many of them have scarcely any prior experience of union activity. Access by trade union representatives to such workers is necessary in order to inform them about the potential advantages of unionization. However, trade union representatives often face difficulties in gaining access to workers in the zones, either due to laws restricting the entry of persons into the zones or because of other measures taken by EPZ companies, such as the deployment of armed security guards to prevent trade union representatives from meeting EPZ workers. The supervisory bodies of the ILO have stressed the need for trade union representatives to have reasonable access to the zones in order to inform workers of their interest in forming unions.

In Mauritius, employers in the EPZs remain hostile to the unions, who find it very difficult to approach the workers given that, in most cases, trade unionists are denied access to the industrial sites.

In Morocco's EPZs organizing is very difficult. Trade union access to the zones is heavily restricted, making freedom of association almost impossible in practice.

In a case relating to the Dominican Republic before the CFA, the complainant alleged that three trade union activists were arrested and detained while distributing information on their trade union in an EPZ. The government admitted that one activist had been detained as he had not requested permission from the management of the EPZ to enter it. The CFA drew the attention of the government to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.

Box 5: Jurisprudence of the CFA on access to workplaces

- Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.
- Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned.
- Access to the workplace should not of course be exercised to the detriment of the efficient functioning of the administration or public institutions concerned. Therefore, the workers' organizations concerned and the employer should strive to reach agreements so that access to workplaces, during and outside working hours, should be granted to workers' organizations without impairing the efficient functioning of the administration or the public institution concerned.

Legal restrictions on industrial action

The right to strike has been recognized as one of the essential means available to workers and their organizations for the promotion of their economic and social interests. Several EPZ-operating countries have by law sought to curtail this right to strike. The observations of the ILO supervisory bodies indicate that any such measures are incompatible with the provisions of ILO Conventions 87 and 98. The observations of the ILO supervisory bodies also state that it is not permissible to even place time-bound restrictions on the right of EPZ workers to resort to industrial action. The main shortcomings regarding legal restrictions on industrial action in EPZs are the prohibition of industrial action by the classification of EPZ industries as essential services, the referral of disputes to compulsory arbitration and the suppression of strikes in EPZs.

In Nigeria, section 18 (5) of the Export Processing Zones Act provides that there shall be no strikes or lockouts for a period of ten years following the commencement of operations in an EPZ. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) recalled that such a prohibition is not compatible with the provisions of ILO Convention 87 and requested the government of Nigeria to indicate the measures taken or envisaged to ensure that workers in the EPZs have the right to establish organizations and that they have the right to organize their activities and formulate their programmes without interference from the public authorities.

In Pakistan, there is an express prohibition on the right of EPZ workers to resort to industrial action. In this regard, section 4 of the Export Processing Zones Rules, 1982 deprives workers in the EPZs of the right to strike and to take other forms of industrial action. The CEACR and the CFA have stressed that this provision is not compatible with the requirements of ILO Conventions 87 and 98.

In Bangladesh, the EPZs Workers' Associations and Industrial Relations Act, 2004, places limitations on the right of workers' organizations to participate in industrial action. Under this Act, no strike or lockout was permissible in any industrial unit in an EPZ until 31 October 2008 and in the meantime, all labour disputes would be subject to mandatory and binding arbitration. The CFA requested the government of Bangladesh to take the necessary measures to amend the Act and to expedite the recognition of industrial action in export processing zones before the established date.

Interference in the affairs of workers' organizations

Article 3 of ILO convention 87 and article 2 of ILO convention 98 seek to protect workers' organizations against acts of interference by the public authorities and employers and employers' organizations respectively in their establishment, functioning or administration.

The CFA has emphasized that the right of workers' organizations to elect their own representatives freely without any interference from the public authorities is an indispensable condition for them to be able to effectively promote the interests of their members. It has pointed out that the requirement of prior authorization for workers' organizations to receive international financial assistance for their trade union activities amounts to interference by the public authorities in the right of workers' organizations to freely organize their administration and activities. It has also pointed out that permitting representatives of the employer to seek the dissolution of trade unions may give rise to acts of interference by the employer.

Box 6: Jurisprudence of the CFA on restrictions on industrial action

- A general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time³⁷. To determine situations in which a strike could be prohibited, the criterion, which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population³⁸. Responsibility for suspending a strike on the grounds of national security or public health should not lie with the government, but with an independent body, which has the confidence of all parties concerned.³⁹
- While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service essential, and thus the right to strike should be maintained.⁴⁰
- The following services may be considered essential: the hospital sector, electricity services, water supply services, the telephone service, the police and the armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools and air traffic control.⁴¹
- The following services are not essential in the strict sense of the term: radio and television, the petroleum sector, ports, banking, computer services for the collection of excise duties and taxes, department stores and pleasure parks, the metal and mining sectors, transport generally, airline pilots, production, distribution and transport of fuel, railway services, metropolitan transport, postal services, refuse collection services, refrigeration enterprises, hotel services, construction, automobile manufacturing, agricultural activities as supply and distribution of foodstuffs, the Mint, the government printing service and the state alcohol, salt and tobacco monopolies, the education sector and mineral water bottling company.⁴²
- Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute.⁴³
- In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.⁴⁴
- The CFA considers that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.⁴⁵

³⁷ See the 2006 Digest, para. 570.

³⁸ See the 2006 Digest, para. 581

³⁹ See the 2006 Digest, para. 571

⁴⁰ See the 2006 Digest, para. 592.

⁴¹ See the 2006 Digest, para. 585.

⁴² See the 2006 Digest, para. 587

⁴³ See the 2006 Digest, para. 564.

⁴⁴ See the 2006 Digest, para. 565.

⁴⁵ See the 2006 Digest, para. 568.

The main shortcomings regarding interference in the affairs of workers' organizations in EPZs are interference in the elections and the functioning of workers' organizations, interference in their registration and dissolution procedures and the interference in their funding activities.

In a case relating to an EPZ in Nicaragua, one of the allegations of the complainant was that shortly after the establishment of a new union, the enterprise and subsequently four workers and an adviser paid by the enterprise had requested the dissolution of the trade union. Proceedings were initiated and the Ministry of Labour then refused to register the reorganization of the trade union's executive committee. The CFA disapproved of the initial refusal of the government to register the reorganization of the committee of the trade union and also the delay of several months in the registration of the committee and requested the government of Nicaragua to refrain from interfering in trade union affairs in the future.



Section 18 (2) of the EPZs Workers' Associations and Industrial Relations Act, 2004 in Bangladesh states that no workers' association shall obtain or receive any funds from any outside source without the prior approval of the Executive Chairman of the Authority of the EPZ. The CFA recalled that trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities and observed that the provision in question interfered with the right of workers' organizations to organize their administration and activities without interference from the public authorities. It requested the government of Bangladesh to take the necessary measures to amend this section of the Act. In Indonesia, trade union research shows that all companies have taken measures to interfere in their trade unions' activities. However, trade unions are present in some companies.

Box 7: Jurisprudence of the CFA on interference in the affairs of unions

- Article 2 of the convention No.98 establishes the total independence of workers' organizations from employers in exercising their activities.⁴⁶
- Respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions.⁴⁷
- The existence of legislative provisions prohibiting acts of interference is insufficient if they are not accompanied by effective procedures to ensure their implementation in practice.⁴⁸
- Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations to ensure the practical application of articles 1 and 2 of convention No.98.⁴⁹
- The cancellation of registration of a trade union organization by the registrar of trade unions or their removal from the register is tantamount to the dissolution of the trade union by an administrative authority⁵⁰. Cancellation of a trade union's registration should only be possible through judicial channels⁵¹.
- Legislation, which accords the minister the complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association.⁵²
- Measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association.⁵³
- The right of workers to establish organizations of their own choosing and the right of such organization to draw up their own constitutions and internal rules and to organize their administration and activities presuppose financial independence. Such independence implies that workers' organizations should not be financed in such a way as to allow public authorities to enjoy discretionary powers over them.⁵⁴
- A system in which workers are bound to pay contributions to a public organization, which in turn, finances trade union organizations, constitutes a serious threat to the independence of these organizations.⁵⁵

⁴⁶ See the 2006 Digest, para. 855.

⁴⁷ See the 2006 Digest, para. 859.

⁴⁸ See the 2006 Digest, para. 861.

⁴⁹ See the 2006 Digest, para. 862.

⁵⁰ See the 2006 Digest, para. 685.

⁵¹ See the 2006 Digest, para. 687.

⁵² See the 2006 Digest, para. 689.

⁵³ See the 2006 Digest, para. 683.

⁵⁴ See the 2006 Digest, para. 466.

⁵⁵ See the 2006 Digest, para. 470.

Anti-union discrimination

While most EPZ-operating countries recognize the right of EPZ workers to organize themselves under the law, in practice, the right of EPZ workers to freely organize themselves and engage in trade union activities is curtailed in many EPZs through the anti-union discriminatory practices adopted by employers. These include the dismissal, suspension, transfer, blacklisting, harassment, intimidation of, and physical assaults upon, trade union officials and members, and the coercion of workers to join employer-sponsored unions and associations. Such practices are particularly pronounced at the stage of formation of trade unions. The problem is accentuated when EPZ workers lack security of employment, as this enables employers to easily get rid of workers involved in union activities. The main shortcomings regarding anti-union discrimination acts in EPZs are inadequate legislative protection against anti-union discrimination, reprisals against trade unionists, blacklisting of trade union officials and harassment and violence.



In El Salvador, workers in EPZs are faced with exploitation, mistreatment, verbal abuse, threats and sexual harassment. The textile maquila is characterized by its anti-union policy and dismissals of workers attempting to exercise their trade union rights. In Nicaragua, dismissals and pressures upon trade unionists are very frequent. So are violations of freedom of association and the right to bargain collectively, and they happen throughout the process of organizing, from the inception phase to the moment when it is fully operational, although small improvements have taken place thanks to more involvement by the Ministry of Labour. In Indonesia, the ITGLWF researchers reported that while trade unions represented workers in the majority of the factories surveyed, all factories had taken anti-union measures. The union officials also expressed concern that employers are denying employment relationships to workers, in order to undermine unions. Workers who became union members were subject to intimidation, dismissed or denied the opportunity to have their contract extended so as to send a clear message to workers that management does not support union membership. In Morocco's EPZs workers are too scared to form trade unions, for fear of losing their jobs. In Namibia, employers have generally been very hostile towards trade unions, refusing to recognize them or let them carry out their activities in workplaces, and especially in EPZs. In Belize, EPZs have been characterized by the systematic violation of workers' fundamental rights. In Jamaica, there are no trade unions in EPZs due to anti-union practices that have always prevented the creation of trade unions. The maquilas located on Mexico's Northern border often sign "protection contracts". These contracts are agreements concluded between a company and a union that only exists on paper. Workers who organize are faced with intimidation and repression at the hands of the "paper unions" and the government. Those attempting to defend their rights are labelled troublemakers and risk being blacklisted by the company. In Costa Rica there is virtually no trade union organization in the EPZs and the few unionized workers face harassment and unfair dismissal.

Box 8: Jurisprudence of the CFA on anti-union discrimination

- Anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions.⁵⁶
- A genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty.⁵⁷
- No one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership and the persons responsible for such acts should be punished.⁵⁸
- Protection against anti-union discrimination applies equally to trade union members and former trade union officials as to current trade union leaders.⁵⁹
- All practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices.⁶⁰
- Freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.⁶¹ The right to life is a fundamental prerequisite for the exercise of the rights contained in convention No. 87⁶².
- The rights of workers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.⁶³ All states have the undeniable duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of life.⁶⁴
- In the event of assaults on the physical or moral integrity of individuals, the CFA has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts.⁶⁵
- The absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights⁶⁶.

⁵⁶ See the 2006 Digest, para. 769.

⁵⁷ See the 2006 Digest, para. 45.

⁵⁸ See the 2006 Digest, para. 772.

⁵⁹ See the 2006 Digest, para. 775.

⁶⁰ See the 2006 Digest, para. 803.

⁶¹ See the 2006 Digest, para. 43.

⁶² See the 2006 Digest, para. 42.

⁶³ See the 2006 Digest, para. 44.

⁶⁴ See the 2006 Digest, para. 58.

⁶⁵ See the 2006 Digest, para. 50.

⁶⁶ See the 2006 Digest, para. 52.

Collective bargaining

In most EPZ-operating countries, the right of workers to collectively bargain with the employer to negotiate their terms and conditions of employment is recognized. However, in countries where the right of EPZ workers to organize themselves is not recognized under the law, their right to collectively bargain with the employer is likewise not recognized. The main shortcomings regarding collective bargaining in EPZs relate to the recognition of the bargaining agent, to restrictions on the scope of collective bargaining, to a refusal to negotiate and to the promotion of collective bargaining in EPZs.

In Ghana, Blue Skies Products (Gh) Ltd, an EPZ fruit processing company that employs over one thousand workers, has consistently refused to recognize its workers' union the Food and Allied Workers Union (FAWU), an affiliate of the Ghana Federation of Labour (GFL). The union organized the workers and was issued with a collective bargaining certificate in February 2004, but has still not been able to negotiate with the company. While the Labour Department issued a collective bargaining certificate to FAWU, it also gave one to the Blue Skies Staff Association, which the Ghana Federation of Labour (GFL) has described as a yellow union. The case to decide which union should represent the workers went to court. The case was called to court in October 2010 without prior notification given to FAWU. The Attorney General's Department suddenly announced the discontinuation of the case, without explanation. Blue Skies had filed several cases against GFL and FAWU as a means of delaying the recognition of its workers' union. The cases were still pending at the end of 2010.

In Nigeria, the concrete mode of collective bargaining is determined by and reflects the character of collective relations in each trade union's sector. For example, the National Union of Chemical Rubber Footwear Leather and Non-Metallic Products Employees holds 2-year bargaining rounds with the employer counterpart stakeholder on the platform of the sector's National Joint Industrial Council and the substantive rules resolved in this platform are binding on EPZs within its sector. On the other hand, in the oil and gas sector there is no National Joint Industrial Council, and no EPZ-specific agreement has been reached with the oil servicing firms.

In Sri Lanka, the establishment in 1994 of employees' councils, encouraged by employers and the Board of Investment (BOI), hampered the creation of free and independent unions and the exercise of the right to collective bargaining. The councils were set up without consultation with unions, are under the control of the BOI and their members are not freely elected.

In Togo, all negotiations related to the working conditions in the EPZs are undertaken bilaterally by the staff delegates, grouped in the "Staff Delegates Committee" and the employers, grouped in the "Employers' Association of the EPZ" under the general supervision of the Management Authority of the Export Processing Zone (SAZOF). Both parties concluded the agreement of 1 June 1996 that is considered as the sectoral collective agreement of the EPZ and the salary revision of 2008. They have had a certain degree of success but the traditional stakeholders of collective bargaining, i.e. freely chosen workers' and employers' organizations, have been replaced by these particular groupings, which are not compatible with the principles enshrined in ILO Conventions 87 and 98. The legitimacy and capacity of these stakeholders to defend, in a collective negotiation, the rights and the material, social and moral interests of workers of the EPZs can be questioned and the large majority of workers do not recognize their legitimacy,

especially when the law in force grants this role expressly to professional trade union organizations. The “Staff Delegates Committee” does not have the same assets as trade union organizations in terms of affiliation, trade union solidarity, pressure, lobbying and trade union experience. Since 2006, some attempts at genuine tripartite social dialogue have taken place and the willingness of the SAZOF has opened up the way for a timid but positive development of trade union activity in EPZs. Thanks to the support of the ILO and the Togolese Ministry of Labour and Social Security, the revision of specific texts relating to the EPZ has been undertaken with the aim of eliminating obstacles to freedom of association. Negotiations are also taking place with the active involvement of trade union organizations in EPZs for the approval of a new sectoral collective agreement.

