



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: BRAZIL

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

REPORTING	Fulfillment of Government's reporting obligations	YES, since the 2000 Annual Review (AR). No change report for the 2008 AR.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the employers' organizations (National Confederation of Agriculture (CNA), National Confederation of Trade (CNC), National Confederation of Industry (CNI), National Confederation of Financial Institutions (CNF), and National Transport Confederation (CNT) and workers' organizations (Single Central Organization of Workers (CUT), General Confederation of Workers (CGT), Força Sindical (FS), and Social Democratic Union (SDS), Independent Workers Confederation (CAT), and General Confederation of Workers of Brazil (CGTB)) by means of consultations and communications of the Government's reports	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2008 AR: Observations by the CNC. 2001 AR: Observations by the CNC. 2001 AR: Observations by the CNT.	
	Workers' organizations	2008 AR: Observations by the CUT Observations by the International Trade Union Confederation (ITUC). 2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU). 2005 AR: Observations by the ICFTU. 2004 AR: Observations by the CUT. 2003 AR: Observations by the CUT. 2002 AR: Observations by the CUT. 2002 AR: Observations by the ICFTU. 2001 AR: Observations by the SDS.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	<i>Brazil ratified in 1952 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C.87).</i>

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>

		Ratification intention	<p>YES, according to the Government: Ratification of C .87 depends on: (i) the outcome of consultations within the tripartite National Congress's approval of Constitutional amendments; and (ii) National Labour Forum; and (iii) the labour law reform to comply with the provisions of C. 87. Such amendments would render the Constitution compatible with the Convention, thus allowing for its ratification.</p> <p>2008 AR: The Government reiterated its observation made in the 2007 AR. The CNC expressed its support to the ratification of C.87 and stated that the Government should address the issue. The CUT indicated that it did not support the ratification of C.87 as it favors the creation of a single syndicate.</p> <p>2007 AR: According to the Government: It is currently still not possible to ratify C.87, since the Constitution (article 8 of the Constitution) runs contrary to the text of this Convention. However, the proposed Constitutional Amendment No. 369/05 is currently being examined by the National Congress, at the request of the Executive, with the aim of ensuring freedom of association. This amendment would render the Constitution compatible with the Convention, thus allowing for its ratification.</p> <p>2003-2005 ARs: According to the Government: A new 60-member tripartite «National Labour Forum» has submitted to the National Congress a proposal to amend the national legislation on industrial relations in order to ratify C.87. It is expected that Congress will soon review this proposal.</p> <p>2000-2003 ARs: According to the Government: The Executive submitted to the National Congress a «Proposed Constitutional Amendment» (PEC) No. 623/98 in November 1998 to suppress the single trade union requirement and the compulsory tax to ensure freedom of association as provided for in C. 87. Unfortunately, the PEC was shelved on a rule of procedure without being debated at the end of 2000.</p>
	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	<p>The 1988 Constitution guarantees freedom of association and collective bargaining (with the exception of the armed forces), but imposes the single trade union requirement according to which there can be only one trade union organization to represent an occupational or economic category in a given territorial area (art. 8, paragraph II). This requirement (known as «unicidade») prohibits the establishment of enterprise unions. Also enshrined in the Constitution is a compulsory trade union tax, which is levied on each worker by the Ministry of Labour and distributed to the national trade union federations according to the number of members.</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, basic legal provisions)	Policy/ Legislation and/or Regulations	<ul style="list-style-type: none"> • Legislations: <p>2001 AR: The consolidated labour laws (CLT) and the labour protection laws (LPL) relate to the principle and right (PR).</p>
		Basic legal provisions	<p>(i) The 1988 Constitution (article 8, paragraph II); (ii) Consolidation of Labour Laws (CLT); and (iii) labour protection laws.</p>
		Judicial decisions	<p>2002 AR: In 2001, the Upper Labour Court decided that the Labour Justice System is competent to declare a strike legal or illegal: «A strike is illegal when carried out in sectors that the law defines as essential to the community, if provision has not been made (...) to meet the basic, essential needs of the users of the service».</p>

	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	<p>2000-2005 ARs: According to the Government: No authorization is required to establish employers' organizations, with the exception of registration with the Ministry of Labour and Employment, and with the provision that only one trade union organization can represent an occupational or economic category in a given territorial area.</p>
			For Workers	<p>2000-2005 ARs: According to the Government: No authorization is required to establish workers' organizations, with exception of registration with the Ministry of Labour and Employment, and with the provision that only one trade union organization can represent an occupational or economic category in a given territorial area.</p>
			Special attention to particular situations	<p>2004-2005 ARs: According to the Government: The situation of specific categories of persons or industries/sectors, such as public servants, dockworkers, rural workers, the waterways, maritime and port sectors, liberal professions, transport and pensioner, and micro and small enterprises.</p>
			Information/ Data collection and dissemination	<p>2003 AR: According to the Government: The Brazilian Institute of Geography and Statistics (IBGE) estimates the number of trade unions in Brazil at 20,000; a number close to that recorded in the administrative records of the Ministry of Labour and Employment.</p> <p>2000 AR: According to the Government: With regard to freedom of association and the right to organize, data from the Ministry of Labour and Employment show that there were about 10,600 legally recognized unions from 1931 to October 1988 during which, the State exercised control over the establishment and running of trade unions in Brazil. In the post-constitutional period (1988-2000) almost 6,600 unions have been formed. In total, there are 17,200 union organizations representing occupational and economic categories.</p>
		At international level	Unions are free to affiliate to similar international organizations.	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Monitoring, enforcement and sanctions mechanisms	<p>2005 AR: According to the Government: In instances where the Government finds that this principle and right (PR) has not been respected, sanctions are provided for under national laws. A draft law on the prevention of anti-union practices has been debated in the National Labour Forum.</p> <p>2004 AR: According to the Government: In instances where the Government finds that this PR has not been respected, it reports the matter to the Labour Prosecutor, who initiates the appropriate legal or administrative proceedings.</p> <p>2003 AR: According to the Government: If workers feel their rights have been infringed, they can resort to the Labour Justice System, which is comprised of the Upper Labour Court, regional labour courts and labour magistrates. The Department of Labour Prosecutor is another body responsible for protecting collective and professional interests.</p>		
	Involvement of the social partners	<p>2004 AR: According to the Government: Social partners have been involved in the National Labour Forum proposed by the present Government to reform industrial and trade union relations and to various tripartite consultations relating to labour relations issues.</p>		

	<p>Promotional activities</p>	<p>2003 AR: The Government referred to the participation of the most representative employers' and workers' organizations in the Southern Common Market (MERCOSUR) social and labour forums at regional level.</p> <p>2000 AR: According to the Government: The Ministry of Labour and Employment including labour court judges and the civilian society have developed a broad programme of seminars, courses, training modules and similar activities on labour relations issues, in cooperation with the ILO. Several handbooks were also published on various topics including unionization.</p>	
	<p>Special initiatives/ Progress</p>	<p>2005 AR: According to the Government: The adoption of the final report on the Trade Union Reform.</p> <p>2004-2005 ARs: According to the Government: The creation of the National Labour Forum (FNT), a tripartite body, which focuses on elaborating proposals for trade union and labour reform.</p>	
<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the social partners</p>	<p>Employers' organizations</p>	<p>NIL</p>
		<p>Workers' organizations</p>	<p>2008 AR: The ITUC indicated the following challenges: (i) by law, each worker must pay a compulsory trade union tax, equivalent to one day's pay. It is deducted from their pay in March and then distributed to the unions, federations and confederations. A portion also goes to an employment and wage fund at the Ministry of Labour. The funds are distributed in proportion to the number of workers legally represented (based on the obligatory single union system, not on the number of workers actually affiliated) and (ii) collective bargaining is only open to those unions that are legally registered with the Ministry of Labour. The monopoly situation excludes workers from sub-contracted firms. The courts interfere in collective bargaining by making rulings based on petitions from only one of the parties. Owing to the lack of effective arrangements for direct bargaining with unions in companies, there is a huge number of pending court cases.</p> <p>2007 AR: According to the ICFTU: (i) the «unicidade» system provides that there can only be one trade union per economic or occupational category in each territorial area. This geographically based single union system means that some sectorial federations and national trade union centres are not legal; (ii) restrictions on the right to strike in the public services; (iii) establishment by companies of a blacklist system that targets workers who filed complaints against their employer; (iv) the anti-discrimination legislation is not enforced in case of violations and (v) weak enforcement of labour laws in the Export Processing Zones (EPZs).</p> <p>2005 AR: The ICFTU made observations on the following issues: (i) violation of union rights by employers; (ii) establishment by companies of a blacklist system that targets workers who filed complaints against their employer; (iii) rural workers' unions are confronted by hostile employers; (iv) incapacity of national authorities to apply anti-union discrimination and (v) weak enforcement of labour laws in the Export Processing Zones (EPZs).</p> <p>2002-2004 ARs: The CUT made the following observations: (i) there are constitutional, legislative, and administrative barriers to freedom of association; (ii) labour courts may order the stoppage of a strike and impose fines on striking unions; (iv) the Government's control over trade union registration; (v) violation of trade union rights in Brazil because of employers and police's obstruction of the work of trade unions and (vi) incapacity of the national authorities to protect workers' rights.</p>

<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the Government</p>	<p>2007 AR: According to the Government: The proposal for trade union organization agreed upon during the National Labour Forum to be submitted to the National Congress in 2006 will still not allow ratification of C.87, because the proposed model is neither for trade union nor for plurality, but is based on the real or <i>de facto</i> representativity of trade union bodies, unlike the present model where representativity is merely legal, with representation and unity based primarily on the seniority of trade union bodies.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) a new legislation proposed within the National Labour Forum (FNT), in July 2003, which is pending the end of the examination of the Proposed Constitutional Amendment (PEC) 369/05, provides for a series of situations involving anti-union conduct. Any act, the purpose of which is to undermine or damage trade union activity on the part of the employers or the workers, shall be held to be anti-union conduct and the perpetrator shall be subject to penalties; (ii) article 37, VII, of the Federal Constitution guarantees the right to strike of civil servants, stipulating that this right shall be exercised under the terms and within the limits defined under the relevant law. However, no law has been passed regulating the exercising of the right to strike of civil servants. Therefore, the Constitutional Court of Brazil, issued a ruling in which it stated the following: «(...) the constitutional precept that recognized the right to strike of public civil servants constitutes a standard of purely limited effectiveness and is consequently not self-executing, for which reason, in order to act fully, it requires the passage of the supplementary law called for in the text of the Constitution itself (...)» Aware of the need for regulations governing the right to strike of public civil servants, the Government, within the framework of the Sectorial Chamber of the Public Service of the National Labour Forum (FNT), guided the discussions with the social partners directly concerned by this issue, with the aim of formulating a draft law regulating the right to strike of civil servants. The draft law is in the final stage of preparation. Moreover, as was previously pointed out, the Government also strengthens its commitment to an urgent project directed at Brazilian workers. The aim of the project is to regulate the right to strike in the public service, this constitutional precept never having previously been regulated. The issue was widely debated within the Sectorial Chamber of the Public Service of the FNT.</p> <p>2005 AR: The main difficulties encountered in realizing the PR in Brazil are as follows: (i) lack of public awareness and/or support; (ii) social values, cultural traditions; (iii) social and economic circumstances; (iv) political situation; (v) legal provisions; (vi) lack of capacity of employers' organizations (vii) lack of capacity of workers' organizations.</p> <p>2002-2003 AR: Much progress has been made as far as the PR is concerned and it believes that technical cooperation offered by the ILO has helped greatly in developing a new model of labour relations in Brazil. However, despite the wide-ranging constitutional and legal guarantees, the Government also acknowledges that there are barriers in realizing the PR. These include: the rule whereby there may be only one union for each occupational or economic category, and the rule whereby everyone must pay compulsory union/confederation contribution.</p>
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TECHNICAL COOPERATION	Request	<p>2005 AR: The Government identified needs for technical cooperation in the following areas: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR, awareness raising, legal literacy and advocacy, strengthening data collection and capacity for statistical analysis, legal reform (labour law and other relevant legislation), (iv) capacity building of responsible government institutions, training of other officials (police, judiciary, social workers, teachers), strengthening capacity of employers' organizations, strengthening capacity of workers' organizations, strengthening tripartite social dialogue; (2) Sharing of experiences across countries/regions.</p> <p>2002 AR: The Government in response to the ICFTU comments made the following observations: (i) although progress has been made, there are still major obstacles in realizing the PR; (ii) violence against rural workers relates to a high concentration of land ownership, disputes about access to land and demands for agrarian reform rather than to union issues; (ii) there is a broad constitutional guarantee of freedom of association for civil rights, however they do not have the right to engage in collective bargaining; (iii) union leaders from the time their candidatures have been registered must be kept in employment for up to one year after the end of their term of office (article 8, (VIII)); (iv) in case of improper dismissal of union members in the public sector, those affected have the right to return to their occupation by order of the competent authority of the system of justice; (v) the strike is not authorized for category of workers of essential services.</p> <p>2001 AR: The Government in response to the CNC made the following comments: (i) the observations of the CNC were not reflected in the Government final report because they were sent later; (ii) the Government supports the view of CNC concerning the scope of Act. No. 9. 958 of the 12 January 2000, amending the Consolidation of Labour Laws.</p>
	Offer	ILO, MERCOSUR, the Organization of American States (OAS).

<p>EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS</p>	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of Brazil (and another country) reported that it did not intend to ratify C. 87. They noted that, after an initial stage where the Government had been seeking to amend its Constitution with a view to allowing greater freedom of association, since 2006, the Government indicated that it was not possible to ratify this Convention as it run contrary to the provisions of the Constitution. The IDEAs also noted that the Single Central Organization of Workers (CUT) supported maintaining the single trade union system and therefore did not favour ratification of Convention No. 87. In this regard, the IDEAs expressed concern that insufficient governmental efforts had been made in order to meet the commitment of removing legal obstacles, and urged the Government to proceed in this matter and work jointly with the Office in giving effect to this PR. Finally, the IDEAs noted that restrictions, in Brazil (and other countries), on the rights of certain categories of workers in Brazil (and some other countries), such as workers in the export processing zones, and workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 27, 28 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs listed Brazil among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize of workers in the export processing zones and workers in the public service. (Cf. Paragraphs 32 and 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed Brazil among the countries where some efforts are being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2004 AR: The IDEAs noted that Brazil was still seeking to amend its Constitution to allow greater freedom of association, and urged the Government to proceed in this matter (Cf. Paragraph 80 of the 2004 Annual Review Introduction– ILO: GB.289/4).</p> <p>2003 AR: The IDEAs noted that there were also indications of legislative developments toward realizing the PR in Brazil (Cf. Paragraph 39 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p> <p>2001 AR: The IDEAs noted that relatively few national employers' organizations submitted separate observations, but where they did, they offered useful insights into their experiences and the implications of recent legislative and institutional developments, as in the case of Brazil. (Cf. Paragraph 76 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>
<p>GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS</p>	<p>NIL</p>