



**COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)<sup>1</sup>: NEW ZEALAND**

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

<b>REPORTING</b>	<b>Fulfillment of Government's reporting obligations</b>	<b>YES</b> , but «no change» report for the 2002 and 2005 Annual Reviews (ARs).
	<b>Involvement of Employers' and Workers' organizations in the reporting process</b>	<b>YES</b> , according to the Government: Involvement of Business New Zealand (BNZ) and the New Zealand Council of Trade Unions (NZCTU) through communication of Government reports; and involvement of the most representatives workers' and employers' federations by means of consultations for the 2005 AR.
<b>OBSERVATIONS BY THE SOCIAL PARTNERS</b>	<b>Employers' organizations</b>	<b>2008 AR:</b> Observations by BNZ. <b>2007 AR:</b> Observations by BNZ. <b>2006 AR:</b> Observations by BNZ. <b>2005 AR:</b> Observations by BNZ. <b>2004 AR:</b> Observations by BNZ. <b>2003 AR:</b> Observations by BNZ. <b>2002 AR:</b> Observations by BNZ. <b>2001 AR:</b> Observations by NZEF. <b>2000 AR:</b> Observations by NZEF.
	<b>Workers' organizations</b>	<b>2007 AR:</b> Observations by NZCTU. <b>2006 AR:</b> Observations by NZCTU. <b>2005 AR:</b> Observations by NZCTU. <b>2004 AR:</b> Observations by NZCTU. <b>2003 AR:</b> Observations by NZCTU. <b>2002 AR:</b> Observations by NZCTU. Observations by the International Confederation of Free Trade Unions (ICFTU). <b>2001 AR:</b> Observations by NZCTU. <b>2000 AR:</b> Observations by ICFTU.

<sup>1</sup> 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>

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	<i>New Zealand ratified in 2003 the Right to Organize and Collective Bargaining Convention, 1949 (No.98) (C.98). However, it has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) (C.87).</i>
		Ratification intention	<p><b>2008 AR:</b> According to the Government: New Zealand is unable, for the time being, to ratify C.87. According to BNZ: Business New Zealand does not support ratification of Convention 87 for reasons stated previously given the broad interpretation by the Committee on Freedom of Association that includes the right. BNZ considers that such strikes benefit neither employers nor employees and could only undermine current government attempts to transform the New Zealand economy. It is concerned that its comment as recorded for 2003 under the 'Challenges in realising the principle and right' heading appears to support ratification although it acknowledges that the latest recorded comment contradicts this perception. The 2003 reference might, however, suggest that there has been a change in BNZ's approach to the ratification issue but this is not the case. Ratification has always been opposed.</p> <p><b>2007 AR:</b> According to the Government: New Zealand's policy remains not to ratify any Convention unless law, policy and practice fully comply with the provisions of the Convention.</p> <p><b>2004 AR:</b> The Government stated that it is continuing to monitor the compatibility of national law, policy and practice with C.87 to assess whether ratification of this instrument will be possible in the future.</p> <p><b>2001 AR:</b> Based on information in GB.282/LILS/7 and GB.282/8/2 (Nov. 2001): The Government intended to ratify C.87 and C.98.</p> <p><b>2001 AR:</b> The Government stated that its intention is to promote observance in New Zealand of the principles underlying in C.87 and C.98 in order to ratify them.</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Recognition of the principle and right (prospect(s), means of action, main legal provisions)	Constitution	NIL