In the Philippines, researchers from the ITGLWF found at a factory that the union had successfully organized a sufficient number of workers to meet the requirements to bargain collectively with the employer. The employer reacted by pursuing a sustained campaign of harassment against union members, culminating in the employer closing the factory and terminating the employment of 800 workers with immediate effect. A case is now pending in the Labour Court. The ITGLWF researchers also recorded the use of management-influenced worker representation bodies, including labour management councils and employee cooperatives, at just under half the factories researched.

In Morocco, in November 2010, the management at APM Terminals in the port of Tangiers dismissed four members of the transport workers’ union. The union had just reached the legal membership threshold that would allow it to negotiate a collective agreement with the employer.



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Box 9: Jurisprudence of the CFA on collective bargaining

- Measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.⁶⁷
- The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference, which would restrict this right or impede the lawful exercise thereof.⁶⁸
- Temporary workers should be able to negotiate collectively.⁶⁹
- Matters which might be subject to collective bargaining include the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of collective agreement, the granting of trade union facilities, including access to the workplace, etc⁷⁰
- Legislation establishing that the ministry of labour has powers to regulate wages, working hours, rest periods, leave and conditions of work, that these regulations must be observed in collective agreements, and that such important aspects of conditions of work are thus excluded from the field of collective bargaining, is not in harmony with article 4 of convention No. 98.⁷¹
- The voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association.⁷²
- Article 4 of convention No.98 in no way places a duty on the government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment. The public authorities should however refrain from any undue interference in the negotiation process.⁷³
- It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.⁷⁴

⁶⁷ See the 2006 Digest, para. 880.

⁶⁸ See the 2006 Digest, para. 881.

⁶⁹ See the 2006 Digest, para. 906.

⁷⁰ See the 2006 Digest, para. 913.

⁷¹ See the 2006 Digest, para. 919.

⁷² See the 2006 Digest, para. 925.

⁷³ See the 2006 Digest, para. 928.

⁷⁴ See the 2006 Digest, para. 935.

- Agreements should be binding on the parties⁷⁵.
- Employers should recognize for the purposes of collective bargaining organizations that are representative of workers in a particular industry⁷⁶. Recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking⁷⁷.

The elimination of discrimination in respect of employment and occupation

Discrimination in respect of employment and occupation is a major challenge in EPZs, where the majority of the workforce is comprised of young women and migrants. These groups are more likely to suffer discrimination. Women in EPZs around the world are denied access to jobs and training, receive lower wages, or are restricted to certain occupations on the basis of their maternity prospects without regard to their capabilities and skills. In most EPZs, there is discrimination in terms of pay equity and equal treatment between male and female workers and migrants are more likely than local workers to suffer discrimination practices.

Box 10: Relevant ILO instruments on discrimination

Equal Remuneration Convention, 1951 (No. 100): This fundamental Convention requires ratifying countries to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The term “remuneration” is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111): This fundamental convention defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It requires ratifying states to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

⁷⁵ See the 2006 Digest, para. 939.

⁷⁶ See the 2006 Digest, para. 954.

⁷⁷ See the 2006 Digest, para. 953.

In Madagascar, the average wage of female EPZ employees is 8% lower in low-skilled jobs and 20% in managerial positions than that of men. Although the rights of pregnant women and young mothers are generally respected, discriminatory practices exist, such as refusal to hire pregnant women, job losses and failure to grant maternity leave. In Namibia, one EPZ, as an example of reverse discrimination, employs a large number of Asian workers whose salaries are higher than those of their Namibian counterparts. In Mauritius, the EPZs employ 15,000 foreign workers, mainly from China, India, Bangladesh and Sri Lanka. Because of language barriers and restrictions imposed by employers, immigrant workers suffer overt discrimination and are often offered no formal contracts. In Sri Lanka, gender discrimination in sportswear and leisurewear factories is common. In this regard, research shows that during the recruitment processes, the management gave preference to workers who were not married. Four companies carried out pregnancy tests, and pregnant women were not recruited. In Belize, the poor enforcement of the labour laws in EPZs results in women facing inequalities and discrimination at work. In this regard, the unemployment rate among women is much higher than for men and their pay is only 52% of that received by men. Women are more concentrated in low-paid, low-skilled jobs.

The elimination of forced or compulsory labour

The elimination of forced or compulsory labour remains a challenge in EPZs where overwork and compulsory overtime are common and their use widespread. Some working conditions in EPZs can be assimilated to forced labour.

A report by the International Trade Union Confederation (ITUC) on core labour standards in El Salvador reported in 2010 that many of the 67,000 mostly women workers employed in the country's 15 EPZs suffered appalling working conditions that can be likened to forced labour, and that the working conditions are slave-like. In Mauritius, the working conditions of Bangladeshi migrants have been described as akin to modern slavery. The IMF has denounced cases in Batam EPZ in Indonesia, where workers are traded like commodities, only one step from human trafficking. These workers are hired through a labour agency and usually sign contracts with the agency, which holds them liable, at high fees, should they lose their job.

Box 11: Relevant ILO instruments on forced labour

Forced Labour Convention, 1930 (No. 29): This fundamental Convention prohibits all forms of forced or compulsory labour, which is defined as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Exceptions are provided for work required by compulsory military service, normal civic obligations, or as a consequence of a conviction in a court of law.

Abolition of Forced Labour Convention, 1957 (No. 105): This fundamental convention prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes; and as a means of racial, social, national or religious discrimination.

The elimination of child labour

Child labour is a reality in many countries around the world that have not ratified ILO Conventions or do not enforce them effectively. In EPZs, some research shows that some cases of child labour may occur.

In Ecuador, there are child labour practices akin to slavery, forced labour and servitude, especially on the banana and flower plantations and in the palm oil and gold mining sectors. Such practices generally involve children from poor families and backgrounds. In Mexico, under-age maquila workers are generally girls just below the minimum age. They start working at the age of 12 or 13. They provide false birth certificates or lie about their age.

Box 12: Relevant ILO instruments on child labour

Minimum Age Convention, 1973 (No. 138): This fundamental Convention sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.

Worst Forms of Child Labour Convention, 1999 (No. 182): This fundamental Convention defines as a “child” a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. The Convention requires ratifying states to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires states to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour.

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Labour inspection

Proper and effective application of labour legislation depends on an effective labour inspectorate, with labour inspectors examining how national labour standards are applied in the workplace and advising how to improve the application of national labour law. In many countries, labour inspection systems are underfunded and understaffed. Regarding EPZs, the general lack of material and human resources and training of labour inspectors, and the absence of a legal framework giving them the power to act in the general interest constitute the main existing problems.

In Nicaragua, labour inspectors have frequently had many problems in accessing EPZs. However, the approval of Act 618, the “General Act on Health and Safety at Work” has helped to improve this situation. Thanks to this law, the role of the Ministry of Labour of Nicaragua has been strengthened and labour inspectors are entitled to visit EPZs at any time without previous notice. In Morocco, the Labour Code requires labour inspectors to enforce labour law provisions. However, trade union organizations have denounced the passivity and incapacity of the labour inspectorate. They state that inspectors cannot access the EPZs freely and that they do not reply to requests from workers to visit the workplaces. In El Salvador, the government does not allocate sufficient resources for adequate inspection and oversight to ensure respect for freedom of association and collective bargaining rights in EPZs. In addition, serious allegations of corruption among labour inspectors exist. In Togo, Article 30 of decree 90/40 of 4/04/1990, which forbids access to EPZs by anybody from outside, has critically restricted labour inspectors’ checks on compliance with labour legislation. In Nigeria, workplace inspections are virtually non-existent due to the hostility of the EPZ management but also to the limited number of factory inspectors, which is barely 19% of the number statutorily required. In Madagascar, the number of labour inspectors is very limited and those who do exist lack training. In

Sri Lanka, the number of labour inspections remains very low, despite the fact that the Ministry of Labour was reorganized and the inspection system revised with ILO support in the period 2003-06. In Indonesia, there is no real and effective system to conduct labour inspections in EPZs, as there is a shortage of labour inspectors. In Haiti, labour inspection is non-existent and the structure within the Ministry of Social Affairs is not operational.

Box 13: Relevant ILO instrument on labour inspection

Labour Inspection Convention, 1947 (No.81): This Convention requires ratifying states to maintain a system of labour inspection for workplaces in industry and commerce. The Convention sets out a series of principles respecting the determination of the fields of legislation covered by labour inspection, the functions and organization of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations.

Social protection in EPZs

According to the ILO, 80% of the world's population has no adequate social protection. Social protection is a human right enshrined in the major international instruments protecting human rights, such as the Universal Declaration of Human Rights of 1948 or the International Covenant on Economic, Social and Cultural Rights of 1966. The lack of adequate social protection is a big decent work deficit among the workers of EPZs, especially for women. The objective in social protection interventions is to reduce insecurity at work, ensure safe conditions at the workplace, maintain incomes and ensure adequate access to care and social services. Interventions may include social security and unemployment benefits, maternity protection schemes, promotion of pensions systems, occupational health and policies addressing HIV/AIDS, etc.

Termination of employment

The termination of employment is a traumatic experience for a worker. It means a loss of income, it leads to a loss of self-esteem and it has a direct impact on the well-being of the workers' family. EPZ companies are often subject to external influences and changes in the global production chain. External demands for products may change. Regional or bilateral trade agreements may impact on EPZ arrangements. Economic crises may set in and affect the EPZ companies. So EPZ jobs are very often insecure jobs. All this is aggravated by the desire of many EPZ employers to maximise their profits by imposing poor working conditions on workers and placing high production targets on workers. Furthermore, the widespread use of temporary contracts means that employment is simply terminated by expiration of contracts thus avoiding any employer penalties for termination. This also contributes to a high turnover of staff in EPZs. Finally, many workers often lose their jobs due to acts of harassment and anti-union discrimination. Workers are therefore arbitrarily dismissed for their trade union activities or simply because they are pregnancy.

Box 14: Key ILO instrument on employment

Termination of Employment Convention, 1982 (No.158): This Convention embodies the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct or based on the operational requirements of the undertaking, establishment or service. Reasons for dismissal which shall not be considered valid include those based on union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, or absence from work during maternity leave. If an individual worker is dismissed, he or she shall have the right to defend him or herself against any allegations. In cases of collective dismissal, governments should aim at encouraging employers to consult workers' representatives and to develop alternatives to mass lay-offs (such as a hiring freeze or working time reductions). The Convention also covers matters related to severance pay, period of notice, appeal procedures against dismissal, unemployment insurance, and advance warning to be given to authorities in cases of mass dismissals.

In Sri Lanka, firms have been known to close without warning and leave workers without compensation, back-pay or national insurance payments. In Nicaragua, dismissals and constant threats towards workers and anti-union behaviour from employers are among the main problems. In the current context of global crisis, employment instability has increased dramatically in the country, with 31 companies in the EPZs having asked to the Ministry of Labour for an indefinite closedown, affecting many female workers. Most complaints in 2007, 2008 and 2009 were related to the sudden closure of companies without compensation payment, a situation that has created big labour conflicts. One of the key demands of the trade unions is legislation to ensure that a fund is created in the case of closure of companies. In El Salvador, the law does not provide for the reinstatement of workers unfairly dismissed on account of their union membership or activities. In Guatemala and in Nicaragua, there are cases of companies that closed down without prior notice and without paying dues to workers.

Social security

Social security systems provide for basic income in cases of unemployment, illness, injury, old age and retirement, invalidity, family responsibilities such as pregnancy and childcare and loss of the family breadwinner. For employers, social security helps maintain a stable workforce adaptable to change. In a globalizing world, where people are increasingly exposed to global economic risks, a broad-based national social protection policy can provide a strong buffer against many of the negative social effects of crises. Workers in EPZs around the world are exposed to high labour turnover and are more vulnerable to employment instability due to external factors. Workers of EPZs are often made redundant and dismissed, and most of them do not have social security coverage when this happens.

Box 15: Relevant ILO instruments on social security

Social Security (Minimum Standards) Convention, 1952 (No. 102): This Convention lays down the minimum standard for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. To ensure that it could be applied in all national circumstances, the Convention offers states the possibility of ratification by accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions may also be envisaged for countries whose economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the Convention and the coverage of the benefits granted.

Social Protection Floors Recommendation, 2012 (No. 202): This Recommendation provides guidance to Member States on establishing and maintaining, as applicable, social protection floors as a fundamental element of their national social security systems. It also covers the implementation of social protection floors within strategies that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards. The social protection floors should comprise at least the following basic social security guarantees: (a) access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality; (b) basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services; (c) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and (d) basic income security, at least at a nationally defined minimum level, for older persons.

In Nicaragua, all workers of the EPZs who work in a formal employment relationship are covered by the social security system in force in the country. However, there are major trends towards outsourcing tasks, especially those in call centres. Outsourced workers are deprived of social security benefits. In El Salvador, in 2008 the Ministries of Labour and of the Economy concluded that approximately 10,000 workers in the EPZs did not receive social security and other payment benefits to which they were legally entitled. In Indonesia, the ITGLWF researchers found that workers employed via private agencies were denied a number of entitlements and benefits. Workers reported that they did not receive pay when taking annual leave, separation payments at the end of the employment period, written contracts and sick pay. Workers told researchers that during peak season the factory would recruit permanent staff, but these workers were often fired at the end

of their 3-month probationary period because the employer no longer required them. The employers would not pay the minimum wage or comply with social security provisions during this probationary period. In Morocco, trade unions state that many EPZ workers are not declared to the Social Security National Fund. In Togo, the fact that many EPZ workers are temporary means that they do not benefit from the social risk allowance.

Wages

In EPZs, access to adequate and regular wages is not guaranteed. Wages tend to be at the same level or even sometimes higher than wages paid in the other sectors of the economy. However, this does not necessarily imply that these earnings are living wages. The situation varies across EPZs in the same country and across the sectors. There are cases of workers in EPZs facing loss of wages when their employer has gone bankrupt or when a company has closed down.

Box 16: Relevant ILO instruments on wages

Protection of Wages Convention, 1949 (No. 95): This Convention states that wages shall be paid in legal tender at regular intervals; in cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose. In cases of employer insolvency, wages shall enjoy priority in the distribution of liquidated assets.

Minimum Wage Fixing Convention, 1970 (No. 131): This Convention requires ratifying states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates that have the force of law.

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173): This Convention provides for the protection of wage claims in insolvency and bankruptcy by means of a privilege or through a guarantee institution.

According to research undertaken by the ITGLWF in the Philippines, Sri Lanka and Indonesia, not one of the 83 companies covered by the study paid a living wage to workers and many of them employed workers on less than the legal minimum wage. In Sri Lanka, researchers recorded that wages are based on productivity targets, although Sri Lankan law clearly stipulates that workers should be paid based on the number of days worked, as opposed to the number of items produced. At a factory, workers had their basic pay cut if they did not achieve the targets set unilaterally by the management. At another factory owned by the same company, workers did not receive any incentive pay unless the entire quota was reached. However, workers reported that the targets set unilaterally by the management were impossible to meet and thus they never received any bonus. In two other factories, workers were forced to work unpaid overtime until they met the productivity targets set by the management. In Morocco, trade unions complain that the wages declared are often below the wages actually paid. In

Togo, the salaries have had a progressive evolution for permanent workers. However, temporary workers without specific skills are prevented from the allowance and there are evidences that sick leave is deducted from their salaries and therefore, they earn less than the minimum wage. In Nicaragua, the minimum salary does not cover half of the monthly basic needs. The “Tripartite Labour Commission on Export Processing Zones” achieved an agreement for a progressive increase of salaries in a series of steps until 2013⁷⁸.

