

NEW ZEALAND (2000-2019)

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING

REPORTING	Fulfilment of Government's reporting obligations	YES, but “no change” reports for the 2002 and 2005 Annual Reviews (ARs).	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, 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	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	2002-2019 ARs: Observations by BNZ. 2000-2001 ARs: Observations by the NZEF.	
	Workers' organizations	2003-2019 ARs: Observations by the NZCTU. 2002 AR: Observations by the NZCTU. Observations by the ICFTU. 2001 AR: Observations by the NZCTU. 2000 AR: Observations by the International Confederation of Free Trade Unions (ICFTU).	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	New Zealand ratified in 2003 the Right to Organise 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).
		Ratification intention	Unable, for the time being, to ratify C.87. 2019 AR: The Government indicates that there is no change since the last report. BNZ comment: while it supports the concept of freedom of association, it does not support the ratification of Convention 87. (NZCTU) Comment: In 2018, the NZCTU wrote to Minister of Workplace Relations and Safety Iain Lees-Galloway, requesting him to commence a process to ratify fundamental ILO conventions including Conventions 87 and 138. The Minister's reply stated that “our non-ratification reflects long-held and considered policy positions regarding the scope of lawful strike action and age-based regulation of work, which prevent compliance with the letter of the Conventions”. 2018 AR: The Government indicates that C.87 is unlikely to be ratified. There is no change in respect of the inconsistency between New Zealand's legislation, which provides for lawful strike action on collective bargaining and health and safety grounds, and the Committee of Experts' interpretation of the Convention, which also provides for sympathy strikes and strike action on social and economic policy matters. 2017 AR: The Government reiterated that under part 3 of the Employment Relations Act 2000 ('the Act'), employees have the freedom to choose whether or not to form a union or be members of a union for the purpose of advancing their collective employment interests. Furthermore, no person may exercise preference or undue influence on another person because the other person is or is not a member of a union. The legal and administrative requirements for union registration under the Act do not pose any significant barriers to union formation or operation. Discrimination in employment based on a person's involvement in the activities of a union is also prohibited under the Act (s104, s107). NZCTU Comment: The government response does not answer the question on the prospects for ratification and the impediments, if any, to ratification of the Convention. This is not acceptable in an Article 19 report on a fundamental convention. We call on the government to provide a full assessment of any barriers to ratification of the Convention and to provide a plan for overcoming these barriers and moving towards ratification. New Zealand is one of only 33 states, and only 3 OECD members, who have not ratified the Convention. The non-ratification of the Convention by the New Zealand government sends the wrong message about New Zealand's commitment to freedom of association and the protection of that right. Despite international

		<p>obligations to promote freedom of association and collective bargaining, the New Zealand government has made regressive policy moves since the last periodic report. Following a protracted parliamentary process and widespread public opposition, the Government passed the Employment Relations Amendment Act 2014 (‘the Amendment Act’) through its final stages in late October and early November 2014.</p> <p>The Amendment Act breaches New Zealand’s obligations to promote freedom of association and collective bargaining in a number of ways: • Removal of the duty to conclude a collective agreement; • A sixty-day period where parties cannot reinitiate bargaining without agreement creates undue delay in negotiations and restricts strike action for a 100-day period (because industrial action cannot be commenced for 40 days after bargaining is initiated); • Effective removal of the right to strike in support of multi-employer bargaining; and • Unnecessary obstacles to and disproportionate deductions for taking strike action are a breach of the right to strike. Taken as a whole, the Act is regressive and fails to promote collective bargaining. We discuss each of these issues in our response to New Zealand’s Article 19 Report on C98. In response to NZCTU’s comment, the Government stated that it had previously reported on the prospects for ratification and impediments to ratification of C87, and its position is published in the ILO Compilation of Baseline Tables. There is no change on this matter since the previous report. Matters concerning changes to the Employment Relations Act have been raised in previous baseline updates and, as the NZCTU notes above, New Zealand’s 2017 Article 22 report on C98. As the NZCTU discusses each of its above points more substantively in New Zealand’s 2017 Article 22 report on C98, we refer the ILO to the Government’s comments and responses made in that report. There have been no changes to the Employment Relations Act over the past year.</p> <p>BusinessNZ Comment As BusinessNZ has pointed out on many previous occasions, New Zealand has not ratified Convention 87 (Freedom of Association and Protection of the Right to Organise) largely because of the way in which the Committee of Experts on the Application of Conventions and Recommendations has chosen to interpret the Convention. Although the Convention itself makes no mention of any right to strike, the Committee has not only found the language used capable of sustaining the right but has gone further by also supporting secondary (or sympathy) strike action and strike action on economic, social and political grounds – strikes which affect far more people than the employers involved and to which those same employers have no ability to respond. This proposition has been strongly refuted by employers (notably at the 2012 International Labour Conference) and supported by many governments. The assertion of a general right to strike in respect to matters that are not work- or workplace-related is of considerable concern to employers since the exercise of such a right has the potential to damage the livelihoods of workers playing no part in the strike, the industries in which they work and a country’s economy generally. In such a situation there are no winners. In New Zealand, legal strike action can be undertaken in two instances – in support of the creation or renewal of a collective agreement and on health and safety grounds. Strikes of this kind the affected employer has the ability to settle. Any damage inflicted will be confined to the immediate parties. Economic, social and political strikes, by contrast, are an attempt to inflict one section of the community’s view of its best interests on all other community members.</p> <p>2016 AR: The Government reported that although C.87 has not yet been ratified, the Employment Relations Act 2000 provides that employees have the freedom to choose whether or not to form a union or be members of a union for the purpose of advancing their collective employment interests; and the exercise of preference or undue influence over whether a person is or is not a member of a union is forbidden, and that the legal and administrative requirements for union registration under the Act do not pose any significant barriers to union formation or operation.</p> <p>2015 AR: The Government reiterated the statement it made under the previous review.</p> <p>NZCTU continues to advocate for legal changes to bring New Zealand’s law into compliance with C87 and for ratification of the</p>
--	--	--