		<b>Policy, legislation and/or regulations</b>	<p>• <b>Legislation</b>  <b>2006 AR:</b> The Government indicated that the Employment Relations Amendment Act, 2004 came into force on 1 December 2004. The objectives of this Act are the promotion of union access, representation rights and collective bargaining. The amendments include among others the prohibition of employers from deliberately undermining union membership through the automatic passing on of union negotiated benefits to non-union employees</p> <p>NZCTU welcomes the employment law changes introduced by the Employment Relations Act (No.2), 2004.</p> <p><b>2004 AR:</b> The Government points out that it is currently reviewing the Employment Relations Act, 2000 with the aim of considering what legislative changes are required so that the Act can better meet its statutory objectives of promoting freedom of association and the right to collective bargaining (PR).</p> <p><b>2001-2002 ARs:</b> The Employment Relations Act (ERA), 2000, which came into force on 2 October 2000, replaces the Employment Contracts Act (ECA).  According to the Government: One of the overall objectives of the ERA is to promote observance of the principles underlying C.87 and C.98. The Act also modifies existing provisions relating to the rights to strike and lockout, including a change to provide that workers and their organizations are able to take industrial action in support of multi-employer collective agreements.</p>	
		<b>Main legal provisions</b>	(i) the Employment Relations Amendment Act, 2004 (ii) the personal grievance provisions of the Act (Part IX); (iii) the New Zealand Bill of Rights Act 1990 (NZ BOR Act); (iv) the Human Rights Act, 1993 (HR Act); (v) the Employment Relations Act, 2000.	
		<b>Judicial decisions</b>	<p><b>2008 AR:</b>  <i>Christchurch City Council v Southern Local Government Officers Union Inc</i> (2007) 4 NZELR 63; [2007] NZCA 11  <i>Greenlea Premier Meats Limited v New Zealand Meat &amp; Related Trade Union Inc</i> (16 June 2006, Employment Court)</p> <p><b>2006 AR:</b>  J. Wilson, 24 August 2004, CA 100/04 — Judgment No. CC 12/05</p>	
	<b>Exercise of the principle and right</b>	<b>At national level (enterprise, sector/industry, national)</b>	<b>For Employers</b>	<b>2003-2005 ARs:</b> The PR can be exercised at enterprise, sector/industry, national and international levels by all categories of employers, without Government authorization/approval.
<b>For Workers</b>			<p><b>2003-2005 ARs:</b> Government authorization/approval is necessary to establish a workers' organization, but not to conclude collective agreements. The PR can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: all workers in the public service; medical professionals; teachers; agricultural workers; workers engaged in domestic work; migrant workers; workers of all ages workers in the informal economy.</p> <p>The armed forces are not covered by the legislation and the police are covered under the ERA, but with certain separate arrangements that apply to sworn police officers under the Police Act, 1958.</p>	

			<b>Special attention to particular situations</b>	<b>2003-2005 ARs:</b> According to the Government: Women and young persons.
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Exercise of the principle and right</b>	<b>At national level (enterprise, sector/industry, national)</b>	<b>Information and data collection</b>	<p><b>2007 AR:</b> According to the Government: An amended Code of Good faith publication is available upon request, and information is also available at any time on the web at <a href="http://www.ers.govt.nz/goodfaith/code.html">www.ers.govt.nz/goodfaith/code.html</a>. Moreover, the Collective Agreement Database &amp; strike information databases are linking actively with the Department's Mediation Service to pre-empt potential collective bargaining problems. The databases contain information on proposed and historical strike action.</p> <p><b>2002 AR:</b> According to the Government: The Department of Labour has revised its database to cover all collective agreements and collect information relevant to the Employment Relations Act, including information on unions and union membership. Analysis of this information showing trends in collective bargaining arrangements and outcomes is presented in its magazine <i>ERA Info</i>, and distributed free to interested groups including unions and employers.</p> <p><b>2001 AR:</b> According to the Government: the Department of Labour's analysis of collective employment contracts, in its database of contracts covering 20 or more employees, shows that in September 2000, 79 per cent of employees covered by these contracts were represented by a union.</p> <p><b>2000 AR:</b> According to the Government: The Industrial Relations Centre at Victoria University continues to survey trade unions annually. The survey provides estimates of the number and membership of unions at 31 December of each year.</p>
		<b>At international level</b>		According to the Government: There are no particular restrictions on the international affiliation of employers' and workers' organizations.
	<b>Monitoring, enforcement and sanctions mechanisms</b>	<p><b>2003-2006 ARs:</b> According to the Government: The following measures have been implemented to respect and implement the PR: (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal sanctions; (iv) civil or administrative sanctions; (v) special institutional machinery.</p> <p><b>2001 AR:</b> According to the Government: The Registrar of Unions (as well as members of a union, other unions and affected employers) is able to take action through the appropriate authorities if they believe a union has acted contrary to the provisions of the Act or unlawfully in some other manner, or contrary to their own rules.</p> <p><b>2000 AR:</b> According to the Government: The ERA ensures the effectiveness of collective agreements by specifying minimum requirements for collective bargaining, including that there must be a ratification procedure, that collective contracts be in writing and that collective contracts include a date of expiry.</p>		
	<b>Involvement of the social partners</b>	<p><b>2006 AR:</b> Involvement of the social partners in the amendment and promotion of the Employment Relations Amendment Act, 2004.</p> <p><b>2003 AR:</b> According to the Government: Through the implementation of tripartite discussion of issues. Moreover, consultation is underway with New Zealand's social partners – NZCTU and BNZ - to address the compatibility of the ERA with C.87 and C.98.</p>		