Working time

Research shows that excessive and compulsory overtime, often in violation of national law, is widespread and exists in nearly all the countries operating EPZs. Many EPZ workers do excessive overtime in order to survive or to obey the industrial demands of the firm, under threat of dismissal. Long and unpredictable hours have an impact on the ability of workers to combine paid work and domestic obligations.

Box 17: Relevant ILO instruments on work

Hours of Work (Industry) Convention, 1919 (No. 1): This Convention sets the general standard at 48 regular hours of work per week, with a maximum of eight hours per day.

Forty-Hour Week Convention, 1935 (No. 47): This Convention lays down the principle of the 40-hour working week.

Weekly Rest (Industry) Convention, 1921 (No. 14): This Convention sets the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days.

Holidays with Pay Convention (Revised), 1970 (No. 132): This Convention states that workers shall enjoy at least three working weeks of annual paid holiday for one year of service.

Night Work Convention, 1990 (No. 171): This Convention requires ratifying states to take measures required by the nature of night work for the protection of night workers. Night work is defined as work performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m. The convention also requires alternatives to night work to be offered to women for specified periods during and after pregnancy.

⁷⁸ See the section on “Social dialogue in EPZs” below.

In Indonesia, researchers from the ITGLWF found that excessive overtime was the norm in sportswear and leisurewear factories, with workers in all factories surveyed doing between 10-40 hours of overtime a week. One factory had the highest levels of forced overtime, with workers stating that they were routinely forced to work 40 hours overtime per week. Workers in all factories reported that overtime levels increased as deadlines approached, at which times overtime of between 35 and 40 hours per week was the norm. Workers reported that those who fail to meet production targets were sometimes subjected to mental and physical abuse. In Sri Lanka, interviews undertaken with workers revealed that a number of companies were forcing workers to work overtime. For example, at a factory workers stated they were forced to work overtime of between 90 and 100 hours per month. The workers had to get prior approval from management before leaving the factory if they did not agree to work overtime. Workers said any requests to leave would be denied and that management would verbally harass the workers for asking to leave. At another factory workers, reported that they put in 100-130 hours' overtime per month. Again, those who refused to work overtime were subjected to verbal harassment and abuse by supervisors and management. In the Philippines, researchers recorded that 24% of the workers interviewed in several surveyed companies received no additional pay or did not receive the legal minimum compensation for overtime work. In Indonesia, workers reported that when deadlines approached, forced overtime hours increased dramatically. 6% of the workers interviewed reported that they received no compensation at all for the overtime they worked. 18% received payment for overtime, but not the premium rates provided for by Filipino law. The majority of workers interviewed worked at least 2 hours' overtime per day, with many workers also forced to work rest days. In one factory, the standard working day was 12 hours, from 6:00 to 18:00 but in the run up to deadlines workers were forced to work an additional 2 hours per day. In Nicaragua, although the Labour Code establishes that the working week is 48 hours, the average number of hours worked in the EPZs is much higher than this. In a survey looking at 5 companies, 71.5% of the employees interviewed replied that they worked overtime. In Nigeria, the working day in EPZs is in general longer than outside the zones, and holidays and leave are grudgingly given, particularly by Chinese firms. In Madagascar, almost all the workforce works full-time around 10 hours per day and there is a constant use of supplementary night work-time. The Act 24/2007 on the EPZs states that the clauses of the Labour Code related to female night work are not applicable to the EPZs.

Occupational health and safety

The ILO Constitution establishes the principle that workers should be protected from sickness, disease and injury arising from their employment. Many EPZs fail to provide safe working environments, with many companies operating in poor health and safety conditions. The ILO instruments below are essential tools for governments, employers and workers to establish good practices and provide for maximum safety and health standards at workplaces.

Box 18: Relevant ILO instruments on health and safety

Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002: This Convention provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions. The Protocol calls for the establishment and the periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics.

Occupational Health Services Convention, 1985 (No. 161): This Convention provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventive functions and are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187): This Convention aims at promoting a preventive safety and health culture and progressively achieving a safe and healthy working environment. It requires ratifying states to develop, in consultation with the most representative organizations of employers and workers, a national policy, national system, and national programme on occupational safety and health.

In Nicaragua, work illnesses are very common. One positive element is the existence of mixed health and safety commissions in the companies involving workers and employers. In Morocco, trade unions consider that real problems exist in terms of health and safety at work. Accidents are frequent, given the materials and the products used in the production units, some of them highly toxic. Equipment to protect against risks is inadequate and workers are not sufficiently aware of the risks for their health. Trade unions consider that the lack of inspections at the workplaces remains an obstacle to the improvement of health and safety standards in workplaces. Trade unions complain that occupational diseases and work accidents are not recognized sufficiently and that health and safety labour committees either do not exist or do not play any role, although Article 336 of the Moroccan Labour Code establishes an obligation to create them. In Togo, the EPZ is predominantly industrial and deaths, work accidents and occupational diseases are very common. The risks are physical and social (e.g. fatigue due to working overtime and workloads that are too demanding, lack of protective equipment, exposure to vibrations, unsuitable working environments, skin or eye irritation, breathing problems, exposure to hazardous substances, menstrual problems, stress and sexual problems) as well as ergonomic, and the workers suffer serious damage to their bones and joints. Trade unions denounce employers' clear tendency to focus on maximizing profits to the detriment of respect for health and safety measures at work. Article 174 of the Togolese Labour Code states that there must be a safety and health labour committee in each enterprise. However, it is very rare to find companies that have established them. In Nigeria, the state of health and safety at work in the EPZs is a mixed bag. In the oil and gas sector, standard procedures and mechanisms for upholding occupational health and safety issues exist, whereas the situation in the manufacturing sector-oriented EPZs is more diverse. Some

companies seem to be more concerned with observing occupational health and safety procedures when a union has secured recognition.

Maternity protection

Pregnancy and maternity are vulnerable times for working women. Pregnant women require adequate time to give birth, to recover and to nurse the children and they also need protection to ensure that they will not lose their job on the grounds of pregnancy or maternity leave. Many women in EPZs suffer strong pressures from the management of companies to quit their jobs and have to undergo pregnancy checks and tests when recruited. Pregnancy and maternity are vulnerable times for working women. Pregnant women require adequate time to give birth, to recover and to nurse the children and they also need protection to ensure that they will not lose their job on the grounds of pregnancy or maternity leave. Many women in EPZs suffer strong pressures from the management of companies to quit their jobs and have to undergo pregnancy checks and tests when recruited. The CEACR has on many occasions commented on the unfair practice of compulsory pregnancy tests in hiring processes. In the Report of the CEACR from 2000, the Committee raised concerns regarding the issue of pregnancy testing as a requirement to obtain or keep a job in EPZs in their comments to the Government of the Dominican Republic and El Salvador. In 2007 the CEACR looked at a case of compulsory pregnancy testing in Brazil and found the practice to be in violation of ILO Convention 111. Later the ILO helped Brazil set up a new legislative compliance system including heavy fines. The system has become a model for other countries.



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Box 19: Key ILO instrument on maternity protection

Maternity Protection Convention, 2000 (No. 183): This Convention is the most up-to-date international labour standard on maternity protection⁷⁹. It provides for 14 weeks of maternity benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of their previous earnings or a comparable amount. The Convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. It also prohibits employers from terminating the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. Also provides a woman with the right to one or more daily breaks or a daily reduction of hours of work in order to breastfeed her child.

Article 9 of the Convention stipulates the requirement for Member States to adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including prohibiting pregnancy tests as part of job selection procedures except in very limited specific circumstances.

In Nicaragua, the presence of trade union organizations in EPZ enterprises has helped to improve practices on maternity protection. In this regard, pregnant women in some companies have gained a right of priority in entering and leaving the EPZs, without having to queue in long lines wait in long queues. However, the working conditions and the type of activity in the EPZs affect pregnant women considerably, and there are frequent cases of miscarriages. When recruitment takes place, it is still very common to discriminate against pregnant women. In Morocco, trade union organizations state unanimously that some companies in EPZs do not respect the duration of maternity leave and that pregnant women suffer from strong pressures to quit their jobs, mainly from management. In Nigeria, there is a tendency to avoid female labour as much as possible and this is due to maternity leave. In Sri Lanka, in research undertaken by the ITGLWF, workers revealed that some companies carried out pregnancy tests and pregnant workers were not recruited and that female workers who were up to 7 months' pregnant were required to continue carrying out the full range of job tasks, without consideration given to the health of the worker and the child. In the Philippines, all female workers who were interviewed said that employers did not follow the law with respect to paid maternity leave, and some workers reported that they had no maternity leave benefits at all. Most of the companies did not provide single parent leave, as required by current national law.

⁷⁹ The earlier relevant instruments, the Maternity Protection Convention, 1919 (No.3) and the Maternity Protection Convention (Revised), 1952 (No. 103) are still in force in certain countries.

HIV/AIDS at the workplace

The pandemic of HIV/AIDS has become one of the critical workplace issues. In addition to the impact on women and men and their families, it affects the world of work in many ways, particularly in the form of discrimination and stigmatization of workers living with HIV/AIDS. Diseases at work are common in EPZs, and being infected with HIV/AIDS is an additional factor of discrimination. It would seem that support for workers living with HIV/AIDS in the EPZs around the world is not a major concern.

Box 20: Key ILO instrument on HIV/AIDS

In 2001, the ILO adopted its **Code of Practice on HIV/AIDS and the World of Work**⁸⁰. This contains principles for policy development and practical guidelines for programmes at the enterprise, community and national levels.

HIV and AIDS Recommendation, 2010 (No.200): This standard is the first internationally sanctioned legal instrument aimed at strengthening the contribution of the world of work to universal access to HIV prevention, treatment, care and support. It contains provisions on potentially life-saving prevention programmes and anti-discrimination measures at national and workplace levels. It also emphasizes the importance of employment and income-generating activities for workers and people living with HIV, particularly in terms of continuing treatment.

In Nigeria, it is difficult to assess the extent to which firms in the EPZs have been concerned with mitigating the impact of HIV/AIDS. Trade unions state that it could very well be assumed that there is no concern about providing support for workers living with HIV/AIDS and even less about improving the quality of life of working women and spouses of working men living with HIV/AIDS.

Workers with family responsibilities

Wages, working time, maternity protection and different arrangements to adapt working life to the demands of life outside work are core elements of the employment relationship and of workers' protection. EPZ workers around the world, mainly women, face overt gender discrimination and often are forced to stay in EPZs under very harsh conditions because there is no other employment opportunity or they have to decline to take up jobs on the grounds of the impossibility of balancing work and private life. Overtime in EPZs and many violations in terms of maternity protection play a crucial role in persuading many women to quit jobs in EPZs.

⁸⁰ <http://www.ilo.org/global/publications/KD00015/lang--en/index.htm>

Box 21: Key ILO instrument on workers' with family responsibilities

Workers with Family Responsibilities Convention, 1981 (No.156): With the aim of creating effective equality of opportunity and treatment for men and women workers, the Convention requires ratifying states to make it a goal of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The Convention also requires governments to take account of the needs of workers with family responsibilities in community planning and to develop or promote community services, public or private, such as childcare and family services and facilities.

In Mauritius, some positive initiatives on the provision of childcare facilities in EPZs have taken place. In Nicaragua, the Tripartite Labour Commission on EPZs has discussed means of facilitating work for those with family responsibilities. In Nicaragua too, trade unions secured the right for nursing mothers to take 15 minutes' break every three hours in order to breastfeed their babies.

Sexual harassment and gender-based violence

A major occupational health and safety concern in EPZs is sexual harassment and gender-based violence. Broadly speaking, sexual harassment in the workplace is any unwelcome sexual advances or verbal or physical conduct of a sexual nature and inappropriate comments, undesired and unnecessary physical contact, lascivious looks and gestures, compromising invitations, requests or demands for sexual favours and explicit and implied threats if sexual favours are not granted. The International Labour Conference in 1985 adopted a resolution on equal opportunities and equal treatment for men and women in employment which states that "*sexual harassment at the workplace is detrimental to employee's working conditions and to employment and promotion prospects. Policies for the advancement of equality should therefore include measures to combat and prevent sexual harassment*".

Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty. Women form a significant percentage of workers in occupations at higher risk to violence, and are particularly exposed to risks as migrant workers and when holding atypical and precarious jobs, often lacking both individual and collective power. Women in EPZs are particularly exposed to this violence.

Social Dialogue in EPZs

Social dialogue can be defined as any kind of negotiations, consultations or exchanges of information between or among representatives of governments, employers and workers on issues of economic and social policy. Social dialogue can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations between trade unions and employers' organizations. It can take place at national, regional or enterprise level.

Social dialogue is an instrument for the promotion of better living and working conditions and social justice, the resolution of economic and social issues, the encouragement of good governance and the achievement of social and industrial peace and stability. For a good social dialogue, some enabling conditions are needed. Strong and independent representative workers' organizations need to exist, with the capacity to engage effectively and efficiently in social dialogue processes.

Two ILO core labour Conventions that are paramount here, namely Conventions 87 and 98 on freedom of association and collective bargaining⁸¹. The State plays a major role in promoting these conditions through the ratification of these Conventions and compliance in practice. The State also has a role in providing essential support for the social dialogue process through the establishment of the legal or institutional frameworks, which enable workers' organizations to engage effectively.

The state of social dialogue in EPZs varies from one country to another but generally collective bargaining in EPZs is quite rare. For EPZ workers in triangular relationships due to the widespread use of employment agencies, collective bargaining is a near impossibility.

Box 22: Relevant ILO instruments on social dialogue

Right to Organise and Collective Bargaining Convention, 1949 (No. 98): The Convention says that measures, appropriate to national conditions, should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Collective Bargaining Convention, 1981 (No. 154): This calls for measures adapted to national conditions for the promotion of collective bargaining.

Workers' Representatives Convention, 1971 (No. 135): The Convention states that workers' representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

⁸¹ See the section on "Workers' rights in EPZs".

Tripartite Consultation (International Labour Standards) Convention, 1976

(No. 144): This priority Convention explains the meaning of “representative organizations of employers and workers” and requires ratifying states to operate procedures that ensure effective consultations between representatives of the government, of employers and of workers on matters regarding items on the agenda of the International Labour Conference, submissions to competent national authorities of newly adopted ILO standards, re-examination of unratified Conventions and Recommendations, reports on ratified Conventions, and proposals for denunciations of ratified Conventions. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken, and consultations shall take place at least once a year.

In Sri Lanka, EPZs have been characterized by a lack of social dialogue. In particular, tripartite social dialogue within the National Labour Advisory Council has been very limited. In Indonesia, the government is formulating a mechanism for the establishment of local tripartite labour committees within EPZs to serve as local social dialogue forums. In Madagascar, a bipartite follow-up committee meets once a month to address social and economic issues pertaining to EPZs. In Nigeria, the EPZ authorities along with most of the firms operating in the zones have always frustrated any meaningful form of social dialogue, while promoting unfair labour practices. There have been some attempts by the Federal Ministry of Labour and Productivity to create a semblance of best industrial relations practice. These, though, have been rather feeble and there is a total absence of tripartite structures or mechanisms within the dynamics of labour and employment relations in the zone. The Calabar EPZ is the only site where some degree of tripartite industrial relations practice has been attempted. In Togo, all negotiations related to working conditions in the EPZs are undertaken bilaterally by the staff delegates grouped in the Staff Delegates Committee and the employers grouped in the Employers’ Association of the EPZs under the general supervision of the management authorities of the EPZ.