		<p>Convention.</p> <p>2014 AR: The Government reiterated the “no change” statement it made under the previous review.</p> <p>According to the BNZ: While the BNZ supports the concept of freedom of association, it does not support ratification of C.87 due to the belief that strike action should not be permissible over matters for which the affected employer can do nothing to influence.</p> <p>2013 AR: According to the Government: There has been no change in the status of the ratification of C.87 over the last year. According to the BNZ: There are no impediments to the right to form and join unions in New Zealand.</p> <p>According to the NZCTU: Considering the latest development and legal reforms in the country, the NZCTU regrets to report that it believes that ratification of C.87 is now less likely than it was before 2009.</p> <p>2012 AR: According to BNZ: As BNZ has noted on previous occasions, while it supports the concept of freedom of association, it does not support ratification of C.87 due to the concern that C.87 would entitle workers to take strike action over social and economic matters or secondary strike action against employers not involved in a particular dispute. BNZ does not believe that strike action should be permissible over matters for which the affected employer has no responsibility and can do nothing to influence.</p> <p>2011 AR: According to BNZ: While BNZ supports the concept of freedom of association, it does not support ratification of C.87. It remains concerned that C.87 entitles workers to take strike action over social and economic matters or secondary strike action against employers not involved in a particular dispute, as interpreted by the Freedom of Association Committee. BNZ does not believe that strike action should be permissible over matters for which the affected employer has no responsibility and can do nothing to influence.</p> <p>2010 AR: BNZ and NZCTU reiterated the statements they made under the 2009 AR.</p> <p>2009 AR: According to the Government: It is New Zealand government policy to ratify treaties only when it is certain that New Zealand will be fully compliant. To all intents and purposes, New Zealand already complies with the letter and spirit of this Convention, but is unable to ratify it given that ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty. This is contrary to New Zealand’s employment relations legislative framework, which clearly specifies the range of lawful and unlawful strikes and the respective immunities and penalties involved in taking such actions. Under current law, protected strike action is that which takes place in pursuit of collective bargaining or on worker health and safety grounds. The Government considers that these provisions remain appropriate although an additional review of the compatibility between national employment legislation and the provisions of C.87 could bring a little substantive benefit, as proposed by the NZCTU.</p> <p>According to BNZ: BNZ would reiterate comments made under the previous ARs regarding New Zealand’s non-ratification of C.87. In this particular case the problem is not so much with the Convention itself but with the way in which it has been interpreted by the ILO Committee on Freedom of Association. Sympathy strikes, and strikes on social and economic grounds are not in the interests of the country generally and are matters that an affected employer cannot readily deal with. Strikes that inconvenience more than the immediate parties are not, in the opinion of BNZ, something to be encouraged, particularly when, as will often be the case, the focus of the action is on government decision-making. In addition, the decent work concept, with its emphasis on workplace productivity, makes general strikes counter-intuitive. In a democracy there is an electoral process to address concerns of this sort.</p> <p>According to the NZCTU: NZCTU believes that there should be a review of current employment legislation and practice in New Zealand for compliance with C.87 with a view to ratifying that Convention.</p>
--	--	---

			<p>Recent improvements in employment legislation have strengthened the workers' rights to freedom of association and protection of the right to organise. The NZCTU notes that New Zealand employment policy and practice is more robust in recognizing workers' rights than the policy and practice of many other ILO member States which have ratified C.87. NZCTU notes that New Zealand law and practice complies with a literal reading of C.87. Issues relating to non-compliance are based on the broad interpretation and implications of the discussion by the ILO Committee of Experts on the Application of Conventions and Recommendations, particularly in its General Survey of 1994. The employment legislation and practice in New Zealand has changed since the 1990s, with a particular strengthening of "the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements", as outlined in chapter V, paragraph 167 of the 1994 ILO General Survey. There has been overall strengthening of employment legislation for collective bargaining by workers in New Zealand, including the use of mediation and judicial processes for examining employment disputes arising from collective bargaining.</p> <p>The NZCTU further notes that the Government adheres to such arbitration processes in general situations where the Government is the employer. The NZCTU recommends therefore a review of the New Zealand employment legislation and practice together with substantive ILO discussions on the issue, such as in the above chapter V on the right to strike, with a view to ratifying C.87.</p> <p>2008 AR: According to the Government: New Zealand is unable, for the time being, to ratify C.87. According to BNZ: it does not support ratification of C.87 for reasons stated previously given the broad interpretation by the Committee on Freedom of Association that includes the right. The BNZ considers that such strikes benefit neither employers nor worker and could only undermine current government attempts to transform the New Zealand economy. The NZCTU stated its support for the ratification of C.87; however, the employment legislation and practice had to be reviewed.</p> <p>2007 AR: 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>2004 AR: 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>2001 AR: 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. 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>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</p>	<p>Constitution</p>	<p>NIL.</p>
		<p>Policy-Legislation and/or Regulations</p>	<ul style="list-style-type: none"> Legislation: <p>2019 AR: The Employment Relations Amendment Act 2018 was passed, and strengthens collective bargaining and union rights in the workplace. It repeals the ability for employers to deduct pay as a response to partial strike action; restores a duty to conclude collective bargaining, unless there is a genuine reason not to; removes the ability of employers to opt out of bargaining for a multi-employer collective agreement; and restores the '30-day rule', requiring new employees to be employed under terms and conditions consistent with the relevant collective agreement for their first 30 days of employment.</p> <p>2018 AR: According to the Government, an Employment Relations Amendment Bill is currently due for further consideration by Parliament. The Bill as currently drafted would repeal the ability for employers to deduct pay as a response to partial strike action. It would also reinstate the ability for union members to access an employer's premises without the employer's prior consent, provided they do so at a reasonable time, in a reasonable way with regard to the businesses'</p>

		<p>operations, and in compliance with any reasonable requirements relating to health and safety or security. The Bill as currently drafted would also strengthen collective bargaining by: restoring a duty to conclude bargaining unless there is genuine reason not to do so; restoring the opportunity for unions to initiate collective bargaining earlier; removing the option for employers to opt out of bargaining for a multi-employer collective agreement; and restoring the '30-day rule' which requires new employees to be employed under terms and conditions consistent with the relevant collective agreement for their first 30 days of employment. Further information on the Bill including its text, public submissions received, and the Select Committee report is available at: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_76257/employment-relations-amendment-bill</p> <p><u>BusinessNZ comment:</u> The Employment Relations Amendment Bill's proposed changes are intended to give greater power to unions at the expense of employers. As the government's response indicates, unions' right of access without first seeking permission is to be restored (permission currently must not be unreasonably withheld) while partial strike action is effectively legalised. Employers will lose the right to opt out of multi-employer bargaining and once bargaining has been initiated (and unions have the right to initiate first) will have no choice other than to conclude a collective agreement. In BusinessNZ's view these latter two provisions are entirely at odds with the concept of freedom of association since to be truly free, collective bargaining must be freely entered into and collective agreements freely concluded. BusinessNZ objects strongly to these particular provisions which in its view are in breach of Convention 98, a Convention very much focused on the voluntary nature of collective bargaining. Other provisions of the bill also favour unions, requiring employers to distribute union information to new employees, provide union delegates with a reasonable amount of paid time off work for union duties, restore the 30-day rule which requires new employees to be covered by an applicable collective for the first 30 days of their employment and extend the ambit of a collective agreement to cover work done by non-union members if the work compares with the work in which unions' members are engaged. All such provisions undermine the ability of employers to manage their enterprises successfully to their own and their employees' advantage. If they come into effect, the limitations imposed on enterprise bargaining and the increase in government-imposed costs will have an inevitably damaging effect both on employing organisations and the New Zealand economy.</p> <p><u>New Zealand Government response to BusinessNZ</u></p> <p>Business New Zealand has made a number of comments on recent proposed changes to the Employment Relations Act - in particular that these are inconsistent with the provisions of Convention 98 - and appended a lengthy discussion paper to their comment. The Government considers that the comments made are not relevant to current reporting on Convention 87 as they concern Convention 98, which the Government will be reporting on in 2020 under the Article 22 process. However, as the issue has been raised, the Government notes the following points. The Government does not agree that its proposed amendments are inconsistent with Convention 98.</p> <p><u>NZCTU comment:</u> the NZCTU commends the newly elected Labour-led Government in seeking to reverse the deleterious effects of 2014 changes to employment legislation and has supported the Government to achieve these objectives.</p> <p>2016 AR: According to the Government: the Employment Standards Legislation Bill 2015 proceeded through Parliament in March 2016 and came into force on 1 April 2016 through specific amendments to the following legislation: i) Employment Relations Act 2000; ii) The Parental Leave and Employment Protection Act 1987; iii) Minimum</p>
--	--	--