<p><b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>Promotional activities</b></p>	<p><b>2008 AR:</b> The BNZ stated that its regional employers’ organisations are involved in the provision of employment relations education and as well provide advice and information to their employer members through seminars, advice line services, collective and individual bargaining assistance and so on.</p> <p><b>2007 AR:</b> According to the Government: A government budget of NZ \$ 2 millions is being provided annually towards an openly contestable employment relations’ education fund. This has resulted in the creation of 282 courses for 2005/06. The courses are designed to increase skills and knowledge of employers and workers in employment matters and to improve relationships within the workplace to allow parties to deal with each other in good faith.</p> <p>-The BNZ stated that its regional employers’ organisations are involved in the provision of employment relations education and as well provide advice and information to their employer members through seminars, advice line services, collective and individual bargaining assistance and so on.</p> <p><b>2003 AR:</b> According to the Government: The following measures have been implemented to promote and implement the PR: (i) capacity building of responsible government officials; (ii) training of other government officials; (iii) capacity building for employers’ and workers’ organizations; (iv) awareness raising/advocacy activities.</p> <p>-Moreover, Information Officers and Labour Inspectors have conducted approximately 400 talks or seminars about employment rights and obligations with high schools, tertiary providers, Citizens Advice Bureaus, industry training providers, workplaces, community representatives, and employers.</p> <p>-A tripartite meeting was held in New Zealand in February 2002, with the Director of the International Labour Standards Department.</p> <p><b>2002 AR:</b> According to the Government: The ERA provides for paid leave for eligible employees (union members) to undertake approved courses in employment relations’ education.</p> <p><b>2001 AR:</b> According to the Government: The Department of Labour is currently undertaking an extensive information campaign, utilizing a number of forums, relating to the new statutory regime. This information campaign includes material relating to the promotion of freedom of association and the right to collective bargaining.</p>
	<p><b>Special initiatives/Progress</b></p>	<p><b>2008 AR:</b> The Department is moving to publish information on collective bargaining outcomes and union membership online to replace ER info in 2007/08.</p> <p><b>2006 AR:</b> According to the Government:</p> <p>-The Department of Labour held ‘Roadshows’ in major centers in 2005 that discussed the amendments implemented by the Employment Relations Amendment Act 2004. The ‘Roadshows’ were well attended by employers’ and employees’ representatives.</p> <p>-Employment Relations Education (ERE) continues to help employers, unions and employees improve their skills and knowledge of employment matters, including on the PR.</p> <p>-Involvement in ERE continues, and over 200 ERE courses are approved under the Employment Relations Act 2000.</p> <p>-The ERE Contestable Fund continues to have New Zealand \$ 2 million available annually for courses. In 2004/05, 24 organizations were funded for employment relations’ education, and two organizations for Health and Safety Representative training.</p> <p>-Some organizations, particularly NZCTU and BNZ, have become major providers of both ERE and Health and Safety Representative training. The range of projects funded continues to expand, and includes researching the employment relations needs of migrant workers and educating union representatives on enterprise and industry economics.</p>

<p><b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>According to the social partners</b></p>	<p><b>Employers' organizations</b></p>	<p><b>2008 AR:</b> According to BNZ: There are concerns that the recent contract proposals developed by the Government, particularly in the health sector, overrides to some extent the integrity of individual choice regarding membership of a union.</p> <p><b>2007 AR:</b> According to BNZ: ratification of C.87 would not be in the interests of New Zealanders generally, given that the Convention has been interpreted as permitting sympathy strikes and boycotts as well as strikes on social and economic grounds which would affect many more individuals than those whom such action is intended to influence.</p> <p><b>2006 AR:</b> According to BNZ, limiting the right to officially registered unions is a retrograde step, which prevents the full realization of freedom of association.</p> <p><b>2003 AR:</b> BNZ raised the following challenges: (i) women in New Zealand do not suffer from labour market disadvantage; (ii) encourages the Government to ratify C.87 and C.98; (iii) and does not believe it is in the interest of New Zealanders, and more generally of employers, to face the possibility of sympathy strikes and boycotts and strikes on social, and economic grounds, which they have no ability to resolve; (iv) Such strikes are in contradiction with strike action as originally conceived, that is, as an action to enable employees with little bargaining power to challenge an employer with greater bargaining power.</p> <p><b>2002 AR:</b> According to BNZ's: (i) only unions are entitled to negotiate collective agreements, and to be so entitled, the union itself must be officially registered, (ii) freedom to associate is limited; (iii) paid employment relations educational leave is available only to employees who are union members; (iv) and the Act promotes registered unions only.</p> <p><b>2001 AR:</b> The NZEF raised the following challenges: (i) before employees can form a union of their own choosing they need to have 15 potential members; (ii) unions are also required to register as an incorporated society.</p> <p><b>2000 AR:</b> No particular challenges have been raised by the NZEF.</p>
		<p><b>Workers' organizations</b></p>	<p><b>2007 AR:</b> According to NZCTU: lack of information and data collection caused by the cancellation of the magazine <i>ERA Info</i>.</p> <p><b>2000 and 2002 ARs:</b> According to ICFTU: (i) trade union membership plummeted; (ii) the limitation on strike rights remain the same in spite of the coming into force of the ERA; (iii) ICFTU encourages the Government to ratify C.87 and C.98; and (iv) the Government has not amended the ECA to make it consistent with the promotion and encouragement of collective bargaining, as well as to allow trade unions to go on strike in support of multi-employer collective agreements.</p> <p><b>2001-2004 ARs:</b> NZCTU raised the following challenges: (i) two categories of workers are restricted from the PR: people required to work in order to continue receiving the «community wage» or unemployment benefit under the Social Security (Work Test) Amendment Act 1998, and prisoners working for private enterprises during the course of their imprisonment; (ii) the ECA provides insufficient protections for the PR.</p>

	<b>According to the Government</b>	<p><b>2007 AR:</b> In response to NZCTU's comments, the Government indicated that the Department of Labour has undertaken to provide information on the Employment Relations Service website. The information will be available to a wider audience and will be updated on a more frequent basis than the previous publication. This website should be online by Christmas 2006.</p> <p><b>2006 AR:</b> In response to BNZ's comments, the Government indicated that the requirements that only officially registered unions may bargain collectively does not constitute a barrier to freedom of association. Registration as a union protects members' interests and gives access to the rights afforded to unions under the Employment Relations Act.</p>
<b>TECHNICAL COOPERATION</b>	<b>Request</b>	NIL
	<b>Offer</b>	ILO, GCC.
<b>EXPERT-ADVISERS' RECOMMENDATIONS</b>		<p><b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of New Zealand (and three other governments) had indicated the current impossibility to ratify C. 87, without further justification (Cf. Paragraph 29 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p><b>2005 AR:</b> The IDEAs listed New Zealand 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. Furthermore, the ILO Declaration Expert-Advisers stated that they hope that the momentum of the positive dialogue on the realization of the PR will be kept, and the intention to ratify C.87 will be realized soon in New Zealand (Cf. Paragraphs 13 and 139 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p><b>2004 AR:</b> The IDEAs noted the meaningful exchange that can take place when employers' and workers' organizations enter the process of dialogue that is also constituted by this annual review process such as in the case of New Zealand (Cf. Paragraph 82 of the 2004 Annual Review Introduction – ILO: GB.289/4).</p> <p><b>2001 AR:</b> The IDEAs noted that relatively few national employers' organizations had submitted separate observations; but where they did, they offered useful insights into their experiences and the implications of recent legislative and institutional developments, such as in New Zealand ((Cf. Paragraph 76 of the 2001 Annual Review Introduction – ILO: GB.280/3/1).</p>
<b>GOVERNING BODY RECOMMENDATIONS</b>		NIL