In Nicaragua, there has been an important and positive initiative, the Tripartite Labour Commission on EPZs. This was proposed to the government in 2006, as a body for resolving the labour conflicts that were taking place in the EPZs in Nicaragua. The government considered the proposal positively but did not support putting it into operation. In 2007, with the change of the government, the Executive Secretary of the National Commission of EPZs called trade union organizations to launch the scheme. In March 2007, the first agenda for tripartite dialogue within the Tripartite Labour Commission on EPZs was drawn up. There were 12 points for discussion, including:

- problems with the Ministry of Labour of Nicaragua, and in particular the application of Article 45 of the Labour Code, labour inspections, administrative procedures, minimum wages, work days, holidays, etc.
- creation of the Labour Court
- development of the corporate social responsibility strategy
- revision of production targets
- trade union and employer representation in the National Commission on EPZs.

The global crisis has had a very strong impact in Nicaragua and has caused many companies in the EPZs to close down, increasing the unemployment rates. The Tripartite Labour Commission on EPZs has critically helped to define a policy of employment stability and investment promotion with the involvement of workers, employers and the government. In the context of the global crisis, a National Emergency Economic and Labour Agreement was signed in March 2009, covering five commitments to:

- promoting employment stability and respect for labour rights and working conditions, with sound labour relations in workplaces
- preserving current employment and establishing the conditions to help preserve investment
- creating the Tripartite Labour Commission on EPZs
- setting minimum wage thresholds for the EPZs during the period 2009-2011
- establishing commissaries to provide workers on low incomes with basic food products.



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Given the persistence of the global economic crisis and the success of the National Emergency Economic and Labour Agreement, the Tripartite Labour Commission on EPZs signed another agreement entitled “Social and Labour Concertation of the Tripartite Labour Commission of the EPZs”. Representatives of workers, employers and the government signed this new agreement, in which nine points were considered including:

- developing social policies aimed at putting EPZ workers on the path to decent work, with full respect for ILO core labour standards
- preserving foreign direct investment and attracting more of it in, strengthening employment stability and improving salary conditions, as well as setting the minimum wage thresholds for the EPZs in 2011-2013
- promoting a programme of social housing
- continuing the development of commissaries in the companies operating in the EPZs, to ensure distribution of at least 40,000 food packages per year
- developing recreational centres for workers and their families
- creating “Loan and Savings Cooperatives” in each of the enterprises, so that saving is promoted and credit facilitated at a low interest rate. Some government bodies and programmes, such as the Nicaraguan Institute for Cooperative Promotion will advise on this.

Under the CAFTA-DR scheme “Development of Capacity Building in Labour and Environmental Issues in the CAFTA-DR countries”, the ILO was asked to let the Tripartite Labour Commission on EPZs implement and execute ILO projects and programmes related to EPZs. In July 2010, a health commission was integrated into the agreement to ensure health assistance to workers and to prevent illnesses and health risks.

The ILO sees as a success the relationship that has been established between workers and employers with the mediation of the government, thanks to the establishment of the Tripartite Labour Commission on EPZs. Representatives of workers’ organizations consider the agreement a significant advance in the working and living conditions of workers in EPZs. The assessment of the management of the EPZs is positive too, as they consider that conditions have improved, even though workers and employers still need to continue working together to improve things.



Chapter 4:

Trade Union Responses: engagement in policy debates

EPZs raise important questions and pose major challenges to trade unions. Their response to these challenges are essentially at two levels, namely, through engaging governments on the policy to develop EPZs; and through organising EPZ workers. This chapter is devoted to reviewing some key policy issues related to EPZ from a trade union perspective.

Governments throughout the world have embarked upon a policy of EPZ expansion. This is raising a number of questions in terms of industrial development, the cost-benefit of foreign direct investment (FDI), issues of forward and backward linkages to the domestic economy, the transfer of technology and the alignment with the WTO trade law, among other things. However, the main question to be answered is whether the establishment of EPZs is the best policy option for a sustainable national industrial strategy.

The EPZ policy debate has to determine whether setting up EPZs is the best way of creating more and better jobs, achieving decent work opportunities and developing the host country. The debate also has to identify the conditions under which existing EPZs can deliver positive socio-economic results to the host country.

The strategy of governments to develop EPZs has demonstrated that it can be effective in attracting investment and creating employment. However, in the long term very few EPZ-operating countries have been able to upgrade the quality of employment created. Many EPZ-operating countries anticipated that their EPZs would spur economic growth and industrialisation, but very few have managed to create the backward and forward linkages needed to achieve a wider economic impact in terms of industrial development. In general terms, EPZs have remained mainly processing and assembly operations based on imported components with very few local materials, goods and services required. Labour relations and human resource development remain two of the most problematic aspects of EPZ operations. The absence of credible and effective structures of labour-management relations is a source of instability in EPZs, which may undermine their ability to provide an internationally competitive export platform and to achieve improvements in wages and working conditions.

Do EPZs promote forward and backward linkages to the domestic economy?

The linkages between EPZs and the rest of the economy of the host country are essential in assessing whether and to what extent a country benefits from opening EPZs. Industrial strategies and policies play a fundamental role in the overall development of a country, and governments see EPZs as a means of industrial development. In this regard, forward linkages (sales of EPZ outputs to the domestic market) and backward linkages (purchase of inputs from the domestic market and subcontracting by EPZ enterprises to domestic firms) are very important from a national development point of view. These linkages would promote synergies between industries inside and outside the zones, overall coherence in industrial strategy, ensure the transfer of technology to local industries and boost domestic demand. However, in reality, the likelihood of backward and forward linkages is generally limited since foreign firms are often seeking export markets.

Most of the research undertaken on EPZ linkages to the domestic economy shows that the creation of backward and forward linkages is minimal. However, there are some positive examples of creation of linkages to the domestic economy. For example, in South Korea, where EPZs were established to promote the electronics sector and attract foreign direct investments, the State played a critical role in fostering linkages. The share of inputs from the domestic economy remained very high through the 1980s. However, these cases are exceptional. In Batam EPZ in Indonesia, there have not been many local business linkages with the domestic economy, since employers have generally preferred to import and re-export products in order to take advantage of the duty and tax reliefs available. In other areas of the world, such as the EPZs of Nicaragua and Guatemala, the majority of inputs have been sourced from abroad, with an average of 6% share of domestic raw material and supplies. In countries like Sri Lanka, Philippines, or El Salvador the share of inputs purchased domestically in the 1990s ranged between 3 and 9 per cent. The Dominican Republic's EPZs purchased only 0.0001 per cent of material inputs from the domestic market in 2004. Evidence of technology spill overs is also rare, as the low-skill assembly type production so common in EPZs is generally not conducive to technology transfer. This is a crucial weakness of the EPZ model because local industries are often in need of markets, skills and technology transfer to improve their productivity and competitiveness. So EPZs do not tend to promote an integrated national industrial strategy but rather islands completely cut off from the national economy.

Costs and benefits of EPZs

The debate on the benefits of EPZs touches upon a number of issues, from labour rights, environmental protection and urban planning to the impact on government revenue, employment, trade, foreign exchange earnings and development. The immediate goal for countries establishing EPZs is to generate FDI, exports, foreign exchange and employment. For a number of countries these goals have been met, especially with respect to exports. However, these gains must be weighed against the cost of generating the benefits of their establishment, in particular the possible loss of tax and tariff revenues and the investments needed to attract EPZ companies.

The establishment of an EPZ affects governments' revenue and expenditure. In terms of government expenditure, significant public investment in infrastructure is often necessary. Infrastructure costs, including public utilities such as electricity and water, may become extremely costly, especially if expected benefits such as employment and investment are delayed.

Export diversification is a potential advantage of EPZs. FDI in new manufacturing sectors can contribute to the diversification of exports. Another potential benefit is the transfer of technology from foreign companies in the zone to domestic companies. Technology transfer may be realized through forward linkages from a supplier of products to a buyer and backward linkages from a buyer of products to a supplier as well as through formal training or personnel transfer from one company to the other. However, examples of technology transfer in EPZs are rare.

EPZs may also contribute to the goal of economic development indirectly by creating conditions in which pro-development policies can be implemented. In particular, by generating a supply of foreign exchange, EPZs can help provide governments with the fiscal space or the purchasing power over foreign assets that ultimately promotes economic development.

Among governments of developing countries with EPZs or interested in establishing them, there is a perception that generous fiscal incentives are needed to compete in a world where capital can flow freely and where trade liberalization offers the opportunity to move production. These incentives, if not properly assessed, may deprive governments of tax income without proper compensation in return. In this regard, there have been cases where these incentive packages have not worked well. For example, Namibia tried to attract foreign direct investment to its EPZ in Walvis Bay providing investors with an indefinite tax holiday. After the enactment of the EPZ Act in 1995, the authorities expected to reach 25,000 newly employed people within the first 5 years. However, the EPZ created only 400 jobs by 1999.

The impact of terminating the Multi Fibre Arrangement

The apparel industry and market is the largest sector in EPZs companies' exports. The phase-out of the Multi Fibre Agreement (MFA) and of the Agreement on Textiles and Clothing (ATC), radically changed the sector around the world. Many EPZs were established because of the MFA, as its provisions enabled companies to move around globally in order to get quota shares in different countries. The phase-out took place over a period of 10 years, with the MFA ending on 31 December 2004.

The greatest beneficiary of the phase-out of the textile and clothing quotas has been China, which has a large number of both high- and low-skilled workers and the capacity to operate on a very large scale. This operational dimension makes the country very attractive to large transnational corporations. The reasons for China's success in clothing exports have been low unit costs. Other countries with very low wages like India, Sri Lanka, Viet Nam or Indonesia have also maintained or even expanded export market shares after the phase-out. On the other hand, countries like Mexico, the Dominican Republic, Mauritius, Lesotho and Madagascar have seen their shares disappear as a result of Chinese competition. In addition to low wages, the winner countries have a record of lax enforcement of labour standards.

The MFA phase-out has also made some agreements linked to the quota system ineffective. The USA-Cambodia Agreement, which linked the improvement of labour standards as monitored by the ILO to increases in Cambodian apparel export shares to the USA became inoperative since there was no quota to increase. This agreement had been hailed as an effective and inspirational model for improving labour standards.

EPZs and the World Trade Organization

The World Trade Organization (WTO) has no view on EPZs as a trade instrument and does not regulate them directly. There is no WTO definition of “EPZ” and issues regarding them have never been challenged in the WTO Dispute Settlement Body. EPZs however provide subsidies that are incompatible with the WTO rules, in particular with the Agreement on Subsidies and Countervailing Measures (SCM) within the Marrakesh Agreement



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establishing the WTO. Some argue that since WTO rules prohibit the export subsidies granted by EPZs, these zones will eventually be phased out. However, this is not the case. EPZs are continuing to expand throughout the world and will continue to exist.

The SCM Agreement excludes some countries from the prohibition of subsidies, and establishes some exemptions for other countries in the form of time extensions for phasing out these subsidies.

In this regard, Article 27 of the SCM Agreement excludes the least developed countries (LDCs) from the prohibition on export subsidies, understood as those WTO members that fall within the United Nations definition of LDCs. These countries are Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Democratic Republic of Congo, Djibouti, Gambia, Guinea, Guinea-Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Togo, Uganda, Tanzania and Zambia.

The SCM Agreement also excludes other countries from the prohibition on export subsidies until their GNP per capita exceeds \$1,000. These countries are Bolivia, Cameroon, Congo, Ivory Coast, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

A number of other developing countries are not subject to the prohibition on export subsidies for certain identified programmes, subject to notification, standstill and prior approval requirements. These countries currently enjoy a time extension up to 31 December 2013, with a final 2-year phase-out period ending on 31 December 2015. They are Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines and Uruguay. However, this extension is not unconditional nor automatic and countries that received a continuation of the extension must undergo an annual review by the SCM Committee and provide a description of all export subsidy programmes in operation. The WTO members that were granted this time extension agreed not to seek further extensions after this date and to phase out all the export subsidies by this date. After this termination date, no further extensions are foreseen. Some of these countries have notified their programmes for establishing EPZs. In this regard, Antigua and Barbuda has notified its “Free Trade/Processing Zones Programme”, Costa Rica has notified its “Duty Free Zone Regime”, the Dominican Republic has notified the “Law 8/90 to promote the establishment of Free Trade Zones”, Jamaica has notified its “Jamaica Export Free Zone Act” and Mauritius has notified its “Freeport Scheme”, amongst other countries.

If the use of export subsidies is prohibited, countries will get round the prohibition and look for other ways of creating new incentives that are compatible with WTO rules. This may even include efforts to make labour legislation and its enforcement even more lax in order to reduce export costs. So EPZs will continue to exist and expand. Besides, if all countries are opening EPZs, no government will complain against another government’s use of export subsidies. In other words, it will no longer be considered a trade-distorting issue as everyone will be using them.

The World Bank Group and EPZs

One of the main criticisms that may be made of the International Finance Corporation (IFC) when it promotes EPZs is the non-respect of freedom of association and the right to

collective bargaining, as for example in Bangladesh. To be considered for IFC financing, a company must meet basic economic, environmental and social criteria and must agree to the financial terms and also to the IFC's Performance Standards⁸². In this regard, the client must not interfere with workers' right to form and join organizations of their choosing or to bargain collectively, even if the national law remains silent on this issue, and it must not discriminate or retaliate against workers who participate in trade unions and bargain collectively and must engage with such workers' representatives. The client must respect collective bargaining agreements in place and if these agreements do not exist, it must comply with national law to define working conditions and terms of employment.

In 2003, the former ITGLWF⁸³ and the former ICFTU⁸⁴ warned the IFC of the poor labour practices of a large clothing manufacturer company opening a new facility in a Haitian EPZ with IFC support. In 2004, the IFC agreed to include a loan covenant requiring the firm to respect the workers' freedom of association. However, after a few months the company fired 350 workers for protesting against the management's refusal to recognize or negotiate with a union that the majority of the employees had joined. After several months of pressure and mediation, the dismissed workers were rehired in 2005. By the end of 2005, the firm had negotiated a collective agreement with the union, the first one for an EPZ in Haiti. As a result of this, a practice of settling differences through negotiation became firmly established at the firm.

The IFC has undertaken some project activities in the field of labour rights and EPZs. The IFC's Social Management Programme in EPZs in Bangladesh is an example. This project seeks to leverage the nature of an EPZ with co-located companies, the zone management, and built-in enforcement mechanisms to improve working conditions. The programme uses different mechanisms, such the analysis of current labour standards at both national and BEPZA (Bangladesh Export Processing Zones Authority) level, the implementation of an awareness-building campaign for both management and workers and the extension of the World Bank programme for labour inspectors or counsellors. However, this falls short of a full compliance with the right to organise and the right to collective bargaining.

Concluding remarks: trade union advocacy for EPZ workers' rights and gender

EPZs have flourished as a vehicle for globalized production, as an employer strategy for low-cost exports and as a governmental strategy to absorb surplus labour and attract FDI. By promoting a race to the bottom, the EPZ model is a low-road to job creation. By its very nature, EPZ investment is precarious and likely to leave the country at a moment's notice if more favourable conditions for production, including lower wages, are on offer elsewhere.