			<p>Wage Act 1983; and iv) Holidays Act. 2003; v) Wages Protection Act 1983. These changes:</p> <p>a) extend paid parental leave to more workers and increase the flexibility of the scheme; b) strengthen the enforcement of employment standards; and c) address issues such as “zero-hour contracts” and other unfair employment practices. The Bill is located here: http://www.legislation.govt.nz/bill/government/2015/0053B/latest/versions.aspx</p> <p>2015 AR: According to the Government: The Employment Relations Act 2000 (ER Act) encompasses the right to freedom of association and right to organise. Part 3 of the ER Act (Freedom of Association) exists to make clear that employees have the freedom to choose, or not to choose, to be part of a union, and that an employee’s preference either way cannot be used against them. Part 4 of the ER Act (Recognition and Operation of Unions) outlines the role of unions in promoting their members’ collective interests and stipulates how unions are to operate. Part 5 of the ER Act (Collective Bargaining) provides parties with the core requirements of the duty of good faith in relation to the collective bargaining process and assists them in understanding these provisions. Part 5 also covers the frameworks for initiating collective bargaining, multi-union or multi- employer bargaining, facilitating bargaining, the collective agreements process, and what constitutes a breach of good faith. A copy of the ER Act can be found here: http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html?src=qs</p> <p>In 2012, amendments were made to the ER Act that require unions to hold a secret ballot of members who would become party to a strike and to approve any strike action before undertaking the strike action (unless it is a strike on health and safety grounds). A majority is required for the strike to proceed and the union is required to announce the results of the ballot to their members as soon as reasonably practicable. The Employment Relations Amendment Bill is currently before Parliament, which is considering further amendments to the ER Act including changes to some collective bargaining provisions. These amendments are intended to reduce ineffective bargaining, increase choice and flexibility in the collective bargaining framework, and improve fairness and balance of bargaining requirements. A copy of the Employment Relations Amendment Bill can be found here: http://www.legislation.govt.nz/bill/government/2013/0105/latest/whole.html#DLM5160</p> <p>According to NZCTU: Two key issues appear to stand in the way of New Zealand’s ratification of Convention 87. The Employment Relations Act 2000 only permits strike action relating to bargaining for a new collective agreement for the striking employees or on health and safety grounds (ss 83- 86). Secondary strike action (such as sympathy strikes) and strikes over social and economic issues are prohibited. These prohibitions have been held to be violations of freedom of association by the Committee on Freedom of Association (CFA) and the ILO has previously found that the Employment Relations Act 2000 does not comply with C.87. NZCTU continues to advocate for law change to bring New Zealand’s law into compliance with C.87 and for ratification of</p> <p>C.87. The Government continues to pursue law changes that the NZCTU believes are in breach of</p> <p>C.98 (and C.87). A useful overview of the issues with these law changes is contained in the ITUC’s submission on the Employment Relations Amendment Bill. The submission is available at: http://union.org.nz/policy/ituc-submission-employment-relations-amendment-bill. As NTCU noted in previous declaration reports, the Employment Relations Amendment Bill currently before Parliament is fundamentally inconsistent with rights to strike and rights to collective bargaining. The Government has attempted an extraordinarily weak justification of this violation of their human rights obligations in advice provided to the Select Committee: http://www.parliament.nz/resource/en-nz/50SCTIR_ADV_00DBHOH_BILL12107_1_A3_58682/9feb13263da6bba952f89284f2fd1d25dbaf2c_5a As will be</p>
--	--	--	---

			<p>apparent to the Committee, there is almost no attempt to engage with ILO jurisprudence on the various issues in this document only bald attempts to claim compliance. As previously indicated, the CTU will look to progress complaints through ILO and other channels if this law is passed. We call upon the Government to discard the regressive elements of this law.</p> <p>2014 AR: According to the Government: The Government currently has the Employment Relations Amendment Bill before the House which aims to create and maintain a flexible and fair employment relations framework for both employees and employers. The Bill provides a package of measures that will enhance the employment relations framework. The Bill is available online: http://www.legislation.govt.nz/act/public/2010/012/5/latest/DLM3172506.html</p> <p>2013 AR: According to the NZCTU: Challenges have occurred following the amendments of the Employment Relations Act which came into effect in 2011. As the Act enables employers to define certain workers as contractors instead of employees, these workers who are now being regarded as contractors are encountering hostility when attempting to unionize. Furthermore, the recent legislative changes have limited union access to workplaces, creating a barrier to organising workers. There is now a requirement for unions to give one working day’s notice of intention to visit a worksite. An employer has another day to decide whether to permit access. If the employer decides to refuse the application they have an additional day to respond in writing explaining why they are refusing access. The ground for refusal requires a “reasonable cause” to withhold access, but while “reasonable” is not defined in the law, this ground can be misused and it effectively frustrates union access to its members.</p> <p>2012 AR: According to the Government: The majority of the amendments of the Employment Relations Act, passed in November 2010, came into effect on 1 April 2011.</p> <p>BNZ indicated that it had supported the Employment Relations Act amendments.</p> <p>2011 AR: According to the Government: In July 2010 a Bill amended New Zealand’s Employment Relations Act 2000 to provide more flexibility, greater choice, and ensure a balance of fairness for both employers and workers. The Bills amends the Act to provide that union access to workplaces is conditional on the employer’s consent, which cannot be unreasonably withheld. If a union representative makes a request to enter a workplace, the employer must make a decision on that request as soon as practicable but within two working days after the request. If the employer does not respond within working days, consent is treated as being given. If the employer declines a request, s/he must provide reasons in writing within two working days after the reason. Where an employer denies consent but does not provide a written explanation on the grounds for refusal, s/he would be subject to penalty action.</p> <p>2006 AR: 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 workers. NZCTU welcomes the employment law changes introduced by the Employment Relations Act (No.2), 2004.</p> <p>2004 AR: 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.</p> <p>2001-2002 ARs: 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</p>
--	--	--	--

			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.
		Basic legal provisions	(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.
		Judicial decisions	<p>2013 AR: According to the NZCTU: Several cases of trade union hostility, where freedom of association is being challenged, have been reported over the last year. For example, the New Zealand Dairy Workers union challenged the actions of Open Country Cheese Ltd in preventing collective bargaining at their processing plant and won the issue in Court. Subsequently, all but six of the 34 union members left that workplace, and the remaining six union members accepted non-union contracts resulting in a de-unionisation of the workplace.</p> <p>2008 AR: Christchurch City Council v Southern Local Government Officers Union Inc (2007) 4 NZELR 63; [2007] NZCA 11. Greenlea Premier Meats Limited v. New Zealand Meat & Related Trade Union Inc (16 June 2006, Employment Court).</p> <p>2006 AR: J. Wilson, 24 August 2004, CA 100/04 –Judgment No. CC 12/05.</p>
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	<p>For Employers 2003-2005 ARs: The PR can be exercised at enterprise, sector/industry, national and international levels by all categories of employers, without Government authorization/approval.</p>
<p>For Workers 2003-2005 ARs: 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. 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>			
			<p>Special attention to particular situations 2015 AR: According to the Government: Migrant workers 2003-2005 ARs: According to the Government: Women and young persons.</p> <p>Information/Data collection and dissemination 2017 AR: According to the Government: The following statistics outline current union membership and coverage of collective employment agreements: a) As of 1 June 2016 MBIE’s collective agreement database contained 2063 collective agreements covering approximately 328,000 employees. During the 2015/16 year, eight unions were wound up. The Engineering, Printing and Manufacturing Union (EPMU) and the Service and Food Workers Union (SFWU), merged to form E tū, now the largest private sector union, and the Southern Local Government Officers Union (SLGOU) amalgamated into the New Zealand Public Service Association (PSA). b) The total number of collective employment agreements has increased from 2014 agreements as at 31 May 2015 to 2063 as at 31 May 2016. c) Agreements that cover more than 500 employees account for the majority of collective bargaining coverage (68.4%). These large collective agreements account for 4.9% of the total of 2063 collective agreements. Agreements with less than 50 employees account for 66.1% of the total agreements recorded. d) Not all collectives detail the number of</p>

			<p>employees covered and due to staff turnover, employees covered by a collective agreement may fluctuate. As such, the above numbers are indicative. In 2016 maintenance of the collective employment agreements database was contracted by MBIE to the Centre for Labour, Employment and Work (CLEW) based at Victoria University. Statistics New Zealand updated its Household Labour Force Survey from the quarter ending June 2016 to now include questions that measure union membership and collective agreements. More information is available here: http://www.stats.govt.nz/browse_for_stats/income-andwork/employment_and_employment/improving-labour-market_statistics/unionmembership-employmt-agmt.aspx BusinessNZ Comment: As is the case in a number of countries, union membership in New Zealand’s private sector has declined over the years with the majority of union members now to be found in the public sector. This higher public sector membership probably reflects a perceived need to compete for government (taxpayer) funding.</p> <p>2016 AR: The Government reported that based on the returns received by MBIE to 31 August 2015, total union membership as of 1 March 2015 was 359,782. This represents 18.3% of the employed labour force at that date (Household Labour Force Survey for the March 2014 quarter). Total union membership declined by 1.4% compared with the previous year; the employed labour force increased by 1.3% (to 2,369,000) over the same period. The 10 largest unions had a total membership of 283,900; accounting for 78.9% of total union membership. In those unions that provided gender details of their membership, more women (213,735, or 57.8%) were members than men (149,177). Union membership is highest in the public sector and in large enterprises in the private sector.</p> <p>During the 2014/15 year, six unions were wound up. One union merged with the Public Service Association on 1 April 2015. The total number of collective employment agreements has fallen by 5.5%, from 1969 in 2014/15 to 1867 in 2015/2016 (1 April – 31 March). Coverage across these agreements has decreased by 4.2 percent (13,719 employees) to 314,999. Agreements that cover more than 500 employees account for the majority of collective bargaining coverage (69.6%). These large collective agreements account for 5.4% of the total of 1867 collective agreements. Agreements with less than 50 employees account for 64.4% of the total agreements recorded. Not all collectives detail the number of employees covered and due to staff turnover, employees covered by a collective agreement may fluctuate. As such, the above numbers are indicative.</p> <p>BNZ commented that although there has been some drop in union membership and in the total number of collective agreements, it is possible that this seeming decline is largely attributable to the fact that New Zealand has for some years had a comprehensive suite of minimum employment standards to which every employer, large or small, must adhere. Holidays, a minimum wage, health and safety, wage payments and so on are all statutorily protected. As a consequence, for some employees, the traditional protective role of trade unions must now appear to be of less importance than was once the case. It is noted</p>
--	--	--	--

			<p>too, that a gradual decline in union membership and coverage is apparent in most developed economies and can be traced back to, as much as anything, the advent of globalisation which has in turn diminished the protected domestic economies in which unions were born in the 19th century.</p> <p>NZCTU indicated that despite the ratification of ILO Convention 98, the Government does not promote collective bargaining vis-à-vis individual bargaining. The opposite is true. For example, legislations have been passed allowing employers to refuse to bargain on a multi- employer basis and restricting rights to strike. The Government’s statistics on decline in unionisation and collective bargaining rates cited above are good examples of the Government’s failure to promote collective bargaining and the effects of this policy in practice.</p> <p>2015 AR: According to the Government: As at 1 March 2013 there were 138 registered unions in New Zealand with a total membership of 371,613. This union membership represents 16.6 per cent of the total employed labour force (March 2013 Household Labour Force Survey), and 20.1 per cent of wage/salary earners for that period (March 2013 Household Labour Force Survey). The total number of union members has declined by 2 per cent since March 2012. The total employed labour force increased 0.3 per cent over the same period. The ten largest unions account for 79.3 per cent of the total union membership. 41.1 per cent of registered unions have fewer than 100 members. Union membership is highest in the public sector and in large enterprises in the private sector. The total number of collective agreements has fallen by 26.9 per cent from 1,690 in 2011/12 to 1,331 in 2012/13, although coverage across these agreements has increased by 8,553 employees to 307,131. Organisations that have covered more than 500 employees account for the majority of collective bargaining coverage. These large collective agreements account for only 19 per cent out of the total of 1,331 collective agreements. Agreements with less than 50 employees account for 63 per cent of the total agreements recorded. It is worth noting that not all collective agreements contain the number of employees covered. Due to staff turnover, the number of employees covered by a collective agreement might not reflect the actual number of employees employed (and covered). As such, the above numbers are indicative. The Ministry of Business, Innovation and Employment (MBIE) is in the process of reviewing its Collective Agreements’ database to ensure the information is accurate.</p> <p>2014 AR: According to the Government: As of 1 March 2012 there were 138 registered unions in New Zealand with a total membership of 379,185. This union membership represents 17 per cent of the total employed labour force (March 2012 Household Labour Force Survey), and 20.5 per cent of wage/salary earners for that period. The total number of union members declined by 0.1 percentage points since March 2011. The total employed labour force increased 0.7 percentage points over the same period. Union membership is highest in the public sector and in large enterprises in the private sector.</p> <p>2013 AR: According to the Government: As of 1 March 2011, there were 145 registered unions in New Zealand with a total membership of 384,644.</p>
--	--	--	---

			<p>This union membership represents 17.4 per cent of the total employed labour force (March 2011 Household Labour Force Survey), and 20.9 per cent of wage/salary earners for that period. The total number of union members declined by 0.9 per cent from March 2010. The total employed labour force increased 1.0 per cent over the same period. Union membership is highest in the public sector and in large enterprises in the private sector.</p> <p>2012 AR: According to the Government: As of 1 March 2010, there were 157 registered unions in New Zealand with a total membership of 379,649. This union membership represents 17.4 per cent of the total employed labour force (March 2010 Household Labour Force Survey), and 20.9 per cent of wage/salary earners for that period. The total number of union members decreased by 2.1 per cent from March 2009. Union membership is highest in the public sector and in large enterprises in the private sector.</p> <p>2011 AR: According to the Government: As of 1 March 2009, there were 159 registered unions in New Zealand with a total membership of 387,959. This union membership represents 17.9 per cent of the total employed labour force (cf. March 2009 Household Labour Force Survey), and 21.5 per cent of wage/salary earners for that period. The total number of union members increased by 3.9 per cent from March 2008.</p> <p>2010 AR: According to the Government: Statistics on union membership are as follows: As at 1st March 2008, there were 168 registered unions with a total membership of 373,327, representing 17.4 per cent of the total employed labour force. However, the total number of union members has decreased by 2.7 per cent between March 2007 and 2009, compared to a decrease of 1.3 per cent in the total employed labour force for the same period.</p> <p>2009 AR: The Government indicated that between 2003 and 2007 union membership as a proportion of the total employed labour force has been static at approximately 17 per cent. Union membership is higher in the public sector and large enterprises in the private sector.</p> <p>2007 AR: 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 www.ers.govt.nz/goodfaith/code.html. Moreover, the Collective Agreement Database & 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>2002 AR: 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 ERA Info, and distributed free to interested groups including unions and employers.</p> <p>2001 AR: According to the Government: the Department of Labour's analysis of collective</p>
--	--	--	--

			<p>employment contracts, in its database of contracts covering 20 or more workers, shows that in September 2000, 79 per cent of workers covered by these contracts were represented by a union.</p> <p>2000 AR: 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>
		At international level	<p>According to the Government: There are no particular restrictions on the international affiliation of employers' and workers' organizations.</p>
	Monitoring, enforcement and sanctions mechanisms	<p>2019 AR: The Labour Inspectorate staff has increased by eight labour inspectors and standards officers, bringing its warranted staff count to 71. To support this increase, Dispute Resolution Services and Business Advisory Services had a combined increase of four full time equivalents, including one mediator.</p> <p>2018 AR: The Government reports that it has increased funding for the Labour Inspectorate to increase the number of inspectors and support staff. This is the first step in a package to lift the capability and capacity of the Labour Inspectorate over the next three years.</p> <p>NZCTU comment: The NZCTU commends and supports the New Zealand Government's moves to increase funding and capacity of the labour inspectorate and notes this will need to be a continuing programme of work. The International Labour Organisation recommends a rate of one labour or health and safety inspector for every 10,000 employees in industrialised countries. New Zealand has one for every 14,000 workers and we understand that the Government intends to increase those numbers over the next three years to bring that to one for every 9,200 employees.</p> <p>2003-2006 ARs: 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>2001 AR: 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>2000 AR: 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>	
	Involvement of the social partners	<p>2018 AR: According to the Government, social partners meet with Government on a regular basis to discuss topical matters of interest. They are also represented in a number of groups that have been convened in the past year to examine and provide recommendations on relevant policy issues. This includes the Fair Pay Agreement Working Group, which has been convened to make independent recommendations to the Government on the scope and design of a legislative system of industry or occupation-wide bargaining.</p> <p>2009 AR: The BNZ and the NZCTU indicated that they had participated actively in the provision of employment relations education course.</p> <p>2006 AR: Involvement of the social partners in the amendment and promotion of the Employment Relations Amendment Act, 2004.</p> <p>2003 AR: 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>	
	Promotional activities	<p>2017 AR: The Government reported that it continues to provide information about the right to join or not join a union, union membership and collective bargaining activities through various Ministry of Business, Innovation and Employment (MBIE) channels. This includes its Employment New Zealand and business.govt.nz websites, contact centre, and mediation services. MBIE also operates union registration processes and provides online resources for supporting workplace partnerships. Specialist institutions such as the Employment Relations Authority and Employment Court may also deal with freedom of association and collective bargaining matters within their jurisdiction.</p> <p><i>NZCTU Comment:</i> The government has not acknowledged or acted on its obligation to promote collective bargaining. As described in our response to 1 above, recent changes to employment law are regressive in this regard and raise barriers to effective collective bargaining. The New Zealand Government responded that it considers the current legislative framework enables the effective realisation of freedom of association and collective bargaining. All employees have the right to join and collectively bargain through a union, and exercising undue influence or discriminating against a person on the basis of their union membership is expressly prohibited in the Employment Relations Act. As noted in the previous response, Government has responded to the NZCTU's concerns relating to collective bargaining in New Zealand's 2017 Article 22 report on C98.</p>	

	<p>2016 AR: The Government reported that it continues to provide information about the right to join or not join a union, union membership and collective bargaining activities through various Ministry of Business, Innovation and Employment (MBIE) channels. This includes the MBIE website, the Employment New Zealand website, contact centre, and mediation services. MBIE also operates union registration processes, provides online resources for supporting workplace partnerships, and reports on collective employment agreement information online. As of 2016, maintenance of the collective employment agreements database was contracted to the Centre for Labour, Employment and Work (CLEW), based at Victoria University. Specialist institutions such as the Employment Relations Authority and Employment Court may also deal with freedom of association and collective bargaining matters within their jurisdiction.</p> <p>NZCTU pointed out that further to the comments it made under the 2013 and 2014 Declaration reports, the Government continues to cut funding for programmes designed to promote freedom of association and collective bargaining. Much of the Government’s promotional efforts listed above are informational only. Previously an active semi-autonomous unit within the Department of Labour called the Partnership Resource Centre (‘the PRC’) provided active assistance to unions and employers (including in relation to collective bargaining issues) but the PRC was disbanded on 30 June 2012. There are major weaknesses in the Government’s provision of information to migrants (an acknowledged group of workers who are extremely vulnerable to exploitation. MBIE has now discontinued its language hub but continues to provide a small amount of information about basic rights in 12 other languages (down from 15 last year). The sum total of the advice on unions and collective bargaining is:</p> <p><i>“Employees have the right to decide whether to join a union and, if so, which union. It is illegal for an employer (or anyone else) to put unreasonable pressure on an employee to join or not join a union. Once employees have joined a union, employers must, if asked, enter into bargaining for a collective agreement with that union. Union members can attend two union meetings (no longer than two hours each) per calendar year on pay and during normal working hours. They can require employers to deduct union fees from their wages and pay these to the union. Some members may be entitled to paid leave to attend employment relations education courses. Unions must gain an employer’s consent to visit a workplace. The employer can’t unreasonably withhold consent. See the Ministry’s website for more information on unions and collective bargaining, including strikes and lockouts.”</i></p> <p>(https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/minimum-rights-booklet.pdf). This does very little to inform workers of their rights and many languages have no information at all (Vietnamese and French are not translated and of the Pacific languages only Samoan and Tongan are accounted for).</p> <p>In response to NZCTU comment, the Government stated that the language hub was a pool of employment and immigration resources, most of which became out of date. Updated information on employment rights can be found on both the employment.govt.nz and immigration.govt.nz webpages. Immigration NZ also provides further information on their website:</p> <ul style="list-style-type: none"> - https://www.newzealandnow.govt.nz/work-in-nz/employment- rights - https://www.newzealandnow.govt.nz/files/documents/NUI2NZ- issue-2.pdf <p>The document referred to by NZCTU is available in 14 different languages, https://employment.govt.nz/starting-employment/rights-and-responsibilities/minimum-rights-of-employees/. The minimumrights document is intended to be an overview only, with more information being provided on the website or calling the Ministry of Business Innovation and Employment’s Employment New Zealand help line, where a language line is available for translation. A radio campaign to educate employees on their minimum rights began in 2013 and runs in English, Samoan, Tongan, Cook Island, Niuean and Kiribati, covering minimum wage and paid holiday leave.</p> <p>2015 AR: According to the Government: MBIE is currently undertaking a work programme that includes research into migrants’ awareness of their employment rights and responsibilities. It includes gathering information on where migrants are getting their information from and provides an opportunity for feedback on website content. This work programme will enable the MBIE to continue to make informed decisions about how best to provide employment information for all of the public, including migrants, on various issues including the right to join a trade union. The NZCTU is a key member on the National Labour Governance Group which is industry- led overseeing seasonal labour in conjunction with attendance from relevant MBIE staff. The NZCTU is also invited to consult on employer applications when employers apply to gain the Recognised Seasonal Employer (RSE) status.</p> <p>2014 AR: According to the Government: The Government continues to provide information about the right to join or not join a union, union membership and collective bargaining through various Ministry of Business, Innovation and Employment (MBIE) channels. This includes: the MBIE website, telephone contact centre, and mediation services. MBIE also operates union registration, maintains a collective agreements database, and there are online resources for supporting workplace partnerships.</p>
--	---

	<p>According to the NZCTU: The NZCTU continues to advocate for law change to bring New Zealand’s law into compliance with C.87 and for ratification of the instrument. The NZCTU believes that the Government has been going backwards in promotion of freedom of association; while the Government previously provided active assistance to unions and employers through a semi-autonomous unit within the Department of Labour called the Partnership Resource Centre (PRC), following the disbandment of the PRC in June 2012 most of the Government’s promotional efforts are now informational only. Furthermore, worker s access to paid leave for union training provided by Employment Related Education Leave (EREL) has been severely restricted by budget cuts of over 50 per cent from \$2.05 million (2010) to \$889,000 (2012).</p> <p>2013 AR: According to the Government: The Government continues to provide information about the right to join or not join a union, union membership and collective bargaining through various Ministry of Business, Innovation and Employment (MBIE) channels. This includes: the MBIE website, telephone contact centre, and mediation services. MBIE also operates union registration, maintains a collective agreements database, and there are online resources for supporting workplace partnerships.</p> <p>2012 AR: According to the Government: As reported under the 2011 AR, the Government continues, through the Department of Labour, to provide information about freedom of association and the right to organise.</p> <p>2011 AR: According to the Government: New Zealand continues to provide information about rights to freedom of association and the right to organize through Department of Labour channels. This includes: the Department website, telephone contact center, and mediation services. The Department also operates union registration, maintains a collective agreements database, and provide resource to union through the partnership resource center. The NZCTU and union affiliates continue to participate in an Employment Relations Education (ERE) activities and provide a range of ERE courses for workers. See http://union.org.nz/organising for more information about NZCTU courses and some of these activities.</p> <p>2009 AR: The Government stated that it had organized employment relations education activities that assisted in increasing employers’, workers’ and unions’ knowledge of employment matters.</p> <p>The BNZ and the NZCTU indicated that they had participated actively in the provision of employment relations education course.</p> <p>2008 AR: 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>2007 AR: 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. 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>2003 AR: 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>2002 AR: According to the Government: The ERA provides for paid leave for eligible workers (union members) to undertake approved courses in employment relations’ education.</p> <p>2001 AR: 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>Special initiatives-Progress</p>	<p>2019 AR: Fair Pay Agreements: The Government has agreed in principle to introduce a Fair Pay Agreements (FPA) system, where unions and employers could bargain to set minimum standards across an occupation or industry. Although under current law it is possible to collectively bargain across multiple unions or employers, the FPA system would fill a gap in New Zealand’s framework and enable social partners to bargain more comprehensively in areas where there has been little or no collective bargaining. The Government intends to publicly respond to the Working Group’s recommendations and consult in the coming months on a proposed FPA system, with a view to introducing legislation in 2020. Screen Industry: The Government has agreed to introduce a collective bargaining system for contractors working in the screen industry. This system was recommended in October 2018 by the Film Industry Working Group, made up of organisations from the industry, including social partners. This new system will allow contractors in the screen industry to bargain collectively at the sector (i.e. occupation) and enterprise levels. Bargaining parties will have to prove they are sufficiently representative of workers or producers to initiate bargaining. Resulting collective agreements will set minimum terms for all contractors in a particular sector (i.e. occupation) or enterprise. Exemptions will be possible in exceptional circumstances.</p> <p>2018 AR: NZCTU comment: the NZCTU notes its engagement with the NZ Government regarding best practice employment relations in the public service including engagement with public sector trade unions and effective collective bargaining. The NZCTU notes there is currently a tripartite process with the aim of developing recommendations regarding the scope and design of a legislative system of collective bargaining in the screen industry to address previous removal of those rights by the former Government. The NZCTU notes there is currently a tripartite process with the aim of developing recommendations regarding the scope and design of a legislative system of industry or occupation-wide bargaining ("Fair Pay Agreements"). This will address industries with historical low access to collective bargaining.</p> <p>2008 AR: The Department is moving to publish information on collective bargaining outcomes and union membership online to replace Employment Relations info in 2007/08.</p> <p>2006 AR: According to the Government:</p> <ul style="list-style-type: none"> – The Department of Labour held ‘Road shows’ in major centers in 2005 that discussed the amendments implemented by the Employment Relations Amendment Act 2004. The ‘Road shows’ were well attended by employers’ and workers’ representatives. – Employment Relations Education (ERE) continues to help employers, unions and workers improve their skills and knowledge of employment matters, including on the PR. – Involvement in ERE continues, and over 200 ERE courses are approved under the Employment Relations Act 2000. – 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>– 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>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the social partners</p>	<p>Employers’ organizations</p> <p>2019 AR: In BusinessNZ’s view, of the challenges listed here it is ‘Legal provisions’ or proposed legal provisions, that in New Zealand pose the greatest challenge to the respect, promotion and realisation of freedom of association and the right to bargain collectively.</p> <p>2018 AR: BusinessNZ reiterates its comments on the compulsion aspect of the bill which is quite contrary to the concept of freedom of association. This is also true of the Fair Pay Agreement proposals (to the extent that these are known) which it seems would take New Zealand back to something like its much earlier award system where bargaining was conducted at third hand and most employers had little say in what was negotiated - whether or not they had the ability to pay or provide what others had decided on. This system was acknowledged to be contrary both to freedom of association and to the right to bargain collectively (voluntarily) in ILO terms.</p> <p>2014 AR: According to the BNZ: While New Zealand’s employment relations legislation is concerned to promote the principles underlying C.87 and while BNZ also supports those principles, the BNZ cannot support the way in which the Convention has been interpreted by the ILO supervisory bodies.</p> <p>2013 AR: According to BNZ: While freedom of association is unchallenged in New Zealand, the problem related to the ratification of C.87 stems from the way in which the Convention has been interpreted by the ILO’s Committee of</p>

		<p>Experts, especially as regards the right to strike.</p> <p>2011 AR: According to BNZ: BNZ supports the proposal to require unions to seek permission before entering an employer’s premises but is concerned that the suggested process is overly complex and would therefore undermine the Government’s apparent intent to simplify the current legislation. A simple requirement to request with penalties applying both to the employer and the union representative for any abuse of the legislative requirement would be more effective.</p> <p>2008 AR: 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>2007 AR: 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>2006 AR: 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>2003 AR: BNZ raised the following challenges: (i) women in New Zealand do not suffer from labour market disadvantage; (ii) encourages the Government not 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 workers with little bargaining power to challenge an employer with greater bargaining power.</p> <p>2002 AR: 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 workers who are union members; and (iv) the Act promotes registered unions only.</p> <p>2001 AR: The NZEF raised the following challenges: (i) before workers 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>2000 AR: No particular challenges have been raised by the NZEF.</p>
	<p>Workers’ organizations</p>	<p>2018 AR: According to the NZCTU: NZCTU notes the social partner, Business NZ’s campaign to actively undermine the NZ Government’s programme of legislative development to reverse regressive law relating to collective bargaining, which reflects in many of the challenges and difficulties below. The NZCTU notes that Statistics New Zealand has since June 2016 been collecting data as part of its quarterly Household Labour Force Survey on membership of unions and collective agreements, filling a longstanding gap in this information. Other than that, the main official sources of such information have been from the Register of Unions managed by MBIE, which has often been very late in reporting union membership numbers. MBIE, rather than Statistics New Zealand also has been responsible for reporting work stoppages but there have been long interruptions in gathering and presentation of this data, and it has missed some significant stoppages; we understand it is compiled from newspaper reports. The NZCTU urges the Government to improve the quality of this data gathering reporting. The NZCTU notes the Government’s programme to reverse deleterious effects of the previous Government’s legislative amendments with respect to collective bargaining. The NZCTU further reports that there are few employer organisations which are engaged in collective bargaining, or have the capability to do so, outside the state sector. Union membership levels result in relatively low resources in union: it was 17.2% of employees in March 2017 according to the latest available Register of Unions data. Statistics New Zealand’s Household Labour Force Survey shows 19.3% union membership in June 2018 and showed 18.1% at March 2017. Finally, the NZCTU indicates that authorities do not enforce employees’ rights to join unions or collectively bargain, despite anti-union behaviour by many employers making it risky and difficult for employees to join unions, despite section 11 of the Employment Relations Act that prohibits to place undue pressure on a person to cease being a member of a union or prevent them from becoming a member of a union.</p>

			<p>2015 AR: According to the NZCTU: NZCTU reiterates its strong disagreement with the Government’s comments that there are no challenges and difficulties faced in relation to freedom of association and collective bargaining. It refers to its comments under the 2014 AR, and links therein for evidence of the Government’s regressive attacks on freedom of association. As discussed in the 2014 AR, the Government continues to cut funding for programmes designed to promote freedom of association and collective bargaining. Workers access to paid leave for union training provided by Employment Related Education Leave (EREL) has been severely restricted by budget cuts of over 50 percent from \$2.05 million (in 2010) to \$889,000 (in 2012) and under \$500,000 (in the 2014/15 budget). Much of the Government’s promotional efforts are informational only. Previously an active semi-autonomous unit within the Department of Labour called the Partnership Resource Centre (PRC) provided active assistance to unions and employers (including in relation to collective bargaining issues) but the PRC was disbanded on 30 June 2012. There are major weaknesses in the Government’s provision of information to migrants (an acknowledged group of workers who are extremely vulnerable to exploitation. The MBIE language hub (http://www.dol.govt.nz/languagehub/) sets out information documents in a number of other languages. There is a reasonable amount of information in some languages (such as Samoan) but the range and detail of translated information is appallingly low for many languages spoken less in New Zealand. Non- English speakers from Kiribati, Solomon, Tuvalu and Vanuatu must make do with a basic RSE explanation that does not fully explain the employment standards and, somewhat unbelievably, a factsheet on cooking and nutrition in New Zealand. It is little wonder that Pasifika are less likely to receive their entitlements when the information provided to them by the regulator is so inadequate. We strongly call for MBIE to undertake a translation exercise to make the full range of guidance available in the full range of languages spoken by the most frequent migrants to New Zealand (and with a particular emphasis on our Pasifika cousins).</p> <p>2014 AR: According to the NZCTU: The NZCTU strongly disagrees with the Government’s comments that there are no challenges and difficulties faced in relation to freedom of association. The NZCTU has identified two key issues that appear to stand in the way of New Zealand’s ratification of C.87: (i) the Employment Relations Act 2000 only permits strike action relating to bargaining for a new collective agreement for the striking employees or on health and safety grounds; and (ii) secondary strike action (such as sympathy strikes) and strikes over social and economic issues are prohibited. These prohibitions have been held to be violations of freedom of association by the ILO Committee on Freedom of Association and the ILO has previously found that the Employment Relations Act 2000 does not comply with C.87. The NZCTU strongly disagrees with the Government’s characterisation of the Employment Relations Act 2000 as “providing more flexibility, greater choice, and ensure a balance of fairness for both employers and employees.” The NZCTU finds it disappointing to see the use of what it regards as propagandistic language by the Government. Furthermore, the Employment Relations Amendment Bill 2013 currently being considered by the Transport and Industrial Relations Select Committee contains a number of proposals which contravene ILO jurisprudence relating to freedom of association. The NZCTU believes that these proposed legal changes are in breach of C.87 and that the proposed measures are extremely retrogressive. The most egregious breaches relate to: (i) a sixty-day ‘free hit’ period that constitutes an unacceptable restriction on the right to strike; and (ii) unnecessary obstacles to and disproportionate deductions for taking strike action. The NZCTU has offered to assist the Government in seeking technical assistance on these changes but the Government has declined. These proposed legal changes, in breach of C.87, do not improve the prospects for ratification of C.87 as the Government has expressed that it will not ratify treaties that the national legislation is not in full compliance with.</p> <p>2013 AR: The NZCTU reported that challenges have occurred following the amendments of the Employment Relations Act which came into effect in 2011. As the Act enables employers to define certain workers as contractors instead of employees, these workers who are now being regarded as contractors are encountering hostility when attempting to unionize. The sectors concerned include ports where permanent jobs have been replaced by contract positions and in the meat and dairy processing sectors. While the</p>
--	--	--	---

			<p>major dairy process company is unionized, smaller companies are not. Cases have been reported where employers who are hostile to union participation in a workplace repeatedly have breached the provisions of the Employment Relations Act to prevent unionization of their workplace. Even where a union wins a legal challenge against such employers' actions, the cost to a union in money, time, and energy may be such that the union and union membership are vulnerable following industrial action as a result of the aftermath. It has also led to a decline in membership and union influence from undermining of the union and in some cases direct bullying of workers who have taken industrial action to defend their right to organize. Furthermore, the recent legislative changes have limited union access to workplaces, creating a barrier to organising workers. There is now a requirement for unions to give one working day's notice of intention to visit a worksite. An employer has another day to decide whether to permit access. If the employer decides to refuse the application they have an additional day to respond in writing explaining why they are refusing access. The ground for refusal requires a "reasonable cause" to withhold access, but while "reasonable" is not defined in the law, this ground can be misused and it effectively frustrates union access to its members. Some employers have created additional barriers preventing a union representative from meeting with members, such as through restriction of union access to one-on-one meetings with individual workers.</p> <p>2011 AR: The NZCTU raised the following challenges in the realization of freedom of association in New Zealand: (i) The Government has recently cut funding for the Employment Relations Education Contestable Fund (ERECF) by almost 56 per cent or \$1.2 million – from \$2.05 million to \$889,000 in its 2010 Budget; (i) In 2009, the NZCTU reported on Government amendments to the Employment Relations Act 2000, which meant that workers in workplaces with 20 or fewer workers could be employed on a trial employment period of up to 90 days, during which time the worker could be dismissed with no recourse to grievance procedures. In 2010, the Government introduced legislation to extend these provisions to workers at any workplaces regardless of the size. This is a negative move, and the NZCTU is opposed to the removal of employment rights during a worker's first 90 days employment given that short term employment decreases, among others, the likelihood of workers joining a union; (iii) While the Government's proposals to restrict union access state that employers will not be able to unreasonably withhold their consent to allow union officials into the workplace, they will be able to slow the process down. This could frustrate and at times isolate and intimidate union members or potential union members. Unions have experience of this under similar legislation in the 1990s. Preventing speedy resolution would in many instances mean that some workers would be denied assistance when they need it most; (iv) In July 2010, the Prime Minister announced the introduction of new legislation to reduce the labour rights of employees and of unions. If the proposed law changes are enacted they will restrict, <i>inter alia</i>, freedom of association meaning that New Zealand will no longer be compliant with C.87; (v) Since 2008 there has been an overall decrease in tripartite consultation. There are now fewer tripartite structures for the NZCTU to provide input into policy or operational deliberations. The Government commitment to the Decent Work Action Plan is reduced and there is not the same level of resourcing or commitment; and (vi) The NZCTU and union affiliates are organising to ensure that workers' rights are recognised, identifying barriers to workers participation in unions and to possible solutions to the problems. Work is underway on: exploring how to make it easier for workers to sign up with a union on first entering employment; how to more easily transfer union coverage when moving to a new job; improving options for workers communicating with unions; and providing workers with more information about the benefits of union coverage.</p> <p>2009 AR: The NZCTU stated that union membership rates continued to be low, in particular, in the private sector.</p> <p>2007 AR: According to NZCTU: lack of information and data collection caused by the cancellation of the magazine <i>ERA Info</i>.</p> <p>2001-2004 ARs: 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</p>
--	--	--	--

		<p>working for private enterprises during the course of their imprisonment; (ii) the ECA provides insufficient protections for the PR.</p> <p>2000 and 2002 ARs: 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>According to the Government</p>	<p>2019 AR: The main difficulties are: a) the lack of public awareness and/or support; b) Legal provisions; c) Prevailing employment practices and d) the Lack of capacity of workers' organizations.</p> <p>2018 AR: The Government reports that the main difficulties are: a) Lack of public awareness and/or support ; b) Lack of information and data ; c) Legal provisions ; d) Prevailing employment practices ; e) Lack of capacity of responsible government institutions ; f) Lack of capacity of employers' organizations ; and g) Lack of capacity of workers' organizations. The Government specifically underlines that in practice the majority of employees are not union members, and bargaining is most frequently conducted on an individual basis at the level of the enterprise. Unions may therefore experience difficulties in recruiting and organising members across industries. However, changes in the Employment Relations Amendment Bill, as well as the development of fair pay agreements, will support further bargaining including at an industry or occupation-level. Furthermore, the Government notes that BusinessNZ is a member of the Fair Pay Agreement Working Group, which has been convened to make independent recommendations to the Government on the scope and design of a legislative system of industry or occupation-wide bargaining. The Working Group is due to report back to the Government in November 2018. The Government will consider the recommendations of the Working Group before making proposals.</p> <p>2016 – 2017 ARs: The Government of New Zealand considers that the current legislative framework enables the effective realisation of freedom of association and the collective bargaining of terms and conditions of employment where sought by the parties. All employees have the right to join a union and the right to collectively bargain through their union. The Employment Relations Act contains detailed provisions and mechanisms to promote a process of orderly collective bargaining that recognizes the interests of employees and employers and is conducted in good faith. However, given that in practice most bargaining is conducted individually between employer and employee, most employees are not union members and most collective bargaining occurs at the level of the enterprise, unions may experience difficulties in recruiting and organizing members across industries</p> <p>2015 AR: According to the Government: The Government considers that there are no challenges and difficulties faced with regard to the PR and that all workers have the right to join a union or not join a union and the right to collectively bargain. For information with regard to the current situation please refer to the section on statistics on union membership and coverage of collective agreements.</p> <p>2013-2014 ARs: According to the Government: The Government considers that there are no challenges and difficulties faced with regard to the promotion and realization of freedom of association. All employees have the right to join a union or not join a union.</p> <p>2011 AR: In response to the NZCTU's comments, the Government provided the following information: (i) The baseline funding for ERECF was \$1.778 million back in 2002. Some funding was transferred from the 2006/07 funding round appropriation and added to the 2007/08, 2008/09 and 2009/10 funding round appropriations. The 2009/10 appropriation reverted to the baseline funding of \$1.778 million. The reduction in funding for the 2010/11 fiscal year is from \$1.778 million to \$889,000, a reduction of 50 per cent; (ii) The Government is not aware of any evidence or research that shows trial periods are limiting, among others, workers' rights to access union membership; (iii) Employers have a right to control who comes onto a worksite at work time, and the Government considers that the proposal is consistent with relevant ILO Conventions; and (iv) The purpose of the proposed amendment is to clarify and create certainty that communications while bargaining is underway are permissible provided such communications adhere with the duty of good faith. Current case law supports this position.</p> <p>2009-2010 ARs: The Government indicated that between 2003 and 2007 union membership as a proportion of the total employed labour force has been static at approximately 17 per cent. Union membership is higher in the public sector and large enterprises in the private sector.</p> <p>2007 AR: 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>2006 AR: 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</p>

		freedom of association. Registration as a union protects members' interests and gives access to the rights afforded to unions under the Employment Relations Act.
TECHNICAL COOPERATION	Request	2014 AR: According to the NZCTU: Despite the Government's refusal to date, the NZCTU believes that there is value in ILO technical assistance to bring the national legislation into conformity with C.87.
	Offer	ILO.
EXPERT-ADVISERS' OBSERVