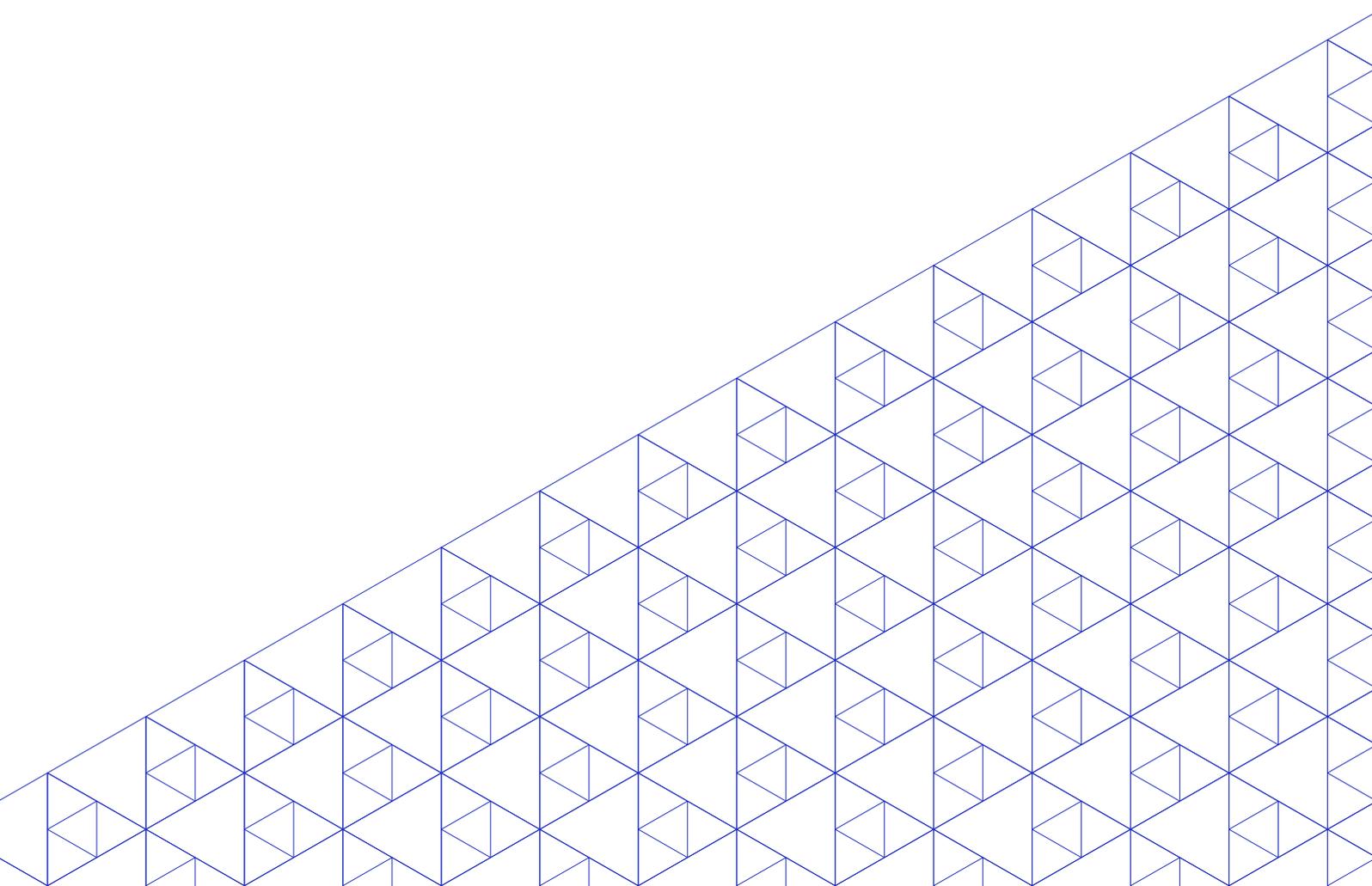




► Social dialogue in the Public Services in selected ASEAN Countries

A comparative overview of the laws, institutions and practices in Indonesia, Malaysia, the Philippines, Singapore and Thailand

Author / **Benedicto Ernesto R Bitonio Jr.**





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Abstract

The study assesses the social dialogue, freedom of association and collective bargaining institutions and practices in the public service among five member-countries of the Association of Southeast Asian Nations (ASEAN), namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Generally, “public service” and “public sector” as understood from the Constitutions of the five countries broadly subsume the various branches or agencies of the State performing governmental functions at central and local levels, including State enterprises. The Constitutions of the five countries generally recognize the freedom of association as a fundamental civil liberty, but national legislations typically regulate or restrict trade union rights in the public sector to maintain or protect public order, national security, general welfare or good morals. Malaysia, the Philippines, Singapore and Thailand have their respective institutions and mechanisms that could allow public sector employees, represented by their unions or associations, to engage in some form of social dialogue with their employers, including collective negotiation or bargaining. In public sector social dialogue mechanisms, high-level elected or appointed public administrators responsible for State functions represent the State as employer party. Their unions or organizations represent employees, who come from the civil service or the bureaucracy. Generally, regulation of public sector labour relations makes public sector social dialogue difficult and, in relation to Indonesia, inexistent. The author concludes that there is little evidence to show the meaningful existence of the enabling conditions for effective social dialogue, particularly the existence of strong, independent workers' and employers' organizations as envisioned in fundamental ILO conventions, and of political commitment to engage in social dialogue by all parties.

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Acronyms

ASEAN	Association of Southeast Asian Nations
CNA	Collective Negotiation Agreement
CSC	Civil Service Commission
CUEPACS	Congress of Unions and Employees in the Public and Civil Service
DJC	Departmental Joint Council
DOLE	Department of Labour and Employment
GOCC	Government Owned or Controlled Corporations
ILO	International Labour Organization
ILOSTAT	International Labour Statistics Database
ISIC	International Standard Industry Classifications
LGU	Local Government Unit
NGA	National Government Agency
NJC	National Joint Council
NTUC	National Trade Union Centre
PSD	Public Service Division
PSLMC	Public Sector Labour-Management Council
SUC	State Universities and Colleges

Executive Summary

The study assesses the social dialogue, freedom of association and collective bargaining institutions and practices in the public service among five member-countries of the Association of Southeast Asian Nations (ASEAN), namely Indonesia, Malaysia, the Philippines, Singapore, and Thailand. All five countries generally subscribe to the ILO's definition of social dialogue. However, national institutions, laws and practices on freedom of association and collective bargaining in the public service do not exist in Indonesia and are not well-developed in the four other countries. Influenced by the “developmental State” model that relies on State-led development planning and direct provision of key services, the industrial relations systems in the five countries, especially in the public service, place emphasis on labour control and containment of labour power, or active State guidance and coordination on the workers' exercise of labour relations rights. The exercise of freedom of association and collective bargaining is strictly regulated. Regulations include peremptory conditions on union formation, detailed procedures on negotiation, limitations on the subject matter for negotiation and preconditions before a collective agreement can take effect, and in at least three countries penalties for violation of trade union laws.

Generally, “public service” and “public sector” as understood from the Constitutions of the five countries broadly subsume the various branches or agencies of the State performing governmental functions at central and local levels, including State enterprises. National labour force surveys applying the International Standard Industry Classifications (ISIC) show that across the five, those “employed in public administration, defense and compulsory social security” range from four to 14 per cent of total employed, while the “aggregate employed in public administration, community, social and other services and activities” is between 13 to 25 per cent. In their public sector labour relations laws, Malaysia, the Philippines, Singapore and Thailand all exclude the armed forces, the police, others involved in the security of the State and in protecting public safety, as well as employees performing management functions. Further, other possible exclusions are officers or employees performing policy-making functions, confidential employees, managers and professionals, which account for 32 to 57 per cent of public sector employment. The statistics thus suggest that the effective base of organizable employees and of social dialogue in the public sector is significantly lower than total public sector employment.

The Constitutions of the five countries generally recognize the freedom of association as a fundamental civil liberty. But in relation to trade union rights, national legislations typically regulate or restrict its exercise to maintain or protect public order, national security, general welfare or good morals. This is especially the case for the public sector. The common areas of regulation include eligibility for trade union membership; one enterprise-one union or one industry-one union policies; a registration system administered by a union registrar to determine whether a trade union is to be conferred legal personality; structure, procedure and substance of collective bargaining; a machinery for labour dispute resolution; protection of the right to organize and to bargain; and in some cases, definition of and penalties for unlawful acts related to trade union activities.

Malaysia, the Philippines, Singapore and Thailand have their respective institutions and mechanisms that could allow public sector employees, represented by their unions or associations, to engage in some form of social dialogue with their employers, including collective negotiation or bargaining. The form of interaction common to Malaysia, the Philippines, Singapore and Thailand are consultation and exchange of information leading to workplace cooperation. Joint labour-management committees are mandatory in Malaysia and Thailand and voluntary in the Philippines. Collective negotiation or bargaining is institutionalized at the agency level in the Philippines, Singapore and Thailand but not in Malaysia. While the general subject matter of collective negotiations are terms and conditions of employment, national laws typically pre-determine what is and is not negotiable. Collective agreements are usually subject to review, approval or registration by government authority, are effective for specified periods, and incorporate a grievance or dispute resolution mechanism. Beyond the agency level, Malaysia, the Philippines and Thailand have joint, standing bodies that are dedicated to public sector issues. Through their organizations, public sector

employees and civil servants may be represented in these bodies. The social dialogue mechanisms recognized in Malaysia, the Philippines, Singapore and Thailand generally allow employees to participate through their representatives. The mechanisms for workplace cooperation are primarily designed to address workplace-specific issues but may also discuss terms and conditions of employment and other matters that are traditionally within the domain of collective bargaining.

In public sector social dialogue mechanisms, the State as employer party is represented by high-level elected or appointed public administrators responsible for State functions. Employees, who come from the civil service or the bureaucracy, are represented by their unions or organizations. The possibility exists that the relationship of the parties in social dialogue mechanisms can mimic the top-down, superior-subordinate power relationship that characterizes the structuring of bureaucracies and public administration functions. This can make the employer party dominant, consequently affecting the quality of social dialogue in terms of subject matter and agenda, process and outputs.

State attitudes in creating or nurturing the enabling conditions for social is reflected in how each State regulates or promotes social dialogue. Generally, regulation of public sector labour relations makes public sector social dialogue difficult and, in relation to Indonesia, inexistent. The attitude is State paternalism and State centrism, if not domination, over employees' unions or organizations. The State acts as "grantor" of trade union and collective bargaining rights and decides whether or not to grant it, under what conditions these should be granted, and when and how these rights are to be exercised. Regulatory instruments are designed to control, guide and coordinate labour relations activities, particularly the activities of trade unions and employees' associations, under the baton of the State. In terms of actively promoting public sector social dialogue, States are generally indifferent. There are no visible programs promoting the development of public sector labour relations, or to systematically monitor and support legitimate activities related to social dialogue.

In conclusion, there is little evidence to show the meaningful existence of the enabling conditions for effective social dialogue, particularly the existence of strong, independent workers' and employers' organizations as envisioned in fundamental ILO Conventions, and of political commitment to engage in social dialogue by all parties. The restrictive orientation of public sector labour relations laws is certainly contributory to the weak outcomes. In relation to public sector employees, they may either be expected or may themselves be inclined not to pursue interests that are not aligned or are opposed to the interests of the State. Together with the top-down, authority-subservient orientation common in many bureaucracies, the developmental State model adds a significant dimension of complexity in charting the future course of public sector labour relations in the five countries.

▶ Introduction

1. Mandate and objective

This study follows up the mandate of the **Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service** (2014) to carry out research on “the diversity of practices in social dialogue, in particular collective bargaining, in different countries, including the demographic dimensions of such practices.” The study aims to gain information and knowledge on how social dialogue, freedom of association and collective bargaining are being practiced in the public service at national levels. The study focuses on five member-countries of the Association of Southeast Asian Nations (ASEAN), namely **Indonesia, Malaysia, the Philippines, Singapore, and Thailand**.

As defined by the International Labour Organization (ILO), social dialogue covers all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement.¹

From various official declarations of ASEAN labour ministries, all five countries in the study subscribe to the ILO's definition of social dialogue. However, literature and statistics on the specific area of public sector social dialogue in the five countries are scarce. In view of this, the study is undertaken as a preliminary assessment of existing laws and institutional arrangements affecting public sector social dialogue particularly freedom of association and collective bargaining, their key characteristics, and how these are positioned in terms of creating the enabling conditions for effective and meaningful social dialogue. The study also identifies challenges in promoting social dialogue from the broader context of the five countries' Constitutions, development policies, political economy and industrial relations.

2. Analytical framework and approach

The main analytical approach used is a legal approach, informed by a political economy perspective.

The major ILO Conventions relating to social dialogue in the public sector are the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154), and more broadly the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and to Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). As shown in **Table 1**, except for Conventions Nos 98 and 144, the level of ratification of these conventions among the five countries is relatively low. Nevertheless, the norms these embody will serve as objective reference points in the assessment.

¹ International Labour Organization (ILO), “Social dialogue”.

► **Table 1. Ratification of relevant conventions by country**

	C 87	C 98	C 144	C 151	C 154
INDONESIA	Yes	Yes	Yes	No	No
MALAYSIA	No	Yes	Yes	No	No
PHILIPPINES	Yes	Yes	Yes	Yes	No
SINGAPORE	No	Yes	Yes	No	No
THAILAND	No	No	No	No	No

Source: ILO NORMLEX

There are four enabling conditions for effective social dialogue. These are (i) strong, independent workers' and employers' organizations with technical capacity and access to relevant information to participate in social dialogue; (ii) political will and commitment to engage in social dialogue by all parties; (iii) respect for the fundamental rights of freedom of association and collective bargaining; and (iv) appropriate institutional support.²

Specific to public sector social dialogue are the basic principles and objectives of Convention No. 151. In particular: (i) protection of public employees' right to organize against acts of anti-union discrimination in respect of their employment; (ii) facilities afforded to the representatives of recognized public employees' organizations for them to carry out their functions promptly and efficiently, both during and outside their hours of work; (iii) procedures and machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters; (iv) an independent and impartial machinery to settle disputes arising in connection with the determination of terms and conditions of employment, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved; (v) assurance that public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association.³

Following these normative and legal parameters, the study has two complementary analytical themes across the five countries -- to inquire into the presence of the enabling conditions for public sector social dialogue, and the extent to which, if at all, each country has incorporated or recognized the objectives and principles of Convention No. 151 in the national legal framework for public sector labour relations.

3. The political economy perspective

A political economy perspective lends broader context in appreciating the challenges as well as the opportunities and potentials for public sector social dialogue in the five countries. The industrial relations institutions in all five were shaped in a significant way by the "developmental State" model.⁴ Singapore was in the first wave of developmental States in East Asia, while Malaysia, Thailand, Indonesia and the Philippines were part of the second wave. In this model, government is intimately involved in the macro and micro economic planning in order to grow the economy while attempting to deploy its resources in developing better lives for the people⁵ or in direct, concerted, and sustained intervention in national economic development through industrial policies such as export-led growth and labour control.⁶ The model has particular implications on the first enabling condition for effective social dialogue -- independence and autonomy of parties -- especially in the public sector.

² ILO, "Social dialogue".

³ Convention No. 151, arts 4-9.

⁴ First used to explain the rapid post-World War II development of Japan. See Chalmers Johnson (1982), *MITI and the Japanese Miracle* (Stanford: Stanford University Press, 1982).

⁵ United Nations Economic and Social Commission for Western Asia (UNESCWA), "Developmental State Model".

⁶ Luiz Carlos Bresser-Pereira, "Models of the developmental state", *CEPAL Review* No. 128(2019): 37.

Although the five countries have had varying outcomes with the developmental State model, their common denominator is that much of their development relied on State-led planning and direct provision of key services. Constitutional preferences and legal institutions, including freedom of association and the right to organize, were coordinated or designed to support this development model. Individual and group interests were subordinated to the argument of ethic of the greater good. This led to paternalistic, State-centric industrial relations systems founded on labour control and containment of labour power, or active State guidance and coordination where mechanisms for workers' participation and labour-management cooperation on matters and decisions related to employment is recognized.

4. Methodology and limitations of the study

The five countries have substantially the same concept of the "public service" or the "public sector." However, they also have differences and nuances in the component parts of public service. In view of this, the study uses a flexible and mixed methodology. Country contexts are described individually, but there are also comparisons between countries where necessary or appropriate.

In addition to the scarcity of literature and key informants on the subject, practical limitations of the study also need to be acknowledged. First, statistics and administrative data on social dialogue and the rights to self-organization and collective bargaining are limited. Data collected through ILOSTAT on trade union density and collective bargaining coverage do not have disaggregated statistics on the public sector. National labour force surveys, also aggregated by ILOSTAT, use international standard industry classifications (ISIC) in classifying workers and employees. But these do not include statistics that cross-reference employees' membership in labour organizations or coverage by collective agreements. Second, not all the countries' government websites provide relevant and updated administrative data directly pertaining to how government employees take part in social dialogue or exercise their rights to self-organization and collective bargaining. And third, since the study primarily relies on the texts of laws and regulations, there may be linguistic limitations in relation to **Indonesia** and **Thailand** where only unofficial English translations are accessible.

▶ 1 LABOUR RELATIONS IN THE PUBLIC SERVICE IN THE FIVE COUNTRIES

Definitions, distinctions and scope of public service, public sector, public administration, and civil service

As defined in Convention No. 151, “public employment” or “public service” refers to “all persons employed by public authorities, including high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, or to the armed forces and police, but whose right to join public employees’ organizations may be defined or determined by national laws or regulations.”⁷ Convention No.154 defines public employment and public service in the same broad and inclusive manner to subsume the terms “public sector”, “public administration” and “civil service” unless otherwise qualified by country-specific definitions. The Constitutions of the five countries are instructive.

In **Indonesia**, “public service” is not used in the English text of the Constitution. But it can be assumed to encompass those tasked with governmental functions and public administration. These include those employed in the State’s executive branch such as the President, the ministries at central level as well as regional and provincial administrations;⁸ those elected to the legislative branch at the national level⁹ and at the regional level;¹⁰ those employed under the independent State audit office;¹¹ and the independent judiciary consisting of the Supreme Court and subordinate courts dealing with general, religious, military, state administrative judicial fields, and the Constitutional Court.¹²

In **Malaysia**, “public services” are the armed forces; the judicial and legal service; the general public service of the Federation; the police force; the railway service; the joint public services provided in common by the Federation or by two or more States; the public service of each State; and the education service.¹³ But public service shall not be taken to comprise the specific offices of any member of the administration in the Federation or a State; or the President, Speaker, Deputy President, Deputy Speaker or member of either House of Parliament or of the Legislative Assembly of a State; or judge of the Supreme Court or a High Court; or member of any Commission or Council established by the Federal Constitution or any corresponding Commission or Council established by the Constitution of a State; or such diplomatic posts as the *Yang di-Pertuan Agong* (the King) may by order prescribe, “being posts which but for the order would be posts in the general public service of the Federation.”¹⁴

In the **Philippines**, the “civil service” embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.¹⁵ Government agency means any bureau, office, commission, administration, board, committee, institute,

⁷ ILO, *Labour Relations (Public Service) Convention, 1978 (No. 151)*, See Art. I, Nos. 1 and 2.

⁸ Indonesia, *Constitution of the Republic of Indonesia* (1945, 2002), Sections III-VI, unofficial translation.

⁹ Indonesia, *Constitution of the Republic of Indonesia*, Chapter VII.

¹⁰ Indonesia, *Constitution of the Republic of Indonesia*, Chapter VIIA.

¹¹ Indonesia, *Constitution of the Republic of Indonesia*, Chapter VIIIA.

¹² Indonesia, *Constitution of the Republic of Indonesia*, Chapter IX, Judicial Powers; Art. 24.

¹³ Malaysia, *Federal Constitution of Malaysia (as of 1 November 2010)*, Part X, Art. 132 (1) and Art. 133.

¹⁴ Malaysia, *Federal Constitution of Malaysia (as of 1 November 2010)*, Part X, Art. 132 (3).

¹⁵ Philippines, *Constitution of the Republic of the Philippines* (1987), Art. IX-B (Civil Service) Section 2(1);

Executive Order No. 180 (1987), Providing guidelines for the exercise of the right to organize of government employees, creating a public sector labour-management council, and for other purposes; *Administrative Code of 1987 (Executive Order No. 292)*, Book V, Title I, Sub-Title A (Civil Service), Chapter 2, Section 6 (1).

corporation with original charter, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city, and municipal government.¹⁶

In **Singapore**, “public service” means service under the Government; a “public officer” means the holder of any public office; and a “public office” means an office of emolument in the public service.¹⁷ This includes public services under the Singapore Armed Forces; the Singapore Civil Service; the Singapore Legal Service; and the Singapore Police Force.¹⁸ On the other hand, for purposes of the Constitution, certain persons performing specific public functions are not considered as occupying a public office.¹⁹ In addition to the Constitution, Singapore has specific definitions of the “public sector” and “public sector agency” for purposes of defining and enforcing accountability among public officers. The “public sector” comprises the public service which includes three categories of “public bodies” based on the activities and functions they perform and the sectors where they work. “Public sector agency” includes all public bodies, a Ministry or Department of the Government, an organ of the State, and a public officer exercising a public function. The entire Singapore public sector is collectively referred to as “whole-of-government.”²⁰

In **Thailand**, the English text of the Constitution does not have a definition of the public service.²¹ Nevertheless, it can be seen that the public service includes those employed in the National Assembly, the Council of Ministers, Courts, Independent Organs and State agencies who perform duties in accordance with the Constitution, laws and the rule of law for the common good of the nation and the happiness of the public at large. These duties will include those subsumed under the specific duties of the State as defined in the Constitution,²² and those pursuant to the development or implementation of a system of administration of State affairs of central, regional and local administrations, as well as other State affairs in accordance with the principles of good public governance.²³

“Public service” and “public sector” as broad terms appear to have substantially the same acceptance and scope in the five countries. Public service pertains to those activities or services the provision of which is part of the inherent responsibilities of the State or any of its organs or agencies to its citizens and peoples. Public sector refers to the groups of people who, on behalf of the State and its organs or agencies, perform specific duties and tasks in undertaking such activities and services.

The five countries also have constitutional structures and institutions that are not different from those in modern Constitutions. Among these are the delineations of the various branches of government and nature of functions (i.e., legislative, executive and judiciary; or defense, justice and social services); the manner of getting into public office which is either by election or appointment and with prescribed qualifications; tenure of office (i.e., whether the office holder has a protected tenure, serves for a term or at the

¹⁶ Philippines, *Administrative Code of 1987*, Book V, Title I, Sub-Title A (Civil Service), Chapter 1, Section 5.

¹⁷ Singapore, *Constitution of the Republic of Singapore*, Part I (Preliminary), No. 2 (1).

¹⁸ Singapore, *Constitution of the Republic of Singapore*, Part IX (The Public Service), No. 102, 1 and 2.

¹⁹ Singapore, *Constitution of the Republic of Singapore*, Part I (Preliminary), No. 2 (5). The Offices of Consul-General and Consul have been prescribed by the President, through G.N. No. S 212/72. The following shall not be considered as holding a public office or an office of profit by reason of the fact that he is in receipt of any remuneration or allowances (including a pension or other like allowance) in respect of his tenure of the office of President, Prime Minister, Chief Justice, Speaker, Deputy Speaker, Minister, Parliamentary Secretary, Political Secretary, Member of Parliament, Ambassador, High Commissioner or such other office as the President may, from time to time, by order, prescribe. Also excluded are the office of the Attorney-General; the office of member of the Public Service Commission or the Legal Service Commission; the office of any police officer below the rank of Inspector; or any office the remuneration of the holder of which is calculated on a daily rate (*Idem*, Part IX (The Public Service), No. 103, 1 and 2).

²⁰ According to the *Public Sector (Governance) Act (2018)*, “public bodies” are classified into three main schedules or groups. Schedule or Group 1 include specialized technical, scientific, educational, and socio-cultural agencies and statutory boards; Schedule or Group 2 include boards or councils regulating the professions; and Schedule or Group 3 include specialized councils to administer the Muslim laws and social services.

²¹ Thailand, *Constitution of the Kingdom of Thailand*, Section 3, unofficial translation.

²² Thailand, *Constitution of the Kingdom of Thailand*, Chapter V, Sections 51 to 63.

²³ Thailand, *Constitution of the Kingdom of Thailand*, Section 76.

pleasure of the appointing authority); the source of emoluments; the law creating the agency or the manner by which it is incorporated or organized; and, in relation to State enterprises, the extent of government ownership or control.

But there are also differences and nuances. The Constitutions of **Malaysia** and **Singapore** have an encompassing definition of public service but also allow a particular authority (namely the Supreme Ruler or President) to exclude an office or position performing a governmental function from “public service.” On State enterprises, **Singapore** does not consider State enterprises and statutory bodies as part of the civil service. But these are part of the “public sector” as defined in the Public Service (Governance) Act 2018. In the **Philippines**, government-owned or controlled corporations created through special laws are part of the public service and are covered by civil service laws. In **Thailand**, “public sector” includes those not covered by the Labour Relations Act 1975²⁴ which applies only to the private sector. Not covered by the Act and therefore part of the public service are State enterprises under the State Enterprises Labour Relations Act (SELRA) 2000 as well as government authorities involved in central, regional and local administrations to whom the Act does not apply.²⁵

Scale and size of public service and public sector employment

National labour force surveys applying the ISIC provide starting points of reference as to the composition, size and employment share of the public sector in the five countries. The applicable indicator pertains to those “employed in public administration, defense and compulsory social security,” which is anywhere from four to 14 per cent of total employed. A broader indicator is “aggregate employed in public administration, community, social and other services and activities,” which is between 13 to 25 per cent of total employed. **Indonesia**, the **Philippines** and **Singapore** also use the residual indicator “not elsewhere classified” which includes the armed forces. **Table 2** below shows the statistics on these indicators as well as distribution across skills levels in the five countries. Also, health and education are distinct classifications in the ISIC. Across the five countries, a significant proportion of these services is publicly provided. In **Singapore**, for example, those who are employed in public health institutions are part of the public sector but are not part of the civil service.

²⁴ Thailand, [Labour Relations Act](#), B.E. 2518 (1975), Section 4.

²⁵ Thailand, [State Enterprise Labour Relations Act](#), B.E. 2543 (2000).

► **Table 2. Employment in public administration and related activities (Indonesia, Malaysia, Philippines, Singapore and Thailand), various years**

	IND (2020)	MAL (2018)	PHILS (2019)	SING (2019)	THAI (2019)
1.Total employed (000)	130,045	14,776	42,284.4	2,230.4	37,613
2. Employment in public administration and related services and percentage to total employed					
a. Employed in public administration, defense and compulsory social security	No data	No data	2,784.8 (6.58%)	304.3 (13.64%)	1611.4 (4.28%)
b. Aggregate employed in public administration, community, social and other services and activities	19,830.1 (15.2%)	2716.4 (18.38%)	7,529.6 (17.8%)	538.9 (24.16%)	4908.9 (13.05%)
3. Number and percentage of No. 2.a except otherwise indicated by selected class of workers					
a. Managers	818.4 (4.1%, based on 2.b)	57.6 (2.12%, based on 2.b)	496.4 (17.82%)	27.3 (8.97%)	384 (7.82%, based on 2.b)
b. Professionals	6,810.8 (34.3%, based on 2.b)	1086.7 (40%, based on 2.b)	421.9 (15.15%)	93 (30.56%)	1,351.8 (27.53%, based on 2.b)
4. Number and percentage of No. 2.a except otherwise indicated by skills level					
b. Skills Levels 3 and 4	9107.3 (45.92%, based on 2.b)	1549.5 (57% based on 2.b)	1,360.5 (48.85%)	196.4 (64.54%)	775.9 (48.15%)
c. Skills Level 2	6515.9 (32.85%, based on 2.b)	942.7 (34.7% based on 2.b)	1,075.3 (38.61)	39.2 (12.88%)	694.5 (43.09%)
d. Skills Level 1	3667.6 (18.49%, based on 2.b)	224.3 (8.25%, based on 2.b)	267.7 (9.61%)	6.9 (2.2%)	141.1 (8.7%)
5. Not elsewhere classified (Separate indicator from No.2)	539.2	None	87.3	61.7	None

Source: ILO, "ILOSTAT".

In relation to the ISIC indicators, Convention No. 151 leaves it to national laws and regulations to determine the extent of its application to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, as well as to those in the armed forces. The technical aspects of this point are discussed in Section 3 (Constitutional and legal frameworks on freedom of association, collective bargaining and social dialogue). It may be mentioned here that **Malaysia**, the **Philippines**, **Singapore** and **Thailand** all exclude the armed forces, the police, others involved in the security of the State and in protecting public safety, as well as employees performing management functions from their public sector labour relations frameworks. Officers or employees performing

policy-making functions are naturally identified with the management or executive group. If they are not excluded by law, they are most likely identified with management who represent the State as employer. With respect to duties of a confidential nature, these are usually performed by managers and professionals under the ISIC which is anywhere between 32 to 42 per cent of total public sector employment, or by skills levels 3 and 4 under the ISIC which is anywhere between 45 to 57 per cent of total public sector employment. Political offices and some offices in public administration are also excluded from the public sector framework, and it is possible that employees who work for them may be broadly classified as performing duties of a confidential nature. Also excluded are workers or labourers who perform public services but are not considered employees, some of whom may have lower set of skills and may fall under skills level 1.

Across the five countries, managers and professionals represent over 30 per cent. The highly educated or highly skilled (skills levels 3 and 4) employees in public administration, defense and compulsory social security represent about 45 per cent in **Indonesia** and over 64 per cent in **Singapore**. At least a portion of these groups of employees can be classified as policymaking, managerial and highly confidential and can be declared by national legislations as ineligible to form or join labour organizations. On the other hand, positions are dominated by the higher-skilled (in **Malaysia**, over 90 per cent are in skills levels 2, 3 and 4) who are likely to have higher job responsibilities associated with managerial, professional, and policy-making or confidential functions, and are also likely to have higher income security and could have less motivation to exercise their right to organize.

To estimate the scale, composition and size of the public service and public sector employment, the narrow, aggregate and residual indicators as well as publicly provided social services as classified in the ISIC should all be considered. Further, for purposes of determining the base or universe of the rights to self-organization and collective bargaining in the public sector as enabling preconditions for social dialogue, the indicators need to be cross-referenced to the legal parameters that regulate the exercise of these rights among public sector employees. The hypothesis, which further statistical gathering and research may validate, is that the effective base of organizable employees and of social dialogue in the public sector is significantly lower than total public sector employment.

Civil servants and their organizations

In the **Philippines**, the public service is categorized into four groups of agencies – National Government agencies (NGAs), Local Government Units (LGUs), State Universities and Colleges (SUCs), and Government Owned or Controlled Corporations (GOCCs). There were 1,841 public sector employees' associations operating in these four groups in June 2021; the estimated total membership was 497,887, with 284,947 (57 per cent) members in NGAs; 117,987 in LGUs (23.4 per cent); 44,210 in SUCs (8.9 per cent); and 50,743 in GOCCs (10.2 per cent).²⁶ The law allows employees' associations at the agency level and does not officially recognize federations or confederations of public sector employees. Nevertheless, there are three well-known federations – the Philippine Government Employees' Association (PGEA) and the Public Services Labour Independent Confederation (PSLINK) both of which have international affiliations, and the Confederation of Unions for the Advancement of Government Employees (COURAGE).

Singapore has 63 employees' trade unions with the National Trade Union Center (NTUC) as the sole umbrella confederation, and three employers' trade unions. Fifteen of the employees' trade unions are in the public sector.²⁷ The Amalgamated Union of Public Employees (AUPE) has the largest membership of about 22,000 employees.²⁸

²⁶ Philippines, Department of Labour and Employment (DOLE), "Registered public sector unions by region as of 2nd Quarter 2021".

²⁷ Singapore, Ministry of Manpower, "Trade Union Directory".

²⁸ Amalgamated Union of Public Employees (AUPE), "About Us".

There is scant information on the actual number of public sector union membership in **Thailand**. The most visible organization is the State Enterprise Workers' Relations Confederation (SERC), which claims to represent 41 trade unions with 200,000 members from state-owned and private companies.²⁹ No detailed information is available on how many of the members actually come from the public sector. According to one project document, there were 128,636 union members in State enterprises in 2014.³⁰ A more recent assessment, citing sources from the Department of Labour Protection and Welfare of the Ministry of Labour, indicates that as of May 2020, there were 48 State enterprise trade unions with 172,477 members. There was also one state enterprise trade union federation. No information was gathered as to the number of collective agreements in State enterprises.³¹

In **Malaysia**, the largest group is reportedly the Congress of Unions and Employees in the Public and Civil Service (CUEPACS). It claims to be a coalition of 100 public sector unions and to represent 1.6 million employees across the country. Actual membership, however, is not specified.³²

The government as a player

Effectively, there are only two players in public sector social dialogue – the government and the employees who have the right to organize in accordance with their national laws. The participation of government representatives in joint bodies is usually in an *ex officio* capacity in relation to the government position they currently hold. Whether dialogue takes place within or above the level of the enterprise or agency, the government plays a dual role – as representative of the State, and as employer in its own right. In this dual role, government representatives in public sector joint bodies are faced with the challenge of balancing the principle of independence and autonomy of parties, which is an enabling condition for effective social dialogue, and their main functions as regulators and administrators of all relevant laws.

A necessary role that government plays is as facilitator of social dialogue. In this role, it usually provides appropriate secretariat and logistical support to social dialogue activities.

²⁹ International Trade Union Confederation (ITUC), “State Enterprise Workers' Relations Confederation Projects Directory”.

³⁰ This was a project of ITUC in partnership with SERC. The project was to be implemented from 2015 to 2018 on building trade union capacity in the State enterprise sector, focused on improving and strengthening the capacity of employees in State enterprises to engage with government as they face challenges in the privatization of State Enterprises under the State Enterprise Capital Act and the strict enforcement of the public assembly law which prohibits workers to mobilize. See ITUC, [Building Trade Unions in the State Enterprise Sector in Thailand](#).

³¹ Sutharee Wannasiri, [Freedom of Association in Thailand: an Assessment of the Enabling Environment for Civil Society](#) (CIVICUS, 2020).

³² Sinar Harian, “Cuepacs seru 1.6 juta penjawat awam berwakaf melalui potongan gaji”, *CUEPACS*, 15 April 2021.

▶ 2 CONSTITUTIONAL AND LEGAL FRAMEWORKS ON FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING AND SOCIAL DIALOGUE

National Constitutions

One enabling condition for social dialogue is respect for the fundamental rights of freedom of association and collective bargaining. The Constitutions of the five countries generally recognize the freedom of people and citizens to associate as a fundamental civil liberty, in the same level as freedom of speech, expression and peaceful assembly. In **Indonesia**, each person has the right to freely associate, assemble, and express his or her opinions,³³ and is entitled to an occupation as well as to get income and a fair and proper treatment in labour relations.³⁴ In **Malaysia** and **Singapore**, every citizen has the right to freedom of speech and expression, to assemble peaceably and without arms, and to form associations,³⁵ subject to such restrictions as Parliament may deem necessary or expedient to impose on labour matters in the interest of State security, public order or morality.³⁶ In the **Philippines**, no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.³⁷ In relation to freedom of association, it also guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law and to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.³⁸ Further, it provides that the right to self-organization shall not be denied to government employees.³⁹ In **Thailand**, a person shall enjoy the liberty to unite and form an association, co-operative, union, organization, community, or any other group. No restriction shall be imposed against this liberty except by a law enacted to protect public interest, maintain public order or good morals, or prevent or eliminate barriers or monopoly.⁴⁰

In all five Constitutions, the freedoms to associate and to form or join labour organizations are couched as fundamental liberties or positive rights. Nevertheless, these freedoms are not self-implementing and can be exercised only on the basis of an enabling national legislation. All five Constitutions reserve to the State the power to regulate or restrict the exercise of these freedoms to maintain or protect the broader interests of public order, national security, general welfare or good morals. This is especially the case for public sector workers, from whom fealty to State interests and public welfare is a general condition in their oaths of office. The crucial determinant in the actual scope of these freedoms is how States shape national public sector labour relations policy through the exercise of their legislative powers and choice of policy instruments.

³³ Indonesia, [Constitution of the Republic of Indonesia](#), Section X-A (Fundamental Human Rights), Article 28E (3).

³⁴ Indonesia, [Constitution of the Republic of Indonesia](#), Art. 28D (2).

³⁵ Malaysia, [Federal Constitution of Malaysia](#), Article 10, No. 1 (a) to (c); Singapore, [Constitution of the Republic of Singapore](#), Part IV, Fundamental Liberties), No. 14 (1) (a) to (c).

³⁶ Malaysia, [Federal Constitution of Malaysia](#), Article 10, No. 3 in relation to No. 2 (c); Singapore, [Constitution of the Republic of Singapore](#), Part IV, (Fundamental Liberties), No. 14 (3) in relation to No. 2 (c).

³⁷ Philippines, [Constitution of the Republic of the Philippines \(1987\)](#), Article III (Bill of Rights), Section 4.

³⁸ Philippines, [Constitution of the Republic of the Philippines \(1987\)](#), Article XIII (Labor), Section 3.

³⁹ Philippines, [Constitution of the Republic of the Philippines \(1987\)](#), Article IX-B (Civil Service), Section 2 (5).

⁴⁰ Thailand, [Constitution of the Kingdom of Thailand](#), Chapter III (Rights and Liberties of the Thai People), Section 42.

National laws and regulations

The five countries in the study have trade union and industrial relations laws which regulate the rights to organize and to collective bargaining. The basic areas of regulation include eligibility for trade union membership; trade union structure; a registration system administered by a union registrar to determine whether a trade union is to be conferred legal personality; structure, procedure and substance of collective bargaining; a machinery for labour dispute resolution; protection of the right to organize and to bargain; and in some cases, definition of and penalties for unlawful acts related to trade union activities. Initially designed for and applicable only to the private sector, certain parts of these laws were later made applicable to the public sector in the countries under study except **Indonesia**.

Indonesia does not have a legal framework for public sector labour relations. The country's main law implementing the freedom of association and the right to organize is Act No. 21 of 2000 Concerning Trade Union/Labour Union⁴¹ which applies exclusively to the private sector. It does not cover public service employees. As explained in the Act, "The worker/ labourer's right to organize as stipulated under ILO Conventions Nos 87 and 98 which have been ratified by **Indonesia** becomes part of national statutory rules and regulations. Until recently, however, there have been no regulations that specifically regulate the implementation of the worker/ labourer's right to organize. As a result, trade unions/ labour unions are still unable to carry out their functions maximally. These abovementioned ILO Conventions guarantee the civil servants' right to organize. However, due to their functions as servants of the public, this right has to be dealt with separately."⁴² Currently, there is no definitive information whether a national legal framework for public sector labour relations is being developed in the country.

In **Malaysia** and **Singapore**, the right to organize of public sector employees is couched in a "double negative." The general rule is that public sector employees do not have the right to organize, unless the appropriate State authorities exempt them from not having this right. This is done through an "Exemption Notification" that specifies the agencies or areas of service where employees may organize.

Thus, in **Malaysia**, no Government employee⁴³ and no employee of a statutory authority⁴⁴ shall join or be a member of any trade union or shall be accepted as a member by any trade union. But the law confers on the *Yang di-Pertuan Agong* authority to issue an exemption notification to any category, class or description of public officers from not being allowed to join a trade union, either wholly or subject to such conditions as may be specified in such notification.⁴⁵ Exemptions may also be issued to financially autonomous institutions, subject to specified conditions.⁴⁶

In any case, no exemption shall be issued in favor of members of the Royal Malaysian Police; members of any prison service; members of the Armed Forces; public officers engaged in a confidential or security capacity; public officers who are prohibited under any written law from forming or being members of a trade union; and public officers holding any post in the Managerial and Professional Group, except such public officers, or such class, category or description of public officers in such Group that are excluded by the Chief Secretary to the Government.⁴⁷

⁴¹ Indonesia, Act No.21 of the Republic Of Indonesia concerning Trade Unions/ Labor Unions, 2000.

⁴² See Explanatory Notes on Act No.21 of Republic of Indonesia Concerning Trade Union/Labor Union.

⁴³ Malaysia, Trade Unions Act of 1959, Section 27 (1).

⁴⁴ Malaysia, Trade Unions Act of 1959, Part I, No.2. "Statutory authority" means any authority or body established, appointed or constituted by any written law, and includes any local authority.

⁴⁵ Malaysia, Trade Unions Act of 1959, Section 27 (3), (b).

⁴⁶ Malaysia, Trade Unions Act of 1959, Section 27 (4). The law provides that (a) employees of a financially autonomous local authority may join or be members of a trade union whose membership is confined exclusively to employees of one or more such financially autonomous local authorities; (b) employees of statutory authorities other than employees of local authorities may with the approval of the Minister join or be members of a trade union whose membership is confined exclusively to employees of one or more financially autonomous local authorities.

⁴⁷ Malaysia, Trade Unions Act of 1959, Section 27 (2).

In **Singapore**, no Government employee shall join or be a member of any trade union or shall be accepted as a member by any trade union.⁴⁸ But the President may, by notification in the *Gazette*, either wholly or subject to such conditions as may be specified in the notification, exempt any Government employees or any classes, categories or descriptions of Government employees from the rule that government employees shall not join or be a member of any trade union.⁴⁹ **Singapore** has issued an exemption notification, with subsequent amendments, that has led to a list of government officers and employees exempted from not being allowed to join or be members of a trade union. Those given exemptions include employees in State authorities, statutory boards, State enterprises, non-teaching staff in government educational institutions, among others.⁵⁰

Not to be given exemptions and therefore not allowed to join trade unions in any case are all members of the Singapore Police Force, the Civil Defense Force and the Singapore Armed Forces; all officers in the Prisons Service and the Narcotics Service; and all public officers appointed as forensic specialists under the Police Force Act.⁵¹

In the **Philippines**, the Constitution provides that the right to self-organization shall not be denied to government employees,⁵² comprising of employees of all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.⁵³

The law that implements the Constitution provides that all government employees can form, join or assist employees' organizations of their own choosing for the furtherance and protection of their interests. They can also form, in conjunction with appropriate government authorities, labour-management committees, works councils and other forms of workers' participation schemes to achieve the same objectives.⁵⁴ High-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees.⁵⁵ The right does not apply to the members of the Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards.⁵⁶

In **Thailand**, public sector labour relations are governed by SELRA.⁵⁷ It applies only to State enterprises. A State enterprise is any government organization under the law on the establishment of labour organizations or an enterprise of the State establishing that enterprise, including business entities owned by the State; or any limited company or registered partnership which a government, ministry, department or equivalent

⁴⁸ Singapore, *Trade Unions Act of 1940, as amended in 2004*, Section 28 (3).

⁴⁹ Singapore, *Trade Unions Act of 1940, as amended in 2004*, Section 28 (4).

⁵⁰ See *Trade Unions (Government Officers - Exemption) Notification N 2*, G.N. No. S 313/1985, as amended. Currently, employees of the following government institutions are allowed to organize: the Government; Government-Aided Schools (non-teaching staff); the Board of Commissioners of Currency, Singapore; the Central Provident Fund Board; the Civil Aviation Authority of Singapore (CAAS); the Economic Development Board; the Institute of Education (non-teaching staff); the Jurong Town Corporation; the Monetary Authority of Singapore; the National Maritime Board; the National Productivity Board; the National Theatre Trust; the National University of Singapore (non-academic staff); the Rubber Association of Singapore; the Sentosa Development Corporation; the Singapore Corporation of Rehabilitative Enterprises (SCORE); the Singapore Institute of Standards and Industrial Research (SISIR); the Singapore Polytechnic; the Singapore Science Centre; the Singapore Sports Council; the Singapore Tourist Promotion Board; the Timber Industry Board of Singapore; the Vocational and Industrial Training Board (non-training staff); the Nanyang Technological Institute; the National Computer Board; the Trade Development Board; the Construction Industry Development Board; Mass Rapid Transit Corporation; the Science Council of Singapore; National Parks Board; Temasek Polytechnic; National Arts Council; National Technology Board; Institute of Technical Education, Singapore; Nanyang Polytechnic; National Heritage Board; Singapore Broadcasting Authority; Civil Service College; National Environment Agency; Singapore Workforce Development Agency; Accounting and Corporate Regulatory Agency; Singapore Examinations and Assessment Board; Council for Estate Agencies; and Republic Polytechnic (non-teaching staff).

⁵¹ Singapore, *Trade Unions (Government Officers - Exemption) Notification N 2*.

⁵² Philippines, *Constitution of the Republic of the Philippines (1987)*, Art. IX-B (Civil Service), Section 2 (5).

⁵³ Executive Order No. 180 (1987), Providing guidelines for the exercise of the right to organize of government employees, Section 1.

⁵⁴ Philippines, Executive Order No. 180 (1987), Section 2.

⁵⁵ Philippines, Executive Order No. 180 (1987), Section 3.

⁵⁶ Philippines, Executive Order No. 180 (1987), Section 4.

⁵⁷ Thailand, *Labour Relations Act, B.E. 2544 (2001)*, Section 3.

body of a state enterprise which has a share capital of more than 50 per cent.⁵⁸ **Thailand** does not have a law granting the right to organize of employees in central, provincial and local administration bodies.

Employees of a State enterprise are eligible to form or join a labour union if they are of age, are Thai nationals, and are employees of the same enterprise but not working at the managerial level.⁵⁹ Management means any person who works for a State enterprise at a management level, with the authority to employ, dismiss, increase wages, cut wages or reduce wages. Employee means any person who agrees to work for a State enterprise in return for wages.⁶⁰ A member of a labour union in the enterprise shall remain as an employee of the enterprise for the duration of his or her membership with the labour union.⁶¹

Where public sector employees in **Malaysia**, the **Philippines**, **Singapore** and **Thailand** have the right to organize, the situs for exercising this right is the agency or enterprise level. Employees should form or join a union or employees' association within the agency or office which employs them. Further, in **Malaysia** and **Singapore**, no person employed by a statutory authority, board or body shall join or be a member of, or be accepted as a member by any trade union unless the membership of that trade union is confined exclusively to persons employed by that particular statutory authority, board or body.⁶² In **Malaysia** and **Singapore**, the right to affiliate or amalgamate is recognized, conditioned on the prior approval or authority of the State, provided that the members of the affiliating or amalgamating organizations are confined to the employees of their respective employers.⁶³ In the **Philippines**, the law and administrative regulations do not provide for affiliation or amalgamation. However, there are public sector organizations that are informally affiliated with each other and with larger umbrella organizations or trade union centers that accept as members employees of public and private sector organizations.

In sum, while all five countries recognize the freedom to form or join labour organizations as a fundamental civil liberty and as a part of positive rights, their Constitutions are not self-implementing. Because enabling legislation is required to make this freedom operative, it is therefore more precisely characterized as a statutory rather than a Constitutional right in both the private and the public sectors. Where the rights to organize and to collective bargaining have been recognized in the public sector, the scope of such rights have been narrower and more restrictive as compared with those granted to employees in the private sector.

⁵⁸ Thailand, *State Enterprise Labour Relations Act (SELRA)*, B.E. 2543 (2000).

⁵⁹ Thailand, *State Enterprise Labour Relations Act (SELRA)*, B.E. 2543 (2000), Section 41. See also Section 5 on the ineligibility of Managerial employees to become union members.

⁶⁰ Thailand, *State Enterprise Labour Relations Act (SELRA)*, B.E. 2543 (2000), Section 6.

⁶¹ Thailand, *State Enterprise Labour Relations Act (SELRA)*, B.E. 2543 (2000), Section 51.

⁶² Malaysia, *Trade Unions Act*, Section 27 (3)(a); Singapore *Trade Unions Act*, Section 29 (1).

⁶³ Malaysia, *Trade Unions Act*, Section 27; Singapore, *Trade Unions (Government Officers - Exemption) Notification*, No. 3.

▶ 3 FORMS OF SOCIAL DIALOGUE IN THE PUBLIC SECTOR: INSTITUTIONS AND MECHANISMS

Overview of forms of social dialogue existing in each country

Based on their national laws, **Malaysia**, the **Philippines**, **Singapore** and **Thailand** have their respective institutions and mechanisms that could allow public sector employees, represented by their unions or associations, to engage in some form of social dialogue with their employers, including collective negotiation or bargaining. The levels of dialogue follow the trade union and collective bargaining structures in the private sector. Dialogue mechanisms are decentralized and dispersed at the agency level. In addition, mechanisms above the agency level are also in place. The engagement of employees is indirect through union or employee representatives.

The form of interaction common to **Malaysia**, the **Philippines**, **Singapore** and **Thailand** are consultation and exchange of information leading to workplace cooperation. In **Malaysia** and **Thailand**, mandatory joint labour-management committees at the enterprise level are standing committees, with representatives from both sides elected or designated to serve for specified terms. In the **Philippines**, the law institutionalizes labour-management councils as voluntary mechanisms. In the four countries, however, there is no available information on actual implementation and practices in relation to such bodies.

Collective negotiation or bargaining is institutionalized in the **Philippines**, **Singapore** and **Thailand** but not in **Malaysia**. Collective agreements typically incorporate a grievance or dispute resolution committee, which serves as a standing committee to address issues that may arise in the administration of collective agreements. Also, collective agreements are effective for specified periods, making it possible for negotiation to take place at regular intervals.

In whatever form or level, national law and regulations focus or limit the subject matter of social dialogue to working conditions or terms and conditions of employment.

Institutional forms, mechanisms, processes and subject matter of social dialogues at the agency level

In **Malaysia**, the mechanisms for exchange of information and consultation are the National Joint Council (NJC) and the Departmental Joint Council (DJC).⁶⁴ The DJC is a direct descendant of the British-style Whitley Councils⁶⁵ and constitutes the agency-level forum for discussion between representatives of management and employees to obtain views from employees regarding issues of common concern, and to create and maintain a position of mutual understanding and trust. Matters that can be discussed include all matters related to the conditions affecting work except for the government policies or personal matters. However, policy-related issues can be discussed with a view to explaining the implementation only. Among the things that the forum can discuss are allowances and benefits, finance services, schemes and employment services,

⁶⁴ According to the [Constitution](#) of the NJC, The "National Joint Council (Council) is established under the authority of His Excellency the Governor General in Council, on the recommendation of the President of the Treasury Board under Treasury Board Minute T.272382B of March 8, 1945, as amended by Orders in Council: P.C. 1966-37/2106 of November 10, 1966; P.C. 1980-2413 of September 5, 1980; P.C. 1981-2443 of September 3, 1981; P.C 1987-884 of April 30, 1987; and P.C. 1994-2/752 of May 5, 1994."

⁶⁵ See Malaysia, [Departmental Joint Council Guide](#).

welfare, administrative and other matters.⁶⁶ In 2004, the Commonwealth Secretariat concluded that “[t]he NJC and the DJC have helped to resolve most of the issues while reducing some grievances”.⁶⁷ There are three NJCs covering employees in the following groups: (1) management and professional, (2) science and technology and (3) support. In December 2020, the Public Service Department published Service Circular Number 6 of 2020 on National Joint Councils. The Congress of Unions of Employees in the Public and Civil Services (CUEPACS) and the National Union of Teaching Personnel (NUTP) requested that the PSD delay its implementation, since there were no prior joint discussions.⁶⁸ This evidences the interest that the workers’ organizations had in the Councils.

In the **Philippines**, workplace cooperation through labour-management councils and collective negotiation at the agency level are the institutionalized forms of social dialogue. In relation to collective negotiation, this has led to several binding collective negotiation agreements (CNA) between the employer agency and the employees’ association that contains terms and conditions of employment or improvements thereof, except those that are fixed by law.⁶⁹

In **Singapore**, collective bargaining is the institutionalized form of public sector social dialogue, with fourteen and five collective agreements certified in the public service in 2019 and 2020, respectively.⁷⁰ With a view toward a collective agreement, the employer agency and the employees’ trade union can negotiate or bargain on employment, non-employment, and terms of employment or conditions of work.⁷¹ Relevant to note is that compensation and benefits in the public service are market-competitive and determined by a specialized agency - the Public Service Division under the Prime Minister’s Office⁷² - rather than by the relative bargaining strengths of the employers and trade unions.

In **Thailand**, the SELRA establishes three mechanisms for social dialogue between State enterprises and their employees. These are enterprise-level negotiation on terms and conditions of employment in which employees are represented by a labour union; enterprise-level Relations Affairs Committees to be set up in all State enterprises, with or without a labour union; and the State Enterprise Labour Relations Committee at the State or national level. In enterprise-level negotiation, the State enterprise and a labour union may negotiate and reach a collective agreement on terms and conditions of employment.⁷³ The Committee met three times in 2021, the latest in June to consider requests from three government agencies to provide risk-based welfare payments to staff in the context of COVID-19, and “set the scope of employment conditions related to financing each state enterprise that may operate independently according to Section 13 (2) in the case of procuring the Covid-19 vaccine.”⁷⁴

⁶⁶ Malaysia, “Public Service Department Malaysia”.

⁶⁷ Dirk Willem te Velde, *A Profile of the Public Service of Malaysia: Current Good Practices and New Developments in Public Service Management. Managing Human Resources in the Malaysian Public Service* (Commonwealth Secretariat, 2004), p. 23.

⁶⁸ Kalbana Perimbanayagam, “Cuepacs opposes implementation of new service circular on National Joint Councils”, New Straits Times, 28 December 2020; Ilah Hafiz Aziz, “NUTP bantah 2 pelaksanaan pekeliling perkhidmatan baharu”, BH online, 31 December 2020.

⁶⁹ Philippines, *Executive Order No. 180, 1987, Section 13*. For examples of these agreements and the subjects they cover, please see Adela G. Ellson, *Comparative Analysis of Selected CNAs and CBAs of Unions in the Philippine Public Services* (Manila: PSLINK, 2011).

⁷⁰ See Singapore, Industrial Arbitration Court, *2019 Annual Report of Industrial Arbitration Court*, 2019; Singapore, Industrial Arbitration Court, *2020 Annual Report of Industrial Arbitration Court*, 2020.

⁷¹ Singapore, *Industrial Relations Act (Chapter 136), Ordinance No. 20 of 1960*, revised edition 2004, No. 2; see also Singapore, Ministry of Manpower, *Singapore Yearbook of Manpower Statistics*, 2020, E.2.

⁷² Singapore, Public Service Division, “Our Organisational Structure”.

⁷³ Thailand, *State Enterprise Labour Relations Act B. E. 2543*, 2000 Section 27.

⁷⁴ Thailand, Ministry of Labour, “MOL Hosts State Enterprise Labour Relations Committee Meeting”.

Institutional forms, mechanisms, processes and subject matter of social dialogue in joint bodies beyond agency level; representation of employees

Malaysia, the **Philippines** and **Thailand** have joint bodies above the agency level that are dedicated to public sector issues. These bodies are standing committees with secretariat support from the concerned labour or civil service agency. Through their organizations, public sector employees and civil servants may be represented in these bodies.

In **Malaysia**, the NJC is a public sector-wide forum for consultation and exchange of information. Its main objective is to prevent or resolve differences between employees and employers; to consult and share information on salary, allowances, perquisites, and terms and conditions of service of employees; and to counter-propose or provide information on current developments in order to obtain feedback from the employee viewpoint before forwarding any proposal to the executive body of the government for action. Representation in the NJC is divided into three occupational groups of employees - the management and professional group; science and technology employees in the support group; and general workers in the support group.⁷⁵

In the **Philippines**, the Public Sector Labour Management Council (PSLMC) is an inter-agency council mandated to issue implementing rules and regulations of the public sector labour relations law and to administer its provisions consistent with civil service laws and regulations. The PSLMC, in the exercise of its regulatory and oversight functions on public sector labour relations,⁷⁶ also acts as a dispute settlement body on complaints, grievances and cases involving government employees that remain unresolved at the agency level after exhausting all the available remedies under existing laws and procedures.⁷⁷ The PSLMC can also resolve complaints for unfair labour practices as may be filed by the concerned party. Employees' organizations have been given observer status to represent the four groups of the public sector (NGAs, LGUs, GOCCs, and SUCs).

In **Thailand**, the State Enterprise Labour Relations Committee sets or recommends employment conditions and generally administers the SELRA. Labour unions elect five representatives to the Committee to serve for specified terms. The Committee functions as a standards-setting, recommendatory, advisory and dispute resolution body. It determines minimum standards on conditions of employment, proposes to the Cabinet the conditions of employment with financial implications, considers or arbitrates labour disputes, and gives legal opinions and advice concerning practices in State enterprises.⁷⁸

In **Singapore**, the country's overall industrial relations philosophy is characterized by a cooperative, non-adversarial approach to labour relations that emphasizes labour discipline and eschews confrontation and conflict. Called the tripartite partnership approach or "symbiotic" relationship between the government, trade unions and employers,⁷⁹ this is embedded in the country's laws and institutions. In terms of representation in dialogue mechanisms, the National Trade Union Congress (NTUC), which is an integral part of the ruling People's Action Party (PAP), is the umbrella trade union. It is allocated a seat in most statutory boards in representation of all workers, including public sector workers. In the Central Provident Fund (CPF), for example, the board includes representatives from NTUC and the Amalgamated Union of Public Employees (AUPE). If one considers the policy- and decision-making processes in statutory boards as a form of social dialogue, it can be said that the social dialogue mechanisms are dispersed and specialized. As such,

⁷⁵ Service Circular No. 2 (1979) and No. 7 (1989), cited in Badariah Ab Rahman, Dzurizah Ibrahim, Rosazman Hussin, "Economic Development Plan and Employee Participation in Public Sector in Malaysia", International e-Journal of Advances in Social Sciences (IJASOS) 2, No.4 (2016); See also Malaysia, Ministry of Manpower, [Tripartite Advisory on Industrial Relations Practice](#), 2017.

⁷⁶ Philippines, [Executive Order No. 180](#), Section 15.

⁷⁷ Philippines, [Executive Order No. 180](#), Section 16.

⁷⁸ Thailand, [State Enterprise Labour Relations Act B. E. 2543](#) (2000), Section 13.

⁷⁹ Malaysia, Ministry of Manpower, [Tripartite Advisory on Industrial Relations Practice](#), March 2017.

the subject matter of dialogue outside of terms and conditions of employment will depend on matters for decision or policy action within the competence of individual agencies.

Composition of social dialogue mechanisms and determination of representatives in processes outside collective bargaining and in joint bodies

Standing committees or mechanisms for social dialogue outside of formal collective bargaining, whether within or above the agency level, are typically composed of high-level officials from relevant ministries or agencies in *ex officio* capacities representing government as employer, and representatives of employees. The latter may come from unions or may be elected by the concerned group of employees.

Malaysia's NJC is headed by the Secretary-General of the Public Service Division (PSD), who also serves as Committee chair, with relevant Secretaries-General, heads of Departments and Statutory bodies, State secretaries, and the Director of the Salaries and Allowance division of the PSD as *ex officio* members. Consistent with Service Circular No. 2 (1992),⁸⁰ the employee side has included representatives from labour organizations, including those coming from CUEPACS and the three employee groups of managers and professional employees, science and technology employees in the support group, and general workers in the support group.⁸¹ On the other hand, the Departmental Joint Council (DJC) required to be set up in all government agencies directly in charge of administrative matters, human resources, management and finance is composed of the Secretary General of the Ministry as Chairperson, and the Deputy Secretary General, Director General, Section Head, General Manager or Deputy General Manager of the ministry, department or office concerned as *ex officio* members, with the official-in-charge of the administration of the ministry, department or office acting as *ex officio* Secretary. Other members are the official-in-charge of finance of the ministry, department or office and other officials who are appointed by the Secretary General or the Head of the Department. The employee side, traditionally represented by the trade union in the agency or by a representative elected by the employees, shall be the Vice-Chairperson and the Joint Secretary.⁸²

In the **Philippines**, the PSLMC is chaired by the Chairperson of the Civil Service Commission (CSC) with the Secretary of the Department of Labour and Employment as Vice-Chair, and the Secretaries of the Department of Finance, Justice and Budget and Management as *ex officio* members. Since 2016, the PSLMC has allowed one employees' representative each from NGAs, LGUs, SUCs and GOCCs to participate as observers with no voting rights. The observers for each category are elected by the concerned employees' associations.

In **Thailand**, the State Enterprise Labour Relations Committee is chaired by the Minister of Labour as the Chairperson, with the Permanent Secretary of the Ministry of Labour, the Secretary-General of the National Economic and Social Development Board, the Director of the State Enterprise Policy Office, and the Director-General of the Department of Labour Protection and Welfare, as *ex officio* members. Other members appointed by the Minister are five representatives (the governor, the director, the managing director or any person who holds a position with similar powers and duties in the State enterprise), and five representatives of employees elected among the presidents of labour unions who serve for specified terms.⁸³ On the other hand, the Relations Affairs Committee at the State enterprise level is chaired by a member of the State enterprise Board, with five to nine representatives each from the management of the State enterprise and from

⁸⁰ A new circular on representation in the NJC is reported to have been issued, with CUEPACS issuing a statement seeking to defer its implementation. See Kalbana Perimbayanagam, "CUEPACS opposes implementation of new circular on National Joint Councils", *New Straits Times* (blog), 28 December 2020.

⁸¹ Commonwealth Secretariat, *A Profile of the Public Service in Malaysia*, 2004, 20-23; See also Malaysia, Public Service Department, "Joint Departmental Council (MBJ)".

⁸² Malaysia, Public Service Department, "Joint Departmental Council (MBJ)".

⁸³ Thailand, *State Enterprise Labour Relations Act B. E. 2543* (2000), Section 8.

the enterprise labour union or, when there is no labour union, representatives elected by the employees who are not classified as managerial employees.⁸⁴ The employee representatives serve for specified terms.

Outside the public sector labour relations laws, there are examples of potential avenues for social dialogue and employees' representation at the policy and decision-making levels in the **Philippines** and in **Singapore**. The charter of the Government Service Insurance System (GSIS) of the **Philippines**, which runs the pension fund for government employees, allocates one seat for a representative nominated by the leading organization of government employees or retirees and appointed by the President of the Philippines.⁸⁵ This seat has been traditionally occupied by a nominee from the Philippine Government Employees' Association (PGEA). Further, the country's party-list system makes it possible for labour-affiliated sectoral representatives to be elected in the Philippine Congress. In this manner, the representatives can advance workers' interests through the political process, particularly through legislation. Similarly, in **Singapore**, as earlier noted, NTUC is allocated a seat in most statutory boards to represent the interests of workers including those in the public sector. Since NTUC is identified with the ruling political party, it can be assumed that it can advance workers' interests through the political process in Parliament.

Observations common to social dialogue mechanisms outside collective bargaining

Based on the social dialogue mechanisms described above, **Malaysia**, the **Philippines**, **Singapore** and **Thailand** all have basic structures for public sector social dialogue outside collective bargaining.

In terms of employees' participation in these mechanisms, it is possible that at the level of the workplace, employees may have the opportunity to directly participate in the process. But in the institutionalized forms of dialogue, participation of employees is typically indirect through representatives from their labour union if such exists, or through representatives that they elect or designate from their own ranks.

Based on the mandates of the law or regulation creating them, the mechanisms are primarily designed to address workplace-specific issues in a cooperative manner. But they may also discuss terms and conditions of employment and other matters that are traditionally within the domain of collective bargaining.

On the other hand, especially in relation to the enabling conditions for dialogue, evidence is lacking on the questions of how extensively these mechanisms are used and how effective these are. More in-depth research is needed to establish how genuine and independent representation (specifically, how representatives are actually chosen, whether in fact they are elected by their own ranks and not simply designated by the employer), the level of representation, how representatives prepare for dialogue (specifically technical capacity as well as whether they conduct consultations within their ranks), the extent to which the parties take part in preparing the agenda for dialogue, the value of agreements as binding agreements or as recommendations or advice to policy and decision-making bodies, among others.

Collective bargaining as a form of social dialogue

Under Convention No.154, collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for determining working conditions and terms of employment; and/or regulating relations between employers and workers; and/or regulating relations between employers or their organizations and a workers' organization or workers' organizations.⁸⁶ While none of the five

⁸⁴ Thailand, *State Enterprise Labour Relations Act B. E. 2543* (2000), Section 19.

⁸⁵ Philippines, *Republic Act No. 8291, 1997* (GSIS Act, as amended), Section 42.

⁸⁶ ILO, *Collective Bargaining Convention, 1981 (No. 154)*, Article 2.

countries in the study ratified Convention No.154, all except **Thailand** ratified the fundamental convention on protection of the right to organize (Convention No. 98). Within the definition of Convention No. 154, all five countries including **Thailand** incorporate the concept of collective bargaining at the enterprise level in their respective labour relations laws for the private sector.

However, only the **Philippines, Singapore** and **Thailand** extend collective bargaining rights to the public sector limited to the agency level. The conditions for the validity or effectivity of a collective agreement, including the process of approval, are also specified. Oversight of the process and content of collective agreements is provided through an office of the registrar or through a court in the case of **Singapore**, which has the power to scrutinize the agreement and determine compliance with laws and regulations as well as consistency with public interest. Labour dispute resolution mechanisms, including conciliation and mediation, are also in place in the laws. As is common in many countries within and outside the region, public sector employees do not have the right to strike.

In the **Philippines**, “collective negotiation” is the term specifically used in the public sector to distinguish the process from private sector “collective bargaining”. The basic difference lies in the output and subject matter of negotiations. The output in the public sector is a collective negotiation agreement (CNA) that contains terms and conditions of employment or improvements thereof, except those that are fixed by law.⁸⁷ The parties to collective negotiations are the employer agency and the duly registered employees’ organization (called an employees’ association rather than a trade or labour union) representing rank-and-file employees.

Two or more employees’ associations may exist among rank-and-file employees within one employer. Registration of an employees’ association does not automatically confer negotiating rights to an employees’ organization. As a pre-condition to negotiation, it must first acquire the status of a sole and exclusive negotiating agent by showing that it has the majority support of the rank-and-file employees in the employer unit.⁸⁸ This is done through a certification and accreditation system administered by the Department of Labour and Employment (DOLE) and the Civil Service Commission (CSC). When there is only one employees’ association in the employer unit, the association needs to file a petition for accreditation with the CSC, accompanied by proof that it is the lone employees’ association in the employer unit and by the names and signatures of the employees supporting it, which must be at least a majority of the employees in the negotiating unit.⁸⁹ If there are two or more registered associations in the employer unit, any one of them must first file a petition for certification election with the Bureau of Labour Relations of DOLE. All other employees’ associations will be treated as forced intervenors in the petition. If the petition is granted, a certification election will then be conducted at which the association which obtains the majority votes of the employees in the negotiating unit will acquire the right to be certified by DOLE as such. The employees’ association will then file a petition for accreditation with the CSC, with the result of the election as supporting document.⁹⁰

The negotiable matters that can be contained in a CNA, as specified in implementing regulations, include schedule of vacation and other leaves; personnel growth and development; communication system; work assignment/reassignment/detail/transfer; distribution of work load; provision for protection and safety; provision for facilities for handicapped personnel; provision for first aid medical services and supplies; physical fitness program; provision for family planning services for married women; annual medical/physical examination; recreational, social, athletic and cultural activities and facilities; a CNA incentive sourced from savings from the annual maintenance and operations budget; and such other concerns which are not prohibited by law and civil service rules and regulations.⁹¹ Also seen in some CNAs are provisions on “union time”, under which officers and members of the employees’ association may attend union-related activities and functions on official time.

⁸⁷ Philippines, Executive Order No. 180 (1987), Section 13; PSLMC Omnibus Rules and Regulations Implementing Executive Order No. 180 (2004), as amended, Rule XII, Section 1.

⁸⁸ Philippines, Executive Order No. 180 (1987), Sections 9 and 10.

⁸⁹ Philippines, Executive Order No. 180 (1987), Section 11; PSLMC Omnibus Rules and Regulations, Rule VIII, Sections 1-13.

⁹⁰ Philippines, Executive Order No. 180 (1987), Section 12; PSLMC Omnibus Rules and Regulations, Rules IX-XI.

⁹¹ PSLMC Omnibus Rules and Regulations, Rule XII, Section 2.

Excluded from the sphere of negotiation are matters of compensation and benefits such as increases in salary, allowances, travel expenses, and other benefits that are specifically provided for by law⁹² and for which public funds or funds approved through the national budget are to be disbursed. These are primarily governed by a standardized position classification and compensation structure set by law and applicable across the government service. The only recognised exception is a “CNA incentive”, which is an amount paid to individual employees on top of their regular compensation and benefits sourced out of savings from an agency’s maintenance and operating budget which are the result of cost-saving measures agreed upon by the agency and its employees’ association.⁹³ On items that are not negotiable, a party may submit proposals to Congress and the proper authorities to improve the terms and conditions of employment.⁹⁴

Some government-owned or controlled corporations (GOCCs) that are part of the public sector are exempt from the standardized position classification system. In these agencies, the rule on exclusion of compensation matters from collective negotiations still applies. In addition, a related law setting up the Governance Commission for GOCCs⁹⁵ requires that CNAs entered into by GOCCs with their employees’ associations are subject to review by the Commission before these can be put into effect.⁹⁶

A CNA generally takes effect upon signing of the authorized representatives of the agency and the employees’ association, and ratification by the majority of the rank-and-file employees in the negotiating unit.⁹⁷ As a rule, a duly executed CNA binds the agency concerned and all its employees for a duration of three years, or until a new CNA is concluded. Regulatory and technical oversight over CNAs is exercised by the CSC which administers a system of registration of CNAs pursuant to the PSLMC rules and regulations.⁹⁸ Registration is not a condition for validity of CNAs. But non-registration can affect the smooth implementation of the CNA and limit the parties’ access to labour dispute resolution mechanisms.

There is no explicit provision on deadlocks under the public sector labour relations law. The relevant provisions of the law that can be invoked during negotiations, and also in the event of deadlocks and disputes, are those pertaining to concerted activities subject to civil service law and rules, and referral of any dispute to the PSLMC for appropriate action.⁹⁹ In the latter case, conciliation and mediation services may be provided by the CSC.

In terms of outcomes, data from the CSC show that there were 401 registered CNAs in 2015.¹⁰⁰ Based on the number of employees’ associations of 1,866 in 2015,¹⁰¹ this means that roughly 21.5 per cent of registered employees’ associations had CNAs.

In **Singapore**, a “collective agreement” means an agreement as to industrial matters, or matters pertaining to the relations of employers and employees which are connected with the employment or non-employment or the terms of employment, the transfer of employment or the conditions of work of any person.¹⁰²

⁹² PSLMC Omnibus Rules and Regulations, Rule XII, Section 3.

⁹³ Philippines, “Authorizing the Grant of Collective Negotiation Agreement (CNA) Incentive to Employees in Government Agencies”, Administrative Order No. 135, Official Gazette, 27 December 2005.

⁹⁴ Philippines, PSLMC Omnibus Rules and Regulations, Rule XII, Section 5.

⁹⁵ Republic Act No. 10149 (GOCC Governance Act, 2011) promotes “financial viability and fiscal discipline in government-owned or -controlled corporations and to strengthen the role of the state in its governance and management to make them more responsive to the needs of public interest and for other purposes”. Under Sections 5 and 8-11 of the Act, the Commission is empowered to oversee the administration and performance of and to formulate a compensation and position classification system for GOCCs that is apart from the standardized structure.

⁹⁶ According to the Republic Act No. 10149, Section 6, the Commission is composed of five members headed by Chairperson who has the rank of Cabinet Secretary, two members with the rank of Undersecretary appointed by the President, and the Secretaries of the Department of Budget and Management and the Department of Finance who sit as ex officio members.

⁹⁷ PSLMC Omnibus Rules and Regulations, Rule XII, Section 4.

⁹⁸ PSLMC Omnibus Rules and Regulations, Rule XII, Rule XIII.

⁹⁹ Philippines, *Executive Order No. 180* (1987), Sections 14 and 16.

¹⁰⁰ CSC, “Registered Collective Negotiations Agreements (CNAs) as of December 31, 2015”.

¹⁰¹ DOLE, “Existing labor organizations, workers associations, and collective bargaining agreements as of December 2015”, 2015.

¹⁰² Singapore, *Industrial Relations Act (Chapter 136)*, Ordinance No. 20 of 1960, revised edition 2004, No. 2; see also Singapore Yearbook of Manpower Statistics 2020.

This definition is applicable to both the private and public sectors. On the part of the trade union, the right to bargain collectively is to be exercised consistent with the objectives of a trade union, which is to regulate relations between workers and employers toward promoting good industrial relations; improving working conditions; and raising productivity for the benefit of workers, employers and the economy.¹⁰³

For public agencies which are part of the civil service, the Minister charged with the responsibility for human resource management in the Civil Service (particularly the Minister or official in charge of the Public Service Division) shall be deemed to be the employer for purposes of a collective agreement.¹⁰⁴ In State enterprises, the employer agency is deemed to be the employer. In either case, the employees are represented by the agency-level union recognized as the bargaining representative of the employees.

The determination of the representative employees' trade union starts at the registration process. Once the Registrar of Trade Unions is satisfied that the applicant union complies with all the conditions for registration and has none of the conditions for denial of registration, it shall issue to the trade union a certificate of registration in the prescribed form. The certificate, unless proved to have been cancelled or withdrawn, shall be conclusive evidence for all purposes that the trade union has been duly registered under the Trade Unions Act 1940.¹⁰⁵

Registration confers to the trade union, among others, the right to seek recognition from the employer as the representative of the employees for purposes of collective bargaining. Once recognized, the union may then invite the employer, or be invited by the latter, to commence negotiations.¹⁰⁶ Where the employer refuses to recognize the union, the parties shall submit the matter to the Court for resolution.¹⁰⁷

From the words of the Trade Unions and Labour Relations Acts, the matters that can be subject of negotiations in the private sector appear broad. However, a trade union cannot make negotiating proposals regarding the promotion, transfer, employment or engagement, termination of service or dismissal or reinstatement, or assignment of an employee.¹⁰⁸ These limitations are seen to be applicable *mutatis mutandis* to the public sector. Further, it should also be recalled that setting of public sector compensation and benefits is determined through the Public Service Division based on competitive market principles rather than on the relative negotiating power of the parties. This approach effectively takes compensation and benefits out of the public sector negotiating agenda.

Upon reaching an agreement, the parties shall submit a memorandum thereof to the Registrar of Courts, who shall bring it to a Court for certification. The Court shall scrutinize the memorandum and may amend or modify any part of it to conform with relevant laws and rules, hold hearings or issue appropriate orders for the purpose. After due proceedings, the Court may issue a certification, or may refuse to do so.¹⁰⁹ Once certified, the agreement shall be treated as an award, effective for a minimum of two years to a maximum of three years computed from the time stated therein.¹¹⁰

If the employer and the trade union cannot reach an agreement, either of them can notify the Commissioner of Labour, who shall then provide access to conciliation and mediation to help the parties resolve their differences.¹¹¹ Any agreement will also be submitted to the Court for certification.

¹⁰³ Singapore, Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, revised 2004, No. 2.

¹⁰⁴ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 16.

¹⁰⁵ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 11.

¹⁰⁶ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 18.

¹⁰⁷ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 17.

¹⁰⁸ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 18.

¹⁰⁹ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 25.

¹¹⁰ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, Sec. 26.

¹¹¹ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, Nos. 20-21.

If conciliation and mediation is unsuccessful, the disagreement ripens into a “trade dispute” (notably, under the Industrial Relations Act, trade dispute appears to have the same meaning as “labour dispute”) which can then be submitted to arbitration, subject to notification requirements of the Registrar of Courts¹¹² and, where government employees are involved, the President of Singapore.¹¹³ The role of the Court is to carefully and expeditiously hear, inquire into and investigate every trade dispute of which it has cognizance and all matters affecting the trade dispute and the just settlement of the trade dispute¹¹⁴ for the purpose of issuing an award which shall be binding and shall serve as the collective contract of the parties.¹¹⁵

One aspect of collective bargaining and the process of making a collective agreement effective that is peculiar to **Singapore** is the role of Courts. In particular, regulation of the content and efficacy of a collective agreement is not through a registration system administered by an administrative agency. Rather, this is exercised by Courts through a certification process. An agreement so certified is considered an award.

In terms of collective bargaining outcomes, **Singapore** has 15 employees’ trade unions operating in the public sector.¹¹⁶ It has an equal number of certified collective agreements, out of the country’s total of 405. Of the 15 public sector agreements, 11 are with Government or Ministries and four are with statutory boards.¹¹⁷

In **Thailand**, the right to collective bargaining in the public sector is recognized only in State enterprises. Under the SELRA,¹¹⁸ employees in State enterprises may establish a union consisting of at least 25 per cent of all employees eligible for membership,¹¹⁹ among others, to promote good relations between employees and the employer and among employees; to support members; to seek or protect benefits relating to employment conditions; and to cooperate in enhancing efficiency and maintaining the interests of the State enterprise.¹²⁰

The law sets up a union registration system administered by a Trade Union Registrar. Since only one union is allowed in one employer enterprise,¹²¹ the registration process effectively determines the right of the union to represent employees for collective bargaining. If there are two or more applicants for registration which comply with the 25 per cent membership requirement, the Registrar will require the applicants to merge into one union.¹²² Upon registration, the union becomes a juristic person.¹²³ The union must then set up its governance structure and operations in accordance with the SELRA.¹²⁴ Thereafter, it acquires the right to perform acts on behalf of or for the benefit of its members, including submission of demands on conditions of employment to the employer party.¹²⁵ Notably, a registered and duly organized union can only represent its own members in collective bargaining.

A collective agreement between an employer and a labour union is one “relating to employment conditions”. It can include any rule concerning conditions of employment or work, working day and time, wages, welfare, termination of employment or other benefits of employer or employee which are related to employment or work.¹²⁶ For an agreement to be effective, it shall be in writing, signed by not less than half of the representatives of each party, disseminated in the workplace, and registered with the Registrar of

¹¹² Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, in relation to No. 2.

¹¹³ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 33 (2).

¹¹⁴ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, No. 32. See also Nos. 34-35.

¹¹⁵ Trade Unions Act (Chapter 333), Ordinance No. 3 of 1940, See Nos. 37-47.

¹¹⁶ Ministry of Manpower Singapore, “Trade Union Directory”.

¹¹⁷ Singapore, Ministry of Manpower, *Singapore Yearbook of Manpower Statistics 2020*, 2020.

¹¹⁸ Thailand, [State Enterprise Labour Relations Act B. E. 2543](#) (2000).

¹¹⁹ B. E. 2543 (2000), Section 42.

¹²⁰ B. E. 2543 (2000), Section 40.

¹²¹ B. E. 2543 (2000), see Section 40.

¹²² B. E. 2543 (2000), Section 46.

¹²³ B. E. 2543 (2000), Sections 42 and 48.

¹²⁴ B. E. 2543 (2000), Section 49.

¹²⁵ B. E. 2543 (2000), Section 25 in relation to Section 54.

¹²⁶ B. E. 2543 (2000), Section 6.

trade unions. The agreement shall be valid for not more three years.¹²⁷ It shall bind the signatory employer and the employees who are members of the labour union.¹²⁸

If the parties are unable to reach an agreement, the union may bring the matter to the Relations Affairs Committee within the enterprise.¹²⁹ If no settlement is reached, the matter ripens into a labour dispute. The party making demands can bring this to a conciliator for settlement. If still there is no settlement, the labour dispute will be brought to the State Enterprise Labour Relations Committee which can assign the dispute to a negotiator for possible settlement or act as arbitrator of the dispute and issue an award to resolve it.¹³⁰

While the scope of an agreement “relating to employment conditions” sounds broad, what the parties can negotiate by themselves is dependent on whether or not the union’s demands will have financial implications, as determined by the State Enterprise Labour Relations Committee and approved by the Cabinet for each enterprise.¹³¹ For working conditions with financial implications, the parties are bound to observe two rules. On one hand, if there are pre-existing working conditions with financial implications that were previously proposed by the Committee and approved by the Cabinet, the parties must observe these conditions in executing an agreement. On the other hand, if the working conditions with financial implications demanded by the union are outside of those which are pre-existing, these conditions must first be submitted for consideration of the Committee which will decide the appropriate proposals to be submitted to the Cabinet for approval. An employer will not be able to execute an agreement with financial implications without observing these conditions.¹³²

As has been noted, there is scant information on the actual number of public sector union membership in **Thailand**. Also, studies on the current labour relations situation and trends in State enterprises are unavailable. The project document mentioned in Section 2.3 above estimates that there were 16 collective bargaining agreements in State enterprises in 2014.¹³³

From the foregoing discussions, it can be seen that different approaches are employed in the determination of the representative union or employees’ organization. In **Malaysia, Singapore** and **Thailand**, the determination starts during the time the union is applying for registration. These countries, and explicitly so for **Malaysia** and **Singapore**, follow a “one union, one enterprise” policy. An application to register a union can be denied if there is already another union in the enterprise. Once registered, the union can then represent workers for all lawful intents and purposes. On the other hand, in the **Philippines**, a registered employees’ association does not automatically acquire the right to represent. The law allows more than one association to be registered in one employer unit. Where there are two registered associations, representation will be determined through a certification election conducted by DOLE. The association obtaining the majority vote will then apply for accreditation with the CSC, after which it will acquire the right to represent. If there is only one registered association in an employer unit, it will nevertheless have to be accredited by the CSC to acquire the right to represent.

In relation to the employer party or representative to collective bargaining, there are specific institutional arrangements. In the **Philippines** and **Thailand**, the government is represented by the head and management representatives of the agency or State enterprise in which the union or employees’ association operates. In **Singapore**, the government is represented by the Public Service Division when dealing with unions which are part of the civil service; in a State enterprise, it is represented by the head and management representatives of the enterprise involved.

¹²⁷ Thailand, State Enterprise Labour Relations Act B. E. 2543 (2000), see Sections 25 to 28.

¹²⁸ B. E. 2543 (2000), Section 29.

¹²⁹ B. E. 2543 (2000), Section 30 in relation to Sections 19 and 23.

¹³⁰ B. E. 2543 (2000), Section 31 in relation to Sections 8 and 13 (4) and (5).

¹³¹ B. E. 2543 (2000), see Sections 8 and 13 [2].

¹³² B. E. 2543 (2000), Sections 13(2), 28 and 32.

¹³³ See Footnotes 31-32.

Comments and observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR); issues raised in other relevant bodies

Over the years, various issues and complaints concerning limitations and restrictions on the exercise of freedom of association and right to organise and to collectively bargain in the five countries have been raised by trade unions with the ILO's CEACR as well as in other international bodies. For its part, the CEACR has made a number of observations and recommendations on these issues, including on public sector labour relations.

Indonesia ratified both Conventions Nos 87 and 98. The main problem is the absence of a legal framework for the public sector inasmuch as the labour relations law, Act No. 21 of 2000, excludes the public sector from its coverage. In a recent report, the CEACR noted "the Government's indication that Law No. 5 of 2014 on State Civil Servants, which stipulates that the civil servants' organization is the Professional Corps of Indonesian State Civil Apparatuses (KPPASN), will be further promulgated in the implementing government regulation that is still being discussed through coordination meetings with the Ministry of State Apparatus Reform."¹³⁴ At this time, however, there is no available information providing updates on any relevant Government initiative.

In the other countries within the sub-region, a common observation is the exclusion of certain groups of employees from the right to organize, and the rights to strike and to bargain on compensation and other monetary or economic terms and conditions of employment.

Malaysia has ratified Convention No.98 but not Convention No.87. Its Industrial Relations Act (IRA) allows organizing rights to public sector workers, with the exception of public sector "confidential, managerial, and executive" employees, as well as defense and police officials. A 2008 IRA amendment added "security" employees to these classifications. The ITUC has raised the concern that no definition of who is a "security" employee is provided in the law. Since the IRA grants the Director General absolute authority to determine employees' classification as "executive", "security", "managerial" or "confidential", the lack of definition or ambiguity could allow for systematic abuse in order to extend these terms to as many employees as possible.¹³⁵

Terms and conditions of employment for public servants are not matters for collective bargaining, but for consultation and discussion at the National Joint Council (NJC) and the Departmental Joint Council (DJC). As described by the Government, these forums operate to discuss grievances in the public sector and to consider any suggestions to improve terms and conditions of employment of public servants. The outcomes of consultations pertaining to salaries and remuneration are then subject to the decision of the Cabinet Committee on Establishment and Salaries of Employees in the Public Sector and are to be tabled and legislated in Parliament. Government has maintained its position of not recognizing the right to collective bargaining of public servant unions not engaged in the administration of the State.¹³⁶

The CEACR has observed that **Malaysia's** legal framework limits public sector collective bargaining. It has noted that "while the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by the Convention, the special characteristics of the public service require some flexibility in its application. Thus, legislative provisions allowing Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations, or to establish an overall 'budgetary package', within which the parties may negotiate monetary or standard-setting clauses (i.e. reduction of working hours,

¹³⁴ ILO, *Observation (CEACR) - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Indonesia (Ratification: 1998)*, 2018.

¹³⁵ See International Trade Union Confederation (ITUC), "Internationally Recognised Core Labour Standards in Malaysia: Report for the WTO General Council Review of the Trade Policies of Malaysia", January 2010.

¹³⁶ ILO, *Observation (CEACR) - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Malaysia (Ratification: 1961)*, International Labour Conference, 98th Session, 2009.

varying wage increases according to levels of remuneration), are compatible with the Convention, provided they leave a significant role to collective bargaining (see General Survey, *op. cit.*, paragraphs 261–264). The Committee considers that simple consultation with unions of public servants not engaged in the administration of the State do not meet the requirements of *Article 4* of the Convention”.¹³⁷ More recently, and responding to Government’s conclusion that “the current practice of negotiating terms and conditions of service of public employees has the rules and spirit of collective bargaining, although to a certain extent it is not in full conformity with international labour standards”, the CEACR reiterated its earlier observation. While recognizing the singularity of the public service which allows special modalities, the CEACR stressed that simple consultations with unions of public servants not engaged in the administration of the State do not meet the requirements of Article 4 of Convention 87. It urged the Government to take the necessary measures to ensure, for public servants not engaged in the administration of the State, the right to bargain collectively over wages and remuneration and other working conditions, in conformity with Article 4 of the Convention.¹³⁸

The **Philippines** ratified Conventions Nos 87 and 98, and in 2017, Convention No. 151. Its current public sector labour relations law excludes certain public servants. Thus, a labour center has raised the observation that firefighters, prison guards, persons outside the armed forces and the police who by the nature of their function are authorized to carry firearms, and public sector employees in policy-making positions or with access to confidential information have no trade union rights. On this point, the CEACR has pointed out that “(i) the right to organize should be guaranteed to all workers without distinction or discrimination of any kind, with the sole possible exception of the armed forces and the police; and (ii) it is not necessarily incompatible with the Convention to deny managerial and executive staff the right to join trade unions which represent other workers in the sector, provided they have the right to establish their own organizations to defend their interests”. Accordingly, the CEACR has expressed the hope that relevant legislative measures will be taken “to ensure that all workers (including those in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, temporary and outsourced workers, as well as workers without employment contract) fully benefit from the right to establish and join organizations to defend their occupational interests”.¹³⁹ Philippine affiliates of Public Sector International (PSI) describe the country’s ratification of Convention No. 151 as a major breakthrough, expressing the hope that with the Convention’s ratification, public employees’ organizations in the Philippines will have a greater role in processes relating to key issues such as salaries, gender and parity, anti-harassment measures, protection at the workplace, family responsibilities, maternity, prevention of occupational risks, and many others.¹⁴⁰ Bills seeking to expand the current public sector labour relations framework have been filed not only after but also before the ratification. However, no new progress in the way of expanding the current law has been reported.

Thailand has not ratified Conventions Nos 87 and 98. In relation to the public sector, the legal framework is the State Enterprises Labour Relations Act (SELRA). The main issue is that only employees in State enterprises, but not other public servants, have the rights to organize and to bargain. Among employees who have these rights, there are perceived restrictions on the extent to which freedom of association principles are applied. In a report by the International Trade Union Confederation (ITUC) to the World Trade Organization (WTO), it was noted that the SELRA allows only one union per state enterprise, and that if membership goes below 25 per cent of the eligible workforce, the union can be dissolved administratively. Further, individual state enterprise unions can only affiliate to the State Enterprise Workers’ Relations Confederation (SERC). Teachers and other civil servants interpret the provisions of the 2007 Constitution as extending the scope

¹³⁷ ILO, Observation (CEACR) - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Malaysia (Ratification: 1961), International Labour Conference, 98th Session, 2009.

¹³⁸ ILO, Observation (CEACR) - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Malaysia (Ratification: 1961), International Labour Conference, 108th Session, 2019.

¹³⁹ ILO, Observation (CEACR) - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Philippines (Ratification: 1953), International Labour Conference, 105th Session, 2016.

¹⁴⁰ Public Services International (PSI), “Major breakthrough for public workers’ rights: Philippines ratifies ILO Convention 151”, *PSI News* (blog), 19 September 2017.

of freedom of association over their professions and trades. Nonetheless, the government has refused to recognise the National Thai Teachers Union (NTTU). Civil servants cannot bargain on wages as government sets their wages through ordinances and decrees.¹⁴¹ In another paper, it was also pointed out that employees who are superiors or in management positions cannot become a member of a State enterprise union.¹⁴²

¹⁴¹ International Trade Union Confederation (ITUC), “Internationally Recognised Core Labour Standards in Thailand: Report for the WTO General Council Review of the Trade Policies of Thailand”, November 2011, 2-3.

¹⁴² Sutharee Wannasiri, *Freedom of association in Thailand: an assessment of the enabling environment for civil society* (CIVICUS, 2020).

▶ Conclusions

- **Relations between public administration and civil servants**

Public administration is lodged with central (or federal in the case of **Malaysia**) and national government ministries and agencies, and with local governments. In the performance of these functions, it is convenient to distinguish two groups of public functionaries. In one group are those who occupy political or elective offices and heads of public agencies who are appointed to their positions by reason of their political affiliations. Their tenure can be uncertain. These are the “political” public administrators responsible for State functions and for leading the affairs of the State at the highest levels of policy- and decision-making. The other group are those officers who are appointed to their offices on the basis of prescribed professional qualifications, merit and fitness, and who enjoy security of tenure. These are the career bureaucrats who constitute the core of the civil service in the five countries. The first group decides and directs. The second group executes and follows.

In public sector social dialogue mechanisms, representatives of the State or government as employer usually come from the first group. The second group is comprised of and is represented as employees.

- **Forms and levels of dialogue**

For the countries with institutional frameworks for public sector social dialogue, the enterprise-level practices of workers’ participation common within the sub-region are in the nature of workplace cooperation mechanisms aimed at improving enterprise productivity and operational efficiency. In such mechanisms, dialogue is through discussions and joint problem-solving processes. Where it takes place, participatory decision-making is focused on addressing floor-level technical or agency-specific concerns.

For countries which allow collective bargaining or negotiation to take place, the common restrictions are on matters that are and are not subject to negotiation. Compensation or other terms and conditions of employment that have financial or budgetary implications are either not negotiable outright (as in the case of the **Philippines**), or proposals thereon may be agreed upon by the parties, but these will have to be submitted to and approved by higher authority before these can be given effect (as in the case of **Thailand**).

In relation to the subject matter of public sector social dialogue mechanisms, it is notable that the matters discussed in workplace cooperation mechanisms, which are in their nature consultative, are also the same matters that are traditionally discussed in collective bargaining. In this regard, a point for further inquiry is the interaction effect, intended or unintended, between workplace cooperation and collective bargaining.

It is also notable that the subject matter of existing public sector social dialogue mechanisms in **Malaysia**, the **Philippines**, **Singapore** and **Thailand**, whether as a consultative process or as collective bargaining, are exclusively focused on terms, conditions, and benefits of employment, productivity and dispute prevention or resolution. There is no visible practice or available information that these social dialogue mechanisms are being used for the higher purpose of economic and social policy formulation or decision-making.

- **The attitude of the State**

A policy and legal environment that respects the fundamental rights to freedom of association and that assures public employees, as other workers, of their civil and political rights which are essential for the normal exercise of these fundamental rights is a key enabling condition for social dialogue in the public sector. This should lead to another enabling condition, which is the development of strong, independent workers' and employers' organizations with technical capacity and access to relevant information to participate in social dialogue. How the five countries are creating or nurturing these enabling conditions through the exercise of their power to regulate these rights is a powerful indicator of their attitude to social dialogue.

In their respective Constitutions and laws, the five countries recognize freedom of association and the right to collective bargaining as fundamental rights. In the relevant trade union and industrial relations laws except in **Indonesia**, public sector employees have different degrees of protection in relation to these rights, have access to social dialogue mechanisms which may include collective bargaining, and have recourse to labour dispute settlement bodies.

However, the trade union and collective bargaining laws in the five countries also contain provisions that can make public sector social dialogue difficult. Regulatory instruments are designed to control, guide and coordinate labour relations activities, particularly the activities of trade unions and employees' associations, under the leadership of the State.

Examples of this include, provisions on limiting the organization of employees within the same industry or occupation, limiting employees' choices through "one union, one employer" or "one union, one industry" policies, lodging in a government authority (typically a union registrar) the discretion to approve or disapprove the establishment of a union, strict supervision over the content of union constitutions and sources as well as use of union finances, limitation or restriction of matters that are subject of dialogue including collective bargaining, a requirement to register or submit a collective agreement for approval, penal sanctions against violations of trade union laws, among others. The regulatory attitude affects both private and public sectors and effectively reduces both the space and creative power of dialogue.

While the **Philippines** has ratified Convention No. 151, there are no visible programs promoting the development of public sector labour relations or to systematically monitor and support their legitimate activities. The absence of administrative data and statistics on public sector labour relations suggest the low level of priority or importance given to labour relations activities in the public sector, including activities related to social dialogue.

The CEACR has also pointed out signs that at least three of the countries included in the study are rolling back trade union rights. The situations in these countries are fluid and are key areas for future inquiry.

- **A suitable framework for public sector social dialogue**

There is an apparent absence of a dynamic culture for social dialogue in the five countries. This is true in the private sector, and even more so in the public sector.

Since strong and independent workers and employers' organizations are an enabling condition for social dialogue, trade union and collective bargaining outcomes can gauge how a country is prepared to further promote trade unionism, collective bargaining and other forms of social dialogue. Evidence¹⁴³ shows weak trade union and collective bargaining outcomes. **Thailand** has a trade union density rate of 3.5 per cent, while **Indonesia**, the **Philippines** and **Malaysia** have between 7 to 9 per cent. On collective bargaining coverage rate, **Malaysia** and the **Philippines** and **Thailand** have 1.3, 1.6 and 3.1 per cent respectively, while **Indonesia** has no statistics on this indicator. **Singapore** may be considered as the outlier with a trade union density rate of 21.2 per cent and collective bargaining coverage rate of 18.1 per cent.¹⁴⁴ Overall, as can be seen in earlier sections, there is very little trade union activity and very few collective agreements in the public sector.

Restrictive public sector labour relations laws, partly a legacy of the developmental State model, can contribute to the weak outcomes. But another dimension of analysis is the incompatible relationship between the developmental State model and the fundamental concept of social dialogue. Social dialogue is meant as an intermediating process that assumes plurality of interests involving multiple players which

¹⁴³ ILO, "Statistics on union membership", [ILOSTAT](#) database, last update 16 May 2021.

¹⁴⁴ Contributing factors are the incentives for joining a union other than improvements in terms and conditions of employment, such as services, rebates and discounts for members in NTUC-run services and facilities. These incentives, which are characteristics of a mutual aid association, are not present in the other four countries.

are independent, autonomous and have relatively equal power. A developmental State model favors a unitarist system where the State is the dominant player. Public sector employees may either be expected or may themselves be inclined not to pursue interests that are not aligned or are opposed to the interests of the State. The developmental State model adds a significant dimension of complexity in charting the future course of public sector labour relations in the five countries.

There is no easy path toward promoting a more facilitative and robust environment for freedom of association, collective bargaining and social dialogue in the public sector. This path will be critically shaped by the country-specific historical experiences, institutions, political and developmental orientation and prevailing attitudes of the players particularly in relation to international norms. In this regard, there is a need to encourage further research and inquiry on the breadth and depth of specific types of social dialogue as actually practiced at country level. The areas of inquiry can include issues, among others, such as whether workers participate in social dialogue mechanisms directly or through their freely and democratically elected representatives; what are the substantive subjects of dialogue be it through discussion, consultation or collective bargaining; what are the outputs of dialogue; whether or not agreements arrived at are binding; whether there are means by which agreements are implemented or enforced; what is the level of the social partners' capacity to engage in dialogue.

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The International Labour Organization is the United Nations agency for the world of work. We bring together governments, employers and workers to improve the working lives of all people, driving a human-centred approach to the future of work through employment creation, rights at work, social protection and social dialogue.

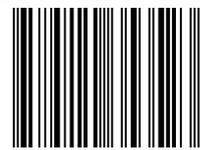
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