There is no one-size-fits-all solution to ensure decent work and socio-economic development through the EPZ strategy, since there is great international variation in the nature of EPZs,

⁸² See "The IFC Online Complaints Mechanism" under chapter 6 "International Mechanism for defending and promoting EPZ workers' rights"

⁸³ International Textile Garment and Leather Workers' Federation

⁸⁴ The establishment of the International Trade Union Confederation (ITUC) in Vienna in November 2006, ended the division that had characterized the international trade union movement for over a century. The ITUC represents currently 175 million workers in 151 countries with 305 national affiliates. The International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) were both dissolved before the establishment of the ITUC.

their linkages to the domestic economy and the status of employment conditions in them. A basic prerequisite for the social development capacity of EPZs is, however, that the zones are linked to the host economy in ways that promote some level of reciprocity and cohesion. Research shows that linkages are more likely to occur when EPZ activity focuses on more high-tech sectors, when the domestic market is larger and has a potential for diversity, when the baseline level of industrial development is higher and when the State is a developmental state.

The EPZ strategy undertaken by many governments has been strongly female-intensive, with peaks of 90% in some countries, and with all developing countries having had recourse to women workers. EPZs have become an important platform for young women to enter the formal economy at better wages than in agriculture or the domestic sector. Governments do not seem to consider in their EPZ employment strategy the different profiles of EPZ workers and the intensive nature of production, the lack of human resource development policies and the underdeveloped labour relations practices existing in EPZs, amongst other aspects. EPZ female workers experience different living and working conditions, and decent work deficits in the EPZs have a much stronger impact on them.

Trade union organizations have a critical role to play in promoting the rights of the workforce of companies operating in EPZs. They must reach and target women workers, advocate for them with governments and EPZ employers, and address the factors that make female

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workers in EPZs more vulnerable to exploitation and denial of rights, considering their multiple identities.

Trade union initiatives to address the specificities of the workforce in EPZs can take different forms, including advocacy, awareness-raising and capacity- building action:

- Trade unions must advocate for the full respect in law and practice of policies, laws and regulations protecting EPZ workers, in order to reduce their vulnerability in the workplace.
- Trade unions must engage governments on the gender implications of EPZ policy and fight for issues that are particularly important for women workers in the zones.
- Trade unions must work to ensure that all laws and regulations cover all EPZ workers, seeing to it that no discriminatory practices take place based on race, gender or ethnicity.
- Trade unions must reach EPZ workers both in their workplaces and outside, raise awareness of their rights and help to understand them, for example, through campaigns and capacity-building activities.
- Trade unions must live up to their responsibility to ensure that EPZ workplaces are properly monitored and inspected and that the specificities and necessities of the workforce are addressed.
- Women should be integrated into all trade union structures and play a critical role in advocacy and related activities. Women are demanding more space in the trade union movement, in its decision-making, but they fail to take up that space due to lack of time, most often because of family responsibilities.



Chapter 5:

Trade Union Responses: organizing strategies in EPZs

Chapter 4 discusses the trade union response to the EPZ model through policy engagement with governments, employers and intergovernmental organisations. The second major trade union response to the creation of EPZs is through organising workers in the zones to enable them to promote and defend their interests as trade unions.

Organizing in EPZs is one of the most difficult challenges faced by trade unions. Due to the nature of industrial relations in EPZs, persistence and creativity are needed to organise workers in the zones. The purpose of organizing workers in EPZs is to create strong trade unions that defend and advance workers' interests, change the world of work in EPZs and tackle decent work deficits through the representation and defence of their interests through collective bargaining.

Obstacles to organizing

Trade unions encounter numerous obstacles in their effort to organize workers in EPZs. As one can see in Chapter 3, working conditions in EPZs are characterised by decent work deficits. All these *decent work deficits* constitute obstacles to organising workers in the zones. So in embarking on an organizing drive, trade unions may wish to review the *obstacles in law and in practice* of the different decent work deficits identified in Chapter 3. Of critical importance are the legal and practical obstacles to the exercise of the right to organise and to collective bargaining. However, considering that most of EPZ workers are young working women, equally important is a review of legal and practical obstacles that relate to gender, for instance, discrimination and workers with family responsibilities.

Box 23: Review of the law and practice of some key ILO instruments before organizing

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (Convention No. 98)
- Equal Remuneration Convention, 1951 (Convention No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111)
- Workers with Family Responsibilities Convention, 1981 (Convention No. 156)
- Maternity Protection Convention, 2000 (Convention No. 183)
- Labour Inspection Convention, 1947 (Convention No. 81)
- Termination of Employment Convention, 1982 (Convention No. 158)
- Protection of Wages Convention, 1949 (Convention No. 95)
- Minimum Wage Fixing Convention, 1970 (Convention No. 131)
- Occupational Safety and Health Convention, 1981 (Convention No. 155) and its Protocol of 2002
- Social Protection Floors Recommendation, 2012 (No. 202)

The *instability of investments in EPZs* is another obstacle to organizing. As EPZs are part of the production system of globalization, changing technology and changes in the structure of economic activity have profound effects on the ability of workers in EPZs to organize themselves. So complex supply chain changes, the threat of relocation, and the uncertainties in the global economy constitute a major obstacle to organising.

Employer practices and the organisation of work constitute another major obstacle to organising. In addition to the violations of workers' rights listed in Chapter 3, the growth of precarious work and the proliferation of contracted and outsourced labour through labour agencies is also a big obstacle. Companies avoid the obligations that laws place on employers by contracting work out and denying employment relationships. Many EPZ workers have fixed-term contracts with duration of only a few months. These workers are generally more reluctant to form and join a trade union.

Linked to the high turnover of EPZ workers is the difficulty unions face in ensuring the *continuation of trade unions and their leaderships* in the zones. This is also a major obstacle. When a trade union is created in an EPZ, its continuity is directly linked to the continuation of trade union leaderships, something that is difficult given the fact that dismissals of trade unionists are very frequent and staff turnover in zones is very high.

Perceptions of trade unions have in some regions also been an obstacle to organizing. Young workers who have little experience of the world of work and even of urban areas in some cases, may tend to perceive trade unions not as organizations that resolve their problems but rather as troublemakers and rioters. Being often very poor, they would tend to stay "out of trouble" until they face the injustices in the zones. Unions therefore have the challenge of being sensitive to this perception or EPZ workers.

Another potential obstacle to organizing workers in EPZs is the *atomization* of trade unions engaging in the zones. One of the priorities for trade union organizations should be to achieve a greater unity of action when targeting and organizing workers in EPZs. This may even include collaboration with like-minded NGOs and women's organisations in order to have access to EPZ workers and to organize them.

However, by far the biggest obstacle to organizing workers in EPZs is dealing with **fear** among workers. The fear of being dismissed or blacklisted on the grounds of trade union affiliation or even because one is pregnant, makes organizing very difficult. Finding ways to reassure workers and to overcome their fear is therefore crucial if unions are able to make a headway in organising.

Gender: a critical factor for organising in EPZs

Before one embarks on an effort to organise, it is absolutely necessary to identify the group of workers one aims to organise and to understand their specificities, the issues they are faced with and their perceptions. Most of the workers in EPZs correspond to several identities. They are generally young women who are poor and may also be migrant. They find jobs in EPZs but they are only offered precarious work with low levels of pay and appalling working conditions. Therefore, gender, must be at the heart of any strategy to organise in EPZs.

The level of unionization among women workers in EPZs is low. Many of them have never had trade union experience. Traditional methods of recruitment have often proved ineffective with them, and they have also sometimes developed alternative forms of informal organization in parallel to trade unions. Men dominate most trade unions and do not always assign enough importance to women's issues and concerns. They tend to consider women's employment issues such as equal wages, maternity leave or childcare facilities as secondary matters. This implies that trade unions have to develop effective strategies to attract EPZ women workers and to serve their interests and address their concerns. Trade unions must also be open to build alliances with like-minded women's organisations that are active in EPZs. An effective tool has been the provision of services to EPZ women to build trust among them. Using women activists in the frontline of the organising drive is also critical if unions want to reach out to EPZ workers.

Opportunities for organizing

In organising, there is the tendency to focus on the challenges and difficulties of organising the workers in a particular plant. However, every situation also presents to unions opportunities for organizing. These opportunities may be local or national, while others may be because of international factors. It is important to factor-in these opportunities in any serious trade union strategy to organize workers.

So when organizing in an EPZ company, time needs to be spent to understand the opportunities that exist for organising in that particular company. These opportunities may range from their reliance on certain external markets that are favourable to unions, their position in the supply chain, their dependence on a more union-friendly global company, and so on. Once these opportunities are factored into the organizing strategy the union would stand a better chance of being successful.

Globalisation and the organization of business activity through international production are increasing the need for international trade union cooperation on organizing workers in EPZs. Another opportunity for organizing is to conduct international campaigns in close cooperation with the GUFs and the ITUC. The use of International Framework Agreements (IFAs) provides another opportunity to influence the employment practices in the EPZs and to build strong trade unions.

The provision of capacity-building activities and other programmes aimed at promoting the ability to organize is a good opportunity for organizing. The ILO and the international trade union movement can mobilize human and financial resources for this, including the sharing of expertise, knowledge and material between the international level and national affiliates.

The use of new communications technology and social media tools could play a role in organizing. Social media like Facebook or Twitter can be effective tools for organizing workers in EPZs. They can turn communication into interactive dialogues and may help to coordinate and spread important messages about the advantages of forming and joining a trade union. They can also be used to denounce violations of trade union rights while maintaining a high degree of personal anonymity, and can be very useful in the development of campaigns. However, it is important to understand that most EPZ workers are poor and do not necessarily have the means and the know how to use these information technologies.

Yet another opportunity for organizing is through undertaking organizing drives in the community. Whether it is through the organisation of community events or house to house visitation of identified EPZ workers, trying to reach workers in the community is a difficult but an important strategy to reach EPZ workers – especially when trade unions are denied access to the zones.

Concrete organizing strategies and experiences in EPZs

Organising is context-specific. Organising depends on a whole host of issues which differ from one context to the other. It depends on the working environment, the target group or workers, the weaknesses and strengths of the employer, obstacle and opportunities for organising, and so on. Therefore, there is no one-size-fits-all strategy to organising. The



examples that will be presented in this chapter are therefore present not as models of how to organise but rather to inspire trade unions to action. These examples are therefore not to be necessarily copied but rather for lessons to be drawn from them and to inspire trade unions to learn from these experiences and develop their own strategies to face up to the specific challenges in their different countries.

In organising EPZ workers, trade unions could adopt a wide range of measures, including reviewing existing priorities and resource allocations, intensifying trade union education, increasing cooperation with other trade union organizations and reviewing their respective experiences with different organizing approaches, informing the public widely about trade union activities, adopting targets for membership increase and developing new techniques and methods of organizing through better planning and strategies.

Experiences of organizing in EPZs

In Sri Lanka, trade unions are using a new plan of action to organize EPZ workers. The largest trade union in the garment sector has undertaken education activities, conducting seminars and workshops for members, and has discussed what it could do to achieve union stability in the long term. In its 5-year action plan, it has focused on recruiting more members with a target of around 5,000 new members. The plan also centres on continuing education and training of activists and on improving the image of the trade union, through the organization of a festival close to the EPZs every year. The union runs offices in major EPZs, where experienced organizers can help workers in need.

The Free Trade Zones and General Services Employees Union in Sri Lanka has 30 years of experience in EPZs. Campaigning for workers' rights, particularly through the use of several international instruments, has been one of the major tools used to ensure that workers are organized and bargain collectively in the EPZs. The union states that trade union struggles combined with international trade union solidarity and the use of different international mechanisms have been the solution to gain more rights for workers, organize them and sign collective bargaining agreements.

In the Dominican Republic, the organisation of metal workers has a method of organizing the workers of EPZs that involves making contact with them outside the workplace. Two or three leaders are identified in each factory. They then get the home contact details of the other workers on the pretext of inviting them to a party. Once the initial contact has been made in a social situation, organizers visit the employees at their houses to discuss the union.

In the Dominican Republic, another EPZ trade union says that workers come to them complaining about the bad working conditions they suffer. The union then explains to them the various ways that it has of organizing workers in EPZs. They generally undertake clandestine campaigns and home visits to reach a big number of workers and then they hold the founding assembly of the trade union, while continuing the campaign to increase the number of members. They try to achieve the majorities necessary for collective negotiations and they show workers the results of the collective agreements, as an incentive to join the union. They state that international assistance and international trade union solidarity, for instance the help they receive from American trade unions, is decisive in putting pressure on companies and brands. The National Federation of Workers of EPZs says that the establishment of a trade union in the EPZs is very hard to achieve, but possible. Once the trade union exists and workers see that their working conditions improve, they

tend to approach and join the union. One of the services provided by the trade union is to advise on organizing and collective bargaining. In the past, they have achieved collective bargaining agreements that improved working conditions and boosted organizing drives.

One organizer in Indonesia explains that most of her organizing comes from setting up social calls with fellow workers on weekends, afternoons and holidays. She takes the time to talk to her neighbours about the positive things unions bring to communities.

The International Metalworkers' Federation states that the examples of two of its Indonesian affiliates are very important because they show that with determination and the right qualitative and quantitative objectives and strategies, it is possible to organize EPZ workers and improve their working conditions. According to this GUF, the success of these unions is largely due to an overall commitment to strategic organizing, putting their time and resources into proper targeting. They have been able to do so as they are national unions and they work in cooperation with each other, sharing experiences

and strategies, without competing for members or status and avoiding trade union atomization. The IMF affiliates understand that organizing workers takes planning. Organizing targets must be selected and agreed on and resources, both financial and human, must be dedicated to the task. One of the affiliates also has a few small cooperative businesses for members in between contracts or out of work. The businesses include motorcycle maintenance, a hair salon, laundry services and tailoring. Workers can volunteer to give basic education to children in poverty-stricken areas.

From 2001 to 2008, these unions recruited almost 50,000 new members, and the number of organized plants rose from 131 in 2001 to 364 in 2008. Most of the workers are women, and trade unions think that organizing efforts must be led by women. Women are also members of the executives and are represented in all structures, and they take a leading role in planning and coordinating organizing drives. Most of the workers are temporary contract workers, who may be reluctant to join a trade union. This is a big challenge for these unions and the top priority is eliminating job insecurity and precariousness. This



in itself gives workers a good reason to join a trade union. The unions make contact with workers through an organizing road show. The union goes directly to workers and provides free transport so that they can participate whenever they want. Hundreds of non-members attend the events to learn about their rights and how trade unions will make them stronger at the workplace. At these shows, the unions identify activists who could organize the other workers back in the factory. After the one-day organizing road show, the trade union forms task forces of 2-4 people. When they go back to the factories, they bring information on the union with them and they start to organize. One focus is on issues that are important to women, such as health and safety or maternity protection legislation. One worker states: “I joined the road show because I wanted to know about the increase in trade union activists and to know how to get involved. I will now ask my friends to join the union.”

In Nicaragua⁸⁵, the organizing strategies have focused on young workers and women in the EPZs of the capital city region. The organizing strategies have been supported by mobilization days, such as a Day of Action at the entrance of one of the EPZs. The trade unions have also organized training sessions for labour experts. These take place once a week and are given at a university that works closely with the trade unions. Trade unions in Nicaragua have sought international help in organizing workers. In doing so, they have worked closely with the ITUC, the Trade Union Confederation of the Americas (TUCA) and the Instituto Sindical para América Central y el Caribe (ISAAC), which have helped the unions to prepare several training sessions for workers and to work in unity to develop an action plan. The Secretary General of the National Federation of Textile, Garment and Leather Workers of EPZs acknowledges the efforts to organize were very hard but thanks to big campaigns, they have had results. Today, there are 48 trade unions in different industries and several achievements. In some companies, pregnant women can now go for lunch and leave the company ten minutes before the other staff and women with children can breastfeed them for 15 minutes every three hours. The unions have also been able to eliminate extra working hours on Saturday for young people who study that day, and they have also achieved an agreement that, during workers’ trial period, they enjoy the same rights as permanent workers. Working conditions continue to be very tough but the creation of the Tripartite Labour Commission on EPZs⁸⁶ has been a great achievement for a sustainable dialogue at national level.

