



COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW (2008)¹: BRUNEI DARUSSALAM

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, under the 2008 Annual Review (AR).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the employers' organizations (the National Chamber of Commerce and Industry, NCCI) and workers' organizations (the Brunei Oilfield Workers Union, BOWU) by means of consultation and communication of a copy of the Government's report and country baseline.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the NCCI and its three affiliates	
	Workers' organizations	2008 AR: Observations by the BOWU Observations by the International Trade Union Confederation (ITUC)	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	Brunei Darussalam has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	Under consideration in consultation with the employers' and workers' organizations. 2008 AR: The Government stated that it is considering the possibility to ratify C.87 and C.98, in consultation with the employers' and workers' organizations. The NCCI supported the ratification of all the ILO fundamental Conventions by Brunei Darussalam, including C.87 and C.98. The BOWU wished to explore the possibility of ratifying C.87 and C.98 with the Government and the employers' organizations.
	Recognition of the principle	Constitution	NO

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	and right (prospect(s), means of action, basic legal provisions)	Policy, legislation and/or regulations	<ul style="list-style-type: none"> • Legislation <p>The Trade Union Act CAP 128; and The Trade Disputes Act CAP 129</p> <p>2008 AR: There is no provision in the laws that underpins the right to collective bargaining. An individual contract is required between an employer and a worker, and trade union activities are not allowed to violate these individual labour contracts.</p>	
		Basic legal provisions	(i) The Trade Union Act CAP 128 (sections 3, 8, 13 and 15-21); and (ii) the Trade Disputes Act CAP 129 (sections 3, 7-30).	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2008 AR: Government authorization or approval is required to establish an employers' organization. Employers' organizations are established under the applicable law regulations</p> <p>The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry and national levels for all categories of employers.</p>
			For Workers	<p>2008 AR: Government authorization or approval is required to establish a workers' organization, but not to conclude collective agreements. The conditions for establishing workers' organizations are provided for under the Trade Union Act CAP 128.</p> <p>The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry and national levels for the following categories of workers: (i) all workers in the public service, except in the army, police and prison services under the Trade Union Act CAP 128. However, a social and welfare association has been formed by prison staff under the Societies Order, 2005, and this association can defend the professional interests of this category of workers; (ii) medical professionals; (iii) teachers; (iv) agricultural workers; (v) workers engaged in domestic work; (vi) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vii) migrant workers; (viii) workers above the age 18 years or between 16 and 18 with parental consent; and (ix) workers in the informal economy.</p> <p>According to the BOWU, the right to collective bargaining is exercised through the free negotiation of collective agreements between the BOWU and Brunei Shell Petroleum. In this respect, a collective agreement is concluded every three years (with possibility of extension) and registered as such in the Labour Department.</p>
			Special attention to particular situations	NO

			<p>Information/ Data collection and dissemination</p> <p>According to the BOWU: 232 out of 831 workers among the technical assistant supervisors of Brunei Shell Petroleum are unionised with the BOWU.</p> <p>According to the NCCI: the NCCI gathers about 1,500 employers and is composed by three major affiliates: the Malay Chamber of Commerce and Industry (MCCI), the Chinese Chamber of Commerce (CCC) and the International Chamber of Commerce (ICC).</p>
		<p>At international level</p>	<p>According to the Government: The principle and right (PR) is recognized at international level for employers' and workers' organizations, subject to the provisions of section 17 of the Trade Union Act CAP 128.</p>
<p>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>Monitoring, enforcement and sanctions mechanisms</p>	<p>2008 AR: According to the Government: Specific governmental measures have been implemented (legal reform, inspection and monitoring mechanisms by the Labour Department Inspectorate, penal sanctions, capacity building of responsible government officials, tripartite discussion of issue and awareness raising/advocacy) to respect, promote and realize freedom of association in the country. In this regard, the Trade Union Act CAP 128, section 19, provides for penal sanctions (fines of B\$ 6,000 (about US\$ 4, 445 as of November 2007) and 6 months imprisonment) when an employer contravenes the Trade Union Act provisions by discriminating a worker on the basis of his being or not being a member of a trade union.</p>	
	<p>Involvement of the social partners</p>	<p>2008 AR: According to the Government: the MCC and the BOWU are involved tripartite consultations.</p>	
	<p>Promotional activities</p>	<p>2008 AR: According to the Government: In November 2007, officials of the Labour Department of the Ministry of Home Affairs and of the Attorney General's Office were sensitized on the fundamental principles and rights at work, ILO fundamental Conventions and reporting issues during ILO's assistance in reporting issues carried out in November 2007. The NCCI stated that it promotes the relationship between these principles and rights, decent work and sustainable enterprises through discussions among its members and with the Government. The BOWU stated that it organizes monthly meetings to increase knowledge on ILO and fundamental principles and rights at work among its members.</p>	
	<p>Special initiatives/Progress</p>	<p>NIL</p>	
<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the social partners</p>	<p>Employers' organizations</p>	<p>2008 AR: According to the NCCI: No problems are being encountered to exercise the PR in the country. However, employers lack capacity building on the PR.</p>

		<p>Workers' organizations</p>	<p>2008 AR: According to the BOWU: There are no major problems to exercise the PR in the country, and bipartite negotiations with Brunei Shell Petroleum have been fruitful so far for workers, without any government interference. However, the issue of freedom of association and the right to collective bargaining needs to be further discussed with the Labour Department so as to strengthen the capacity of workers' organizations and the Labour Department officials.</p> <p>According to the ITUC: In Brunei Darussalam, the suspension of democratic rights, dating from 1962 and renewed by the government every two years, prevents trade union activity. The law prohibits unions and federations from affiliating with international union bodies unless they receive prior written consent from both the Minister of Home Affairs and the Labour Department. Also, it does not explicitly recognize the right to strike. Except for those in the army, police and prisons, civil servants are permitted to form and join unions, but none have done so. Moreover, their associational rights as well as those of the members of the security forces are significantly limited by a strict prohibition against them to join political parties of any kind. In practice, there are only three trade unions registered in the country, all in the oil sector, representing a total of approximately 1,500 workers. Two of the unions representing office workers are allegedly inactive, while the remaining union, comprised of manual oil field workers, has limited activities. These unions exercise little independence from government authority. There was virtually no discernible trade union activity in 2006. As regards migrant workers, the majority of national laws apply only to nationals, thereby failing to cover skilled and unskilled migrant workers, who make up from 30 to 40 per cent of the total workforce. Migrant workers are over 100,000 in the country, including over 10, 000 garment workers, none of whom are members of a trade union. Some migrant workers have reportedly carried out work stoppages in protest, which are illegal under the labour law barring strikes. In September 2005, three hundred migrant workers employed by a garment factory held a public protest complaining that they have not been paid for six months. As the protest was not permitted to continue, government officials reportedly worked with foreign Embassy staff to find alternative employment for the workers while prosecuting the company's representatives.</p>
	<p>According to the Government</p>		<p>2008 AR: According to the Government: (i) Lack of public awareness and/or support; (ii) Lack of information and data; (iii) legal provisions; (iv) lack of capacity of responsible government institutions; (v) lack of capacity of employers' and workers' organizations; and (vi) lack of social dialogue on the principle and right (PR).</p> <p>In response to the ITUC's observations, the Government stated as follows: (i) the Trade Unions Act (CAP 128) and the Trade Disputes Act (CAP 129) regulate trade unions and trade disputes respectively, and both legislations are still in force -- Moreover, as of 2004, the Legislative Council was re-established and comprises 45 persons including representatives from the four districts; (ii) the current unions registered under the Trade Unions Act are the following: (a) The Brunei Government Subordinates Officers' Union; (b) the Royal Brunei Customs Workers' Union; and (c) the Brunei Oilfield Workers' Union (BOWU); (iii) as regards the members of Royal Brunei Police Force, the Royal Brunei Armed Forces and the members of the Prison Services, they are not allowed to join any trade union. However, they are protected under specific laws, namely the Royal Brunei Police Act, (CAP 50), the Royal Brunei Armed Forces Act (CAP 149), and the Prisons Act (CAP 51); (iv) civil servants are not prohibited from joining trade unions; (v) concerning migrant workers, although this category of workers are not prohibited from joining trade unions and are protected under national labour laws, they are not members of any trade unions. Moreover, national laws do not differentiate between citizen and non-citizen workers; and (vi) as regards the garment industry, there were about 6,250 garment workers in 2006. The Government has taken legal action against a garment factory for failing to pay wages to citizens and non-citizens. The company faces 200 criminal charges concerning non-payment of wages under Section 108 of the Labour Act (CAP 93), and if found guilty, it could be fined up to B\$300,000 (about US\$ 222, 000 as of November 2007). Winding up proceedings have also been taken against the company whereby a liquidator has been appointed.</p>

TECHNICAL COOPERATION	Request	<p>2008 AR: According to the Government: There is a need for ILO technical cooperation to facilitate the realization of the PR in Brunei Darussalam, in particular in the following areas, by order of priority: (1) Strengthening data collection and capacity for statistical collection and analysis; sharing of experiences across countries/regions; (2) Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; Legal reform (labour law and other relevant legislation); capacity building of responsible government institutions; strengthening tripartite social dialogue; training of other officials (e.g. police, judiciary, social workers, teachers); and (3) Awareness-raising, legal literacy and advocacy; strengthening capacity of employers' and workers' organizations. These priorities may be satisfied through the preparation (survey and validation seminar) and the possible launch of a national programme to promote and realize the fundamental principles and rights at work in Brunei Darussalam, in consultation with the employers' and workers' organizations and the ILO.</p> <p>The NCCI and the BOWU supported the Government's requests, including the capacity building of the employers' and workers' organizations and the preparation of a national survey followed by a tripartite workshop on the Declaration's follow-up in Brunei Darussalam.</p>
	Offer	ILO (consultations on Decent Work Country Programme and assistance in reporting under the AR).
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	2008 AR: The ILO Declaration Expert-Advisers noted with particular interest that Brunei Darussalam, a new ILO member State, has provided a report (Cf. Paragraph 25 of the 2008 AR Introduction – ILO: GB.301/3).	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	