In Nigeria, the intervention of the Nigeria Labour Congress (NLC) has played an important role in the processes leading to the organization of EPZ workers. In almost all the successful organizing efforts that have led to union recognition by the management in the EPZs, strike action or the threat of strike action has been a common element.

With the help of the ITGLWF, workers of the Korean-owned Corazon Apparel company of San Pedro Sula in Honduras have succeeded in forming a trade union. Most of the work had to be done secretly in the areas where workers lived, in order to prevent victimization and dismissals. As soon as the trade union gained sufficient support and declared itself publicly, the company started to put pressure on the union by dismissing its leaders. The

⁸⁵ The Maquilas Labour Platform (Mesa Laboral de las Maquilas) was a trade union coordination unit that was created in June 2003 and was operational until 2008 in Nicaragua. Several EPZ sectoral trade unions took part in its creation, as did trade union organizations at the national level. Although the platform did not manage to get all the EPZ sector on board and did not get government and employer approval, it managed to create in 2007 the Trade Union Confederation of EPZs, which was recognized by the Ministry of Labour of Nicaragua as an organization affiliated to the CST (Central Sandinista de Trabajadores), a national level trade union organization.

⁸⁶ For more information, see the “Social Dialogue in EPZs” section of Chapter 3.

ITGLWF made approaches to the government, to the company and to the retailers involved and this led to the reinstatement of the dismissed workers. However, the problems did not stop there and the company continued to exert pressure on those involved in the trade union, who were threatened, blacklisted, etc. The ITGLWF made five different approaches to the company concerned and to the retailers. The members of the trade union remained united and determined and they finally made a proposal for a collective agreement. Thanks to international pressure on the company, negotiations were completed and the company agreed to sign the collective agreement.

A trade union in El Salvador uses leaflets to call on workers to organize, and it adjusts its timetable to the workers' availability. They have created a legal department for both organized and non-organized female workers, where they give help and advice on labour law, family law and criminal law. In this way, women workers begin to identify with the union. They have also created a training facility where they give tuition in different subjects to children of both organized and non-organized female workers. Every three months, they teach 280 pupils.

In Georgia, a trade union helps workers in many ways, particularly women workers. It supports their efforts to obtain medical treatment or legal assistance, and it alerts the media to abuses in factories. The trade union acknowledges that international solidarity is decisive to guarantee substantial progress in EPZs.

The UMT in Morocco reports that entry into the EPZs is completely forbidden. So they see female workers outside the zones. They cooperate with NGOs and various human rights associations to denounce violations of workers' rights and raise awareness among workers of the importance of organizing.

In Togo, the CSTT says that organizing workers has not been an easy task, since they did not have the right to go into the companies to raise awareness about the importance of joining a trade union. They had to call on the workers to meet them outside of their working hours. For example, they gave some workers from cement companies some training in the principles and values of trade unionism one evening. The main challenge for them was to convince workers to unionize. They agreed to set up a union, and workers drew up the statutes. After the founding congress, the unionized workers sent an email to their employers and the management authority of the EPZ to inform them that the union had been founded. Since then, the movement in favour of trade union rights is growing stronger, and a second trade union was formed not long ago. 219 workers from 12 companies took part in its founding congress. The participants in the congress committed to support all organizations working to defend the workers' interests. They would also like to establish a structure to assist dismissed EPZ workers. The new trade union will help dismissed workers to assert their rights and is planning to set up a commission to discuss piecework rates. The trade union also intends to work for the payment of the minimum wage in EPZ companies and to ensure that all wage rises negotiated with the employers are effectively implemented. The CSTT-Togo lets the new unions meet on its premises. It has committed itself to train their members and is also planning to meet the employers to explain that these new unions do not pose a threat to their interests, that the unions are social partners that work in consultation with the employers to achieve respect for fundamental rights. The CSTT-Togo is asking other trade union organizations to be attentive to the members of these new unions and EPZ workers. In Togo, given the reticence of the EPZ management, no one had ever thought that they would be able to set up a trade union in the EPZs. However, it has proved possible.

In Madagascar, the Trade Union Federation of Workers of EPZs supports EPZ workers when they are fired because of organizing drives. They also accompany workers at the workplace where the employer permits this, and they restore workers' self-confidence when they lose their jobs. The trade union managed to gather 30,000 workers together in the capital city in 1998 to raise awareness among the media and public opinion of the appalling working conditions existing in the EPZs.

The ILO Bureau for Workers' Activities, has provided assistance, among others, to the Trade Union Congress of the Philippines (TUCP). 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, trade union monitors have assessed working conditions in over 70 companies. Activities are ongoing to spread and raise awareness of ILO core labour standards, and over 133 companies in the EPZs have been unionized by the TUCP.

Some key lessons learnt on organizing EPZ workers

Based on the different experiences of trade unions one can draw some general lessons that trade unions could consider in developing a strategy to organise EPZ workers. These include the following:

- Each union must develop its own strategies for the particular challenges it faces when organizing workers in EPZs in its country. There is no one-size-fits-all strategy for organizing EPZ workers;
- Many unions have found out that it is important to take time to plan a strategy for organizing. Such a strategy would take into consideration among other factors, the challenges and obstacles to organising and the (internal and external) opportunities for organising in a particular plant. Simple questions that could be asked include, who are the workers in the zone? What are their problems and interests the union should fight for; Where do they live? What are the strengths, weaknesses and opportunities of organising in the company? and so on;
- Most workers in the EPZs are young women. A critical factor in successful organizing is to ensure that women are adequately represented in trade union structures and play a central role in EPZ organizing - from planning to the implementation of activities.
- Since most EPZs make access to the zones very difficult, organizing strategies have to be undertaken both at the workplace and also at the community level. In the communities, this can be done through home-to-home visits, the organisation of awareness raising alternative events, and adjusting to the timetable of workers and their responsibilities outside the workplace. Trade unions need to be flexible in terms of working hours to reach EPZ workers, and women activists must play a leading role in organizing. They must be in the frontline when talking to young women;
- Combining traditional trade union activism and the provision of trade union services is an effective way to attract young women who have no previous experience of trade unionism or social activism. For instance, alongside trade union activism for freedom of association in the zones, unions could also provide legal aid to workers not only on industrial relations issues but also on other issues such as family law or criminal law. Some workers would be initially more attracted to the services the

union is providing. Based on the confidence that has been built, workers may then consider joining the unions and becoming activists themselves;

- Since the majority of EPZ workers are young women, who are poor and may be migrants, trade unions need to pay particular attention to these identities and adjust their services and organizing drives to issues that are priorities for EPZ workers, such as maternity protection issues or family responsibilities, amongst other things. Since the workers are mostly young, it is also important to adapt to the youth culture of the particular country through for instance, the events that are organised and the language that is used in making publicity on the union;
- EPZ workers suffer high job insecurity, with fixed-term contracts and low wages. One of the priorities of an EPZ worker is to ensure a permanent contract and see the wage increased. Trade unions need to start off with identifying with these priority needs. Organizing experience shows that workers are less reluctant to form and join trade unions if they see positive and tangible results and their working conditions are improved.
- Addressing the fear in EPZ workers for losing their jobs is crucial. Trade unions have to deal with this fear by a host of initiatives. These include respecting the sensibilities of the workers, providing legal and material support to workers who are dismissed as a result of engaging in trade union activities, informing workers of the international solidarity network of the union, strategising to reduce the risk of job losses due to trade union activities, as well as spending time for awareness raising and capacity building of EPZ workers;
- Technical cooperation activities can play an important role in organizing workers. The ILO, the ITUC and the GUFs can help trade union organizations to design and implement strategies for organizing workers in EPZs and can mobilize human and financial resources.
- Greater unity of trade action is critical to organizing workers in EPZs. Trade unions at national level need to cooperate with each other, share experiences and strategies and avoid atomization.
- Networking with like-minded NGOs, women's organizations, church-based groups or community groups can be effective in the strategy to organise workers. These groups may have privileged access to the zones and may be involved in different humanitarian projects with EPZ workers. Networking with them and working together to improve the working and living conditions of the workers has proved effective in some counties.
- Personal safety is often a primary concern for women and in cases where women have to travel far or use what is seen as unsafe transport, this can hinder their participation in meetings and capacity building events. In such cases providing safe transport to avoid harassment of women should be considered.
- In many places women lack control over their own mobility with strong social and cultural norms dictating social interactions between men and women. These norms might make it difficult to reach women effectively or convince them to attend meetings and therefore should be understood and dealt with.
- Engage in a public information and awareness programme in order to educate the community and general public on the conditions in the zones and win the sympathy of the general public to the struggles of the workers in the zones.

 **Exercises**

- 1) What are the main obstacles that you encounter in organizing workers in the export processing zones (EPZs) in your country? What opportunities exist for organising in the zones?

- 2) What are your main strengths and weaknesses of the workers and the union? How should the union overcome fear among the workers?

- 3) What are the lessons learnt from experiences in organizing in the past?

- 4) In organizing drives, which organisations at all levels would you contact for assistance and support? Which international mechanisms will you consider using?

- 5) In summary, what are the key elements of the organizing strategy of your union?



Chapter 6:

International mechanisms for defending and promoting EPZ workers' rights

One of the key lessons learnt by trade unions engaged in the organising of EPZ workers is that some situations require external pressure to make organising possible. Many unions have exerted this pressure through the use of different international mechanisms. These mechanisms can be used to put pressure on governments and employers at the national level to accept internationally recognised labour standards. These mechanisms can also be used to give visibility to the local struggles of trade unions for workers' rights. This international visibility of violations of basic workers' rights puts pressure on those who perpetuate these violations. International mechanisms are also a means of generating international solidarity. EPZs are a result of the globalisation of production and so when workers' rights are violated, one can mobilise international solidarity in favour of the workers. However, these international mechanisms cannot replace national action and efforts. Rather, these international mechanisms support the actions that are taking place at the national level. So one cannot simply depend on the international mechanisms to achieve trade union goals. External pressure can only support national level action. This chapter presents an overview of some of the key international instruments that trade unions could use in their fight for workers' rights in EPZs.

Using the ILO supervisory mechanisms⁸⁷ and programmes

The ILO can be used by trade unions in cases of violations of workers' rights in EPZs. Below are some ways of using the ILO, its supervisory system, declarations and programmes, to defend EPZ workers.

⁸⁷ ILOLEX: ILOLEX is a trilingual (English, French and Spanish) database containing ILO conventions and recommendations, ratification information, comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA), complaints, interpretations, general surveys, and numerous related documents. <http://www.ilo.org/ilolex/english/>

Using the Regular System of Supervision

Committee of Experts on the Application of Conventions and Recommendations

Each ILO Member State is obliged to make periodic reports to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions it has ratified. Copies of all reports on the application of Conventions should be communicated to representative workers' and employers' organisations inviting their comments. Trade unions can also send in their observations on the application of the ratified Conventions directly to ILO. In these observations, trade unions may point to violations of the provisions of the ratified Convention in both law and in practice.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) is the body responsible for the regular supervision of the observance by Member States of their standards-related obligations. The CEACR is a 20-member body consisting of eminent and impartial jurists, drawn from Member States who are appointed by the Governing Body of the ILO. It monitors compliance with international labour standards on the basis of reports submitted by Member States regarding the application of the

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Conventions ratified by them and also on the basis of observations by employers' and workers' organizations. A reporting cycle has been set up for Member States to send in reports on ratified Conventions. This reporting cycle which covers all Conventions that are relevant to EPZs, can be consulted in the ILO Handbook on procedures relating to International Labour Conventions and Recommendations ⁸⁸ or on the ILO web site. The observations of the CEACR are published in an annual report which is discussed during the International Labour Conference in the Committee on the Application of Standards.

ILO Conference Committee on the Application of Standards

The Conference Committee on the Application of Standards is a tripartite body consisting of representatives of governments, employers and workers. The Committee examines the annual report of the CEACR which is submitted to the International Labour Conference (ILC)⁸⁹. The Committee invites the representatives of some governments to attend its sitting and examines the measures taken by the Member State to give effect to the provisions of the Convention which it has ratified. On the basis of this discussion, the committee draws its conclusions which may include recommendations on measures that the government has to take to ensure conformity with the requirements of a Convention. The discussions and conclusions of the committee are published in its report. Through this mechanism, violations of the rights of EPZ workers can be raised at the ILC.

Using the Special Procedures of the ILO

Committee on Freedom of Association (CFA)

The CFA is a tripartite body of nine members drawn from the ranks of the government, worker and employer members of the Governing Body, that meets three times a year and examines complaints concerning violations of freedom of association. The CFA entertains complaints regardless of whether a Member State has ratified any of the Conventions in the field of freedom of association. This is because all ILO Member States have the obligation, by virtue of their adherence to the ILO Constitution, to recognise the principle of freedom of association. So if your country has not ratified any freedom of association convention, you can still file a complaint to the CFA in cases of violations of the principles of freedom of association. Complaints must be submitted in writing, signed and supported by proof of allegations relating to specific infringements of freedom of association. Complaints can be submitted by trade unions that are:

- A national organisation directly interested in the matter;
- An international organisation of workers which has consultative status with the ILO;
- An international organisation of workers where the allegations relate to matters directly affecting affiliated organisations.

⁸⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_192621.pdf

⁸⁹ The member States of the ILO meet annually at the International Labour Conference, held in Geneva, Switzerland. Each member state is represented by a delegation consisting of two government delegates, an employer delegate, a worker delegate and their respective advisers. In 2011 the International Labour Conference has met for its 100th Session.

Complaints should be addressed to the Director General, ILO, CH-1211, Geneva 22, Switzerland.

The report of the CFA is submitted to the ILO Governing Body for approval and the recommendations are transmitted to the Member State concerned. The recommendations may require the government concerned to report on the action taken pursuant to the recommendations.

The principles enunciated by the CFA are compiled in the Digest of Decisions and Principles of the Freedom of Association Committee⁹⁰ published by the ILO and provide guidance for decisions on future cases of a similar nature. A number of complaints about the denial of trade union rights to workers in EPZs have come up for consideration by the CFA over the last two decades. In case of doubt about the validity of a violation of freedom of association, trade unions should consult the Digest before submitting a formal complaint.

The ILO also has other special procedures, namely **Representations** which is a procedure governed by articles 24 and 25 of the ILO constitution, as well as **Complaints** under articles 26 and 34 of the ILO constitution. Using these procedures requires close coordination with your international trade union confederation to be effective and is normally devoted to very serious and repeated cases of violations of workers' rights.

Using relevant ILO Declarations

Two ILO declarations could also be useful in cases of violations of the rights of EPZ workers. These are the ILO Declaration on fundamental principles and rights at work and its follow-up as well as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

ILO Declaration of Fundamental Principles and Rights at Work of 1998 and its Follow-up⁹¹

The ILO Declaration of Fundamental Principles and Rights at Work requires all Member States of the ILO to respect, promote and realize the principles contained in the eight fundamental Conventions relating to freedom of association and the effective recognition of the right to collective bargaining, the elimination of discrimination in respect of employment and occupation, the elimination of forced or compulsory labour and the effective abolition of child labour, even when they have not ratified the Conventions in question. The declaration proclaims that all Member States have an obligation to do so, arising from the very fact of their membership of the ILO. Under the follow-up to this Declaration, governments of countries that have not ratified one or more of the fundamental conventions in question, are required to submit reports to the ILO. These reports should deal with the position of its law and practice in regard to the matters dealt with in the Convention and the extent to which effect is to be given to the provisions of the Convention. Trade union organisations may comment on these reports or send their observations directly to the ILO.

⁹⁰ http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_090632/lang--en/index.htm

⁹¹ <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

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Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy⁹²

The principles enshrined in this Declaration provide detailed guidelines on how enterprises should apply international labour standards concerning employment, training, conditions of work and life, and industrial relations. They are intended to guide all enterprises, whether multinational or national, public, mixed or privately owned, as well as governments, and organizations of employers and workers in home and host countries. Paragraph 2 of the Declaration states that “*its aim is to encourage the positive contribution, which multinational enterprises can make to economic and social progress and to minimize the difficulties their operations may give rise to*”. The Declaration is organized into four sections (general policies, employment, conditions of work and life and industrial relations) and its text aims at promoting coherence between public and private policies to ensure maximum positive impact to protect rights at work. Adopted in 1977, the ILO MNE Declaration was amended in 2000 in order to emphasize the need for companies to adopt a full commitment towards the respect for Fundamental Principles and Rights at Work.

In its section on industrial relations, the Declaration urges governments that have not ratified ILO Conventions Nos. 87 and 98 to do so and to apply, to the greatest extent possible, through their national policies, the principles that it embodies. It stipulates

⁹² The ILO Bureau for Workers' Activities (ACTRAV) has prepared a policy guide for workers on the “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy” called the ILO MNE Declaration: What's in it for workers?

that when governments of host countries offer special incentives to attract foreign direct investment, these should not include any limitation on the right of workers to join trade unions of their choice and to organize and bargain collectively.

The Declaration provides that workers employed by multinational enterprises should, without any distinction whatsoever, have the right to establish and be subject only to the rules of the organization concerned and to join organizations of their own choosing without prior authorization. It also provides that workers in multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their choice recognized for the purpose of collective bargaining. Paragraphs 50 and 51 of the declaration require multinational enterprises to facilitate collective bargaining, and paragraph 52 stipulates that multinational enterprises must not use the threat of transferring all or part of their operation in order to hinder the right to organize of the workers and the process of collective bargaining.

The Declaration also refers to contractual policies (with a section on security of employment) as well as on wages, conditions of work, minimum age and safety and health. It ends with a list of 69 standards (Conventions and Recommendations) which constitute the backbone of the guidance for companies, trade unions and governments.

The operation of the Declaration is monitored by periodic surveys every four years, through which the ILO constituents provide information about the effect they have given to the principles of the declaration. There have been eight surveys to date.

Regarding EPZs, the seventh survey⁹³ on the effect given to the declaration between 1996 and 2000 examined the status of observance of the principles of freedom of association and collective bargaining in multinational enterprises in EPZs. The survey indicated that workers in multinational enterprises in EPZs in several countries face difficulties in organizing themselves into unions.

The follow-up to the Declaration is currently being reviewed in the ILO so the Surveys have been suspended. Contact the ILO Bureau for Workers' Activities for information and assistance if you would like to use the Declaration to defend workers' rights in your country.

Using the ILO Decent Work Country Programmes⁹⁴

The ILO Decent Work Country Programmes (DWCP) are instruments to promote decent work as part of the national development strategies of countries and to place the expertise of the ILO, its instruments, advocacy and cooperation at the service of tripartite constituents in order to advance the ILO Decent Work Agenda. The DWCPs are written by national governments in consultation with social partners and with the full support of the ILO and are organized around a number of priorities and outcomes. Social dialogue and tripartism are required to play a central role in the planning and implementation, and budget lines are built in for technical cooperation activities. For example, the Nigeria Decent Work Country Programme (DWCP) was developed by the government and social partners in

⁹³ The Working Group notes that the response to this question overall leads it to query the effectiveness of the application of the MNE Declaration in EPZs and recommends exploration of further means for promotion of its principles in such settings. The Working Group, thus, recommends that further study and consultations, combined with ongoing programmes in the Office be conducted to promote the application of the Declaration by MNEs in EPZs. It further recommends that the issue of the labour and employment effect of MNE operations in the context of privatized and deregulated industries be addressed as a separate question in the Eighth Survey.

⁹⁴ <http://www.ilo.org/public/english/bureau/program/dwcp/index.htm>

November 2005 and subsequently revalidated in 2009. The DWCP of Nigeria included priority areas such as job creation (in particular for women and young people through self-employment), the reduction of human trafficking and child labour, the prevention and mitigation of the impact of HIV/AIDS in the world of work, the improvement of labour administration, ratification of ILO Conventions and social security. However, the Nigeria DWCP did not include a reference to the phenomenon of EPZs in the country or include any specific provision in the formulation, something that is criticized by the NLC (Nigeria Labour Congress). For more assistance on using all the ILO mechanisms presented above, contact the ILO Bureau for Workers' Activities⁹⁵.

Using other international mechanisms

The OECD Guidelines

The OECD⁹⁶ Guidelines for Multinational Enterprises⁹⁷ are recommendations, not legally binding, for responsible business conduct to which 42 governments⁹⁸ from all regions of the world and representing 85% of global foreign direct investment have adhered. These 42 adhering governments encourage enterprises from their countries to observe these recommendations wherever they operate. In addition, the Guidelines also apply to companies from non-adhering countries for their operations inside countries that do adhere to the Guidelines. According to the Guidelines, the enterprises that fall within their scope are also expected to encourage their business partners, including suppliers and subcontractors, to apply compatible principles. The Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises and have been updated several times since they were adopted in 1976 for the first time. The last and fourth update took place in 2011 on the occasion of the 50th Anniversary Ministerial Meeting of the OECD.

The updated Guidelines include new recommendations on human rights and company responsibility for their supply chains. They establish that firms should respect human rights in every country where they operate and also respect environmental and labour standards, with due diligence processes in place to ensure this happens. The Employment and Industrial Relations section of the updated Guidelines explicitly references ILO core labour standards and adds a new clause on wages, requiring multinational enterprises to provide the best possible wages, benefits and conditions of work related to the economic position of the enterprise but at least adequate to satisfy the basic needs of workers and their families. The updated version of the Guidelines has also put in place a new and tougher process for complaints and mediation.

Every country adhering to the Guidelines is obliged to establish a National Contact Point⁹⁹ (NCP), which is responsible for promoting them. Some governments have, however, failed to establish effective NCPs. The NCP is obliged to contribute to the solution of problems that are brought to its attention and to follow up according to well-defined steps in order

⁹⁵ <http://www.ilo.org/actrav/lang--en/index.htm>

⁹⁶ Organization for Economic Cooperation and Development

⁹⁷ <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

⁹⁸ 34 OECD economies plus Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania.

⁹⁹ http://www.oecd.org/document/3/0,3746,en_2649_34889_1933116_1_1_1_1,00.html



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to resolve the problem in question. The procedure allows trade unions to raise a case concerning the behaviour of an enterprise with respect to the Guidelines with a NCP. For assistance on using this mechanism, contact the Trade Union Advisory Committee to the OECD¹⁰⁰

The Global Compact

The United Nations Global Compact¹⁰¹ is a network that was formally launched as an initiative of the UN Secretary-General in July 2000. At the core of the UN Global Compact network are the Global Compact Office and six UN agencies¹⁰². The Global Compact's participants are companies, governments, trade unions, NGOs and civil society organizations together with academic institutions, development agencies, municipalities and organizations dealing with corporate social responsibility issues. The Global Compact is an initiative based on the voluntary choice of companies to commit themselves to a responsible mode of conducting businesses and invites them formally to join.

¹⁰⁰ <http://www.tuac.org/en/public/index.phtml>

¹⁰¹ <http://www.unglobalcompact.org/>

¹⁰² International Labour Organization (ILO), Office of the High Commissioner for Human Rights (OHCHR), United Nations Environment Programme (UNEP), United Nations Office on Drugs and Crime (UNODC), United Nations Development Programme (UNDP) and United Nations Industrial Development Organization (UNIDO)

In this regard, companies willing to participate are requested to send a letter to the UN Secretary General, expressing support for the Global Compact and its principles¹⁰³. The company has then to establish changes to its business operations so that the Global Compact and its principles become part of the business strategy of the company.

The company is expected to advocate the Global Compact and its principles publicly via communication tools. In this regard, the company is expected to publish in its annual report or similar corporate report a description of the ways in which it is supporting the Global Compact and its ten principles. This communication policy asks participants to communicate with their stakeholders on an annual basis about progress - for example, to describe practical actions that participants have taken to implement the Global Compact principles during the previous years, measure outcomes or make a statement of continued support for the initiative. If a participant does not publish annual reports, a communication on progress can be issued through other alternative channels, such as the company's website, press releases or official publications.

International Framework Agreements

An IFA is an instrument negotiated between a multinational enterprise and a GUF¹⁰⁴ to establish an ongoing relationship and ensure that the company respects the same standards in all countries where it operates. The specific aspect that distinguishes IFAs from corporate social responsibility initiatives is that they result from negotiation with the international workers' representatives. The agreements do not substitute for direct negotiations between companies and workers at the national or workplace level. They simply provide a framework for those negotiations to take place in a constructive way and with a minimum floor. The basic content of an international framework agreement is:

- The ILO core labour standards¹⁰⁵ and other issues such as wages, occupational safety and health or skills development and training, differing from one agreement to the other.
- Most IFAs make reference to the entire supply chain, even if the supplier companies are not parties to them. In this regard, companies usually commit to inform all their subsidiaries, suppliers, contractors and subcontractors about the agreement and to pressure suppliers to implement the principles enshrined in the IFA. One of the big complexities of implementing the IFAs in the supply chains is the fact that it is often not clear which companies are producing goods for a particular multinational company. In this regard, disclosure of supplier locations is very important and the GUFs have managed to negotiate this with some companies.

There are positive cases where signatory companies to an IFA have used these instruments to bring about improvements in their suppliers' behaviour. Some IFA signatory companies have chosen to end their contract with suppliers who violated the terms of the agreement.

¹⁰³ The Global Compact was originally based on nine principles that came under three categories: human rights, labour standards (ILO core labour standards) and the environment, with a new principle on corruption being added in 2004

¹⁰⁴ <http://www.global-unions.org/framework-agreements.html>

¹⁰⁵ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), Right to Organise and Collective Bargaining Convention, 1949 (No.98), Forced Labour Convention, 1930 (No.29); Abolition of Forced Labour Convention, 1957 (No.105); Equal Remuneration Convention, 1951 (No.100); Discrimination (Employment and Occupation) Convention, 1958 (No.111); Minimum Age Convention, 1973 (No.138); and Worst Forms of Child Labour Convention, 1999 (No.182)

For example, Bosch stopped its relationship with a South African supplier after they broke the terms of the agreement. Similarly, Umicore reported that they had terminated their business relationship with a Congolese supplier that breached a code of conduct that was part of the IFA.

Most IFAs include follow-up mechanisms involving trade union participation. These mechanisms include specific actions on the part of management and workers' representatives such as company-wide dissemination of the agreement or the development of joint training programmes. Most of the IFAs include mechanisms for the GUF to raise a case if a company violates the terms of the agreement.

ITGLWF-INDITEX framework agreement

The ITGLWF-INDITEX agreement is a unique example of an international framework agreement that applies exclusively to the company's supply chain. The agreement is based on the premise that the ITGLWF will work with INDITEX¹⁰⁶ along their supply chain to develop mature systems of industrial relations based on decent work and relying on social dialogue. In the agreement, INDITEX commits itself to applying and insisting upon observance of the provisions throughout its entire supply chain, in all locations, whether managed by INDITEX or by its external manufacturers and suppliers. External manufacturers and suppliers that subcontract work for INDITEX are responsible for the subcontractors' compliance with the agreement's provisions. External manufacturers, suppliers and their subcontractors are required to appoint a senior member of management to take responsibility for the implementation and enforcement of the provisions set out in the agreement.

The ITGLWF-INDITEX agreement provides for the right of all workers to unionize and bargain collectively and outlaws child labour, forced labour and discriminatory practices. It provides for the payment of a living wage, places restrictions on working hours, insists on safe and healthy workplaces and promotes job security, free of abusive treatment.

The ITGLWF and INDITEX have undertaken joint work to support the company's suppliers in complying with the terms of the agreement. This has often involved joint interventions in situations where workers were dismissed after joining a trade union. In these cases, the initial priority has been to secure the reinstatement of workers, the payment of wages for the period of dismissal and the introduction of mature systems of industrial relations at the plants concerned. In this regard, it is estimated that over 2,000 workers dismissed for exercising their right to freedom of association have been reinstated through the joint intervention of the ITGLWF and INDITEX in countries such as Cambodia, Bangladesh, Peru and Turkey. This approach has been an effective way of resolving disputes in the garment supply chain. As a result of the international framework agreement, INDITEX suppliers who have made efforts to implement the agreement and have concluded recognition agreements with unions are prioritized when deciding who maintains business relationships with the company. Some companies have even received significant increases in orders following the introduction of mature systems of industrial relations at their plants. INDITEX has also ceased using merchandisers and is now placing orders directly with factories. For more information contact IndustriALL¹⁰⁷.

¹⁰⁶ Industrial del Diseño Textil S.A (INDITEX) is the largest Spanish corporation and the world's largest fashion group.

¹⁰⁷ <http://www.industriall-union.org/>

Codes of Conduct

A code of conduct or code of labour practice is a written statement of principles adopted voluntarily by a company in order to express its commitment to a particular type of business conduct. Its implementation depends completely on the company concerned. Companies that adopt codes of conduct are usually expected to assign personnel to implement the code provisions and to report on the code implementation policies, programmes and performance. Likewise, they are also expected to review the code of conduct at the highest decision-making level of the company and to make code implementation a contractual obligation for suppliers and subcontractors. It is a well-established practice that the workers concerned by the code are made aware of its provisions and that they have some form of confidential complaint procedure. These codes of conduct however have their limitations. Even though trade unions may be involved in some of them, generally trade unions view these codes mostly as company public relations exercises that are ineffective in resolving violations of labour rights.

One has seen the emergence of various multi-stakeholder initiatives alongside codes of conduct. These initiatives involve sourcing companies, trade unions and NGOs. Below are examples of these multi-stakeholder initiatives



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- *Ethical Trading Initiative*¹⁰⁸: The Ethical Trading Initiative (ETI) is an alliance of companies, trade unions and voluntary organizations that work in partnership to improve the lives of workers across the globe.
- *Fair Labor Association*¹⁰⁹: The Fair Labor Association (FLA) is a collaborative process of socially responsible companies, colleges and universities, and civil society organizations to improve working conditions in factories around the world. The FLA has developed its own workplace code of conduct based on ILO core labour standards and created monitoring, remediation and verification processes.
- *Social Accountability International*¹¹⁰: Social Accountability International (SAI) is a non-governmental, international and multi-stakeholder organization dedicated to improving workplaces and communities through the implementation of socially responsible standards. SAI partners with trade unions, local NGOs, multi-stakeholder initiatives, environmental organizations and development charities.
- *Worker Rights Consortium*¹¹¹: The Worker Rights Consortium (WRC) is an independent labour rights monitoring organization that conducts investigations into working conditions in factories around the globe, in order to protect the rights of workers who make apparel and other products. The WRC conducts independent investigations and issues publications on factories producing for major brands.

UN Framework for Business and Human Rights¹¹²: “The Ruggie Principles”

The United Nations Human Rights Council endorsed in June 2011 the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy Framework’”¹¹³ proposed by the United Nations Secretary’s General Special Representative on the issue of human rights and transnational corporations in March 2011. The Special Representative produced previously in 2008 the “Respect, Protect and Remedy Framework”. The Guiding Principles aim to provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. They outline how states and businesses should apply the framework of 2008 and give comprehensive recommendations for its implementation. The framework has been already been used in the revision of important standards such as the IFC Performance Standards or the OECD Guidelines.

Principle 12 of the Guiding Principles states: “The responsibility of business enterprises to respect human rights refers to internationally recognized human rights, understood at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO’s Declaration on Fundamental Principles and Rights at Work”. Principle 14 of the Guiding Principles states: “The responsibility of

¹⁰⁸ <http://www.ethicaltrade.org/>

¹⁰⁹ <http://www.fairlabor.org>

¹¹⁰ <http://www.sa-intl.org/>

¹¹¹ <http://www.workersrights.org/>

¹¹² <http://www.business-humanrights.org/SpecialRepPortal/Home>

¹¹³ <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure”.

The IFC's Performance Standards and its online complaints mechanism

The IFC, the private-sector lending arm of the World Bank Group¹¹⁴, stated in 2003 that all borrowers should be required to comply with core labour standards and that the IFC would include them in the new safeguards policy under development. The “Performance Standard 2: Labour and Working Conditions” (PS2) explicitly referenced the eight ILO core Conventions and made observance of the core labour standards obligatory for all client companies.

Trade unions made several recommendations for improvements to the PS2 during a review process that began in 2009 and ended with the adoption of a revised policy by the World Bank's Board of Directors in May 2011, the “Performance Standard 2: Labour and Working Conditions” (PS2)¹¹⁵. The standards include new language requiring borrowing companies to examine alternatives to retrenchment of workers, such as negotiated working time reduction programmes, employee capacity-building programmes or long-term maintenance work during low production periods in case of business down-turns, enhanced protection for migrant workers and an improved mechanism for examining labour rights violations issues in firms' supply chains. The revised standards entered into force on the 1 January 2012.

Over the years, trade union organizations have advised the IFC of 27 cases of possible non-compliance by firms in which the IFC had invested. These cases involved allegations of refusal to respect freedom of association and to bargain collectively, gender discrimination and child labour. They occurred in various developing and emerging economy regions where the IFC has operations in Africa, Asia, Central and Eastern Europe and Latin America. After trade union organizations raised several cases where they felt the new requirements were not being applied in full, the IFC Social and Environmental Development Department agreed to create a simplified multilingual online complaints mechanism¹¹⁶. Experience has shown that while some complaints received a fast response and action was taken towards resolving the problems identified, in other cases responses were unduly long and no substantive action was taken to correct serious problems.

The IFC PS2 has important flaws. The IFC relies mainly on self-reporting by client companies rather than monitoring by its own staff. This means that trade unions have a vital role to play as the only independent source of information able to verify whether firms do indeed comply with PS2. However, many IFC investments take place in countries where independent trade unions are restricted or are illegal. In countries where trade unions do not face such restrictions, they often lack the human or financial resources to

¹¹⁴ The World Bank Group consists of five associated institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes.

¹¹⁵ http://www.gcgf.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_laborstandardsperformance_wci_1319577153058

¹¹⁶ This complaints mechanism has been established to facilitate trade union communications to IFC about project clients' non-compliance with IFC Performance Standard 2. The communications through this online mechanism are submitted to the IFC Environmental and Social Review Team: <http://www.ifc.org/laborps2/>

engage in this kind of monitoring¹¹⁷. Another important obstacle to effective monitoring of the compliance with the PS2 is the limited access to information about investments. The IFC posts notices about investments 30 days before the project goes to IFC's board for approval. This gives trade unions very little time to learn about newly proposed investments that may be problematic, conduct an investigation and report to IFC in the early stages of the loan preparation during which the precise loan conditions are negotiated.

Labour provisions in international trade and investment agreements

International trade and investment agreements include a number of mechanisms intended as levers to ensure the respect of workers' rights. Some of these agreements can provide inspiration when pressing for levers and enforcement mechanisms in other trade agreement negotiations. Trade unions must use the language and provisions enshrined in international trade agreements to pressure governments and employers to respect workers' rights. These levers are also important in campaigns and organizing drives. Trade unions have to make sure that trade agreements include procedures for handling violations of workers' rights, including complaint, denunciation and enforcement mechanisms.

A number of bilateral trade agreements have included labour provisions to reduce the negative effects on workers that can derive from them. The provisions differ from one agreement to another. The US and the European Union have used labour provisions, but with different approaches. Other regional groupings have also used labour provisions, for example MERCOSUR. The results of labour provisions are rather mixed, reflecting their usually non-enforceable nature. There are some positive examples but in many cases the provisions have remained unused or have not led to major changes.

Generalized System of Preferences

The Generalized System of Preferences (GSP) is a mechanism for granting preferential customs tariffs to developing countries on a non-reciprocal basis. It is an exemption from the Most Favoured Nation clause, one of the cornerstones of WTO trade law. Some industrial nations, particularly the European Union and the United States, use this exemption to promote compliance with certain labour standards and work conditions.

The US GSP

The US GSP came into force on 1 January 1976. Originally authorized for a period of 10 years, it was extended periodically until 2000 and then renewed up to 31 December 2008. To benefit from the preferential tariffs granted under this arrangement, a country had to fulfil a number of conditions. In the 1980s, the US Congress introduced workers' rights into the GSP arrangement, stating that beneficiaries should have taken or should be taking steps to afford internationally recognized workers' rights, including the right of association and the right to organize and bargain collectively, a minimum age for employment of children and freedom from compulsory labour. A country that failed to fulfil its commitment under the GSP arrangement would lose its preferential tariffs on all or some of its exports to the USA.

¹¹⁷ The ITUC/ Global unions liason office in Washington DC can be contacted at any time to get information on the activities of the IFC. The office monitors the activities of the Washington DC based international financial institutions, the International Monetary Fund and the World Bank Group.

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As an example of the effectiveness of the GSP in terms of compliance with labour provisions, in Swaziland, thanks to pressure brought by the American trade unions, which were able to press for the withdrawal of Swaziland's preferential access to the US market under the GSP, EPZ workers secured an improvement in the labour legislation. For assistance contact the AFL-CIO¹¹⁸.

The European Union's GSP

Since the beginning of the 1970s, the European Union's GSP schemes have been in force. The GSP scheme is implemented over cycles of 10 years with the current cycle beginning in 2006 and expiring in 2015¹¹⁹. The current GSP scheme covers the general arrangement that provides tariff reductions for 176 developing countries and territories, the "Everything But Arms"¹²⁰ arrangement, and the GSP+, where potential beneficiaries may get as an incentive additional trade preferences under the obligation to commit to respect effectively international conventions related to human and labour rights, including ILO core labour standards. The European Union has never followed a sanctions-based trade-related policy but rather a policy of incentives focused on technical cooperation.

The system defines sanctions mechanisms in the event of a violation of these undertakings, taking the form of a temporary withdrawal of the preferential arrangements for all or part of the country's exports. Such withdrawal also applies to all trade arrangements in force,

¹¹⁸ <http://www.aflcio.org/>

¹¹⁹ The scheme is implemented through regulations applying for 3 years with the current one expiring on 31 December 2011.

¹²⁰ "Everything but the arms" provides complete access in terms of duty-free exemptions and quotas to the European Union market except for arms and armaments for the least 49 developing countries defined by the UN.

and not only the GSP+. The mechanism is triggered mainly in the event of the serious and systematic violation of the international conventions, based on the conclusions of the monitoring bodies with jurisdiction in the matter, such as the ILO. Such withdrawal has applied in the case of Myanmar and Belarus, for example. For assistance in using this mechanism contact the ETUC¹²¹ or the ITUC.

US free trade agreements¹²²

The United States has secured the incorporation of labour provisions in all bilateral and regional free trade agreements since 1994. The 2002 Trade Act made it a requirement to incorporate labour provisions and a reference to labour standards in all trade agreements in which the USA takes part. The New Trade Policy with America, agreed in May 2007, states that specific labour provisions are to be included in free trade agreements, covering an obligation to adopt and maintain in the domestic legislation the ILO core labour standards and the obligation to effectively enforce domestic labour laws containing these standards. Agreements that have included these requirements include the North American Free Trade Agreement, the USA-Cambodia Agreement and the USA–Jordan Agreement.

Canadian free trade agreements¹²³

Canada has signed free trade agreements with labour provisions. The agreements establish principles, objectives, institutions and initiatives aimed at avoiding social dumping and advancing fundamental labour principles and workers' rights.

The Social and Labour Declaration of the Common Market of the Southern Cone (MERCOSUR)

The Social and Labour Declaration of the Common Market of the Southern Cone (MERCOSUR)¹²⁴ complements the Treaty of Asunción signed between Brazil, Argentina, Paraguay and Uruguay in 1991. This document was signed in December 1998 and goes beyond the ILO core Conventions, covering also social dialogue, employment promotion, unemployment protection, health and safety and social protection. The declaration mandated a commission to monitor adherence to the declaration and to advice measures to ensure adherence. The trade unions in the region have formed the Southern Cone Trade Union Coordinating Committee and hold regular meetings to pressure regional officials on social and labour issues.

¹²¹ <http://www.etuc.org/>

¹²² For more information, please visit the following link: http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS_115531/lang--en/index.htm

¹²³ For more information, please visit: http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS_115852/lang--en/index.htm

¹²⁴ http://www.mercosur.int/msweb/Documentos/Publicados/Declaraciones%20Conjuntas/003671668_CMC_10-12-1998_DECL-DPR_S-N_IN_SocioLaboral.pdf

The Central American Free Trade Agreement-Dominican Republic (CAFTA-DR)

The Central American Free Trade Agreement-Dominican Republic (CAFTA-DR) contains provisions for the enforcement of ILO core labour standards. Chapter XVI¹²⁵ of the agreement relates to labour. Labour obligations in CAFTA are part of the core text of the trade agreement and include provisions that commit CAFTA countries to provide workers with improved access to procedures that protect their rights. It provides for a three-part cooperative approach. Firstly, the agreement requires that all parties shall effectively enforce their own domestic labour laws in seven areas but there is no stipulation that these must be in line with international standards. Secondly, they will work with the ILO to improve existing labour laws and enforcement. Thirdly, strategies will be built to improve workers' rights (consultations, training programmes, financial resources and public participation). However, countries are not obliged to include procedural guarantees or sanctions to correct detected breaches, and funding to promote cooperation is lacking. The ILO core Convention on discrimination is not included in the agreement.

The European Union Bilateral and Regional Agreements¹²⁶

The European Union (EU) has negotiated many bilateral agreements. Most of them include labour provisions¹²⁷, but they do not go as far as the agreements signed by the USA or Canada. The EU does not pursue a trade sanctions-based approach to social and labour standards and has always focused on technical cooperation and assistance. The EU also undertakes sustainability impact assessments of the free trade agreements concluded with third parties.

The EU has bilateral and regional trade agreements with many non-European Union countries, including Algeria, Egypt, Israel, Lebanon, Morocco, Palestine Authority, Syria, Tunisia, South Africa, Switzerland, Mexico and Chile. It is currently negotiating trade agreements with several other regions including MERCOSUR, India, ASEAN countries and Canada and has recently concluded agreements with Peru, Colombia and South Korea. The European Union also engages in political dialogue at regional level such as, for example, the ASEM process and the EU-Latin American and Caribbean Summits.

The bilateral and regional agreements all contain a framework for economic, institutional and social cooperation. Most of them have a sustainable development chapter with social provisions, although sometimes vaguely defined. Examples of this are found in the clauses on core labour standards in the EU-South Africa agreement of 1999, the articles containing social provisions in the EU-Chile agreement of 2002, which includes a chapter on social cooperation that encourages the promotion of the ILO core labour conventions but this is not binding, or the preamble of the Cotonou Agreement, which contains references to social aspects of international human rights treaties and to the ILO core labour standards.

The EU is negotiating Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries that are members of the Cotonou Convention, which was signed in 2000. The negotiations are being undertaken with different sub-regional groupings within the ACP countries. Except for the Caribbean, where a full EPA has been initialled, signed and ratified, other countries have initialled interim EPAs, but

¹²⁵ http://www.ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file320_3936.pdf

¹²⁶ <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/>

¹²⁷ For more information, please visit: <http://ec.europa.eu/trade/wider-agenda/labour/>

many countries have refused to ratify them. The EPAs have been criticized for promoting aggressive liberalization of trade that would impede industrial development in ACP countries and would jeopardize agricultural production and services, while lacking binding and enforceable provisions regarding core labour rights.

The ITUC and the ETUC participate in and monitor closely the negotiations of the EU's bilateral and regional agreements and can be contacted at any time to raise awareness of violations of trade union rights in EPZs and bring them to the attention of the EU authorities.

Investment Agreements

In 1995, the OECD began negotiations aimed at drawing up a Multilateral Agreement on Investment (MAI). However, the negotiations were discontinued in 1998. The agreement

was intended to be an autonomous international treaty with a stated objective of establishing a broad multilateral framework for international investment, with high standards for the liberalization of investment regimes and investment protection and with effective dispute settlement procedures. The question of whether or not to include provisions relative to labour was raised but this was opposed by some countries involved in the negotiations. The final draft stipulated the commitment of the parties to the observance of internationally recognized core labour standards and the ILO as the competent body to set and deal with core labour standards worldwide. The negotiations on the MAI failed, and consequently several countries decided to enter into a number of bilateral agreements on investment, independent of free trade agreements.

The USA has around 40 bilateral investment agreements with developing countries¹²⁸. In all these agreements, the preamble clearly states that, while the primary objective is to encourage investment, other factors must be taken into consideration, notably boosting economic development, improving living standards, promoting workers' rights and upholding health, safety and environmental regulations. In spite of



¹²⁸ http://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp

the large number of bilateral investment agreements linking Latin American countries with developed countries or with other countries in the Americas, only the agreements with the US contain explicit references to compliance with international labour standards.

As regards Europe, there are around 1,200 bilateral investment agreements between the EU Member States and third countries. There is no common EU strategy regarding bilateral investment agreements, which remain the responsibility of the individual Member State. None of them integrate labour standards.

International Trade Union Confederation's reports

Every year, the ITUC prepares an Annual Survey of Violations of Trade Union Rights¹²⁹. The period reviewed is 1 January to 31 December of the previous year, and the public launch of the survey is in June. The ITUC's Human and Trade Union Rights Department¹³⁰ can be contacted at any time to include violations of trade union rights in EPZs in the annual survey. The department is also available to assist trade unions in preparing complaints to the ILO, in providing assistance in using the different international mechanisms for promoting workers' rights and to help unions launch campaigns in favour of the rights of EPZ workers.

The ITUC also regularly prepares reports on respect for internationally recognized core labour standards for the WTO General Council Trade Policy Reviews. The Economic and Social Policy Department of the ITUC can be contacted at any time about violations of trade union rights in EPZs that may be included in these reports.

¹²⁹ <http://survey.ituc-csi.org/>

¹³⁰ Human and Trade Union Rights Network



Contacts and links

LINKS

ACTRAV:	www.ilo.org/actrav
GLOBAL UNIONS:	www.global-unions.org
ILO:	www.ilo.org
INDUSTRIALL:	www.industrialunion.org/
ITUC Africa:	www.ituc-africa.org
ITUC America (CSA-TUCA):	www.csa-csi.org
ITUC Asia-Pacific:	www.ituc-ap.org
ITUC:	www.ituc-csi.org
OECD:	www.oecd.org
World Bank Group (International Finance Corporation):	www.ifc.org
WTO:	www.wto.org

CONTACTS

Global Union Federations

IndustriALL:	info@industrialunion.org
UNI Global Union:	contact@uniglobalunion.org

International Trade Union Confederation

Human and Trade Unions Department:	turights@ituc-csi.org
Economic and Social Policy Department:	esp@ituc-csi.org
Equality Department:	equality@ituc-csi.org

International Labour Organization

ACTRAV:	actrav@ilo.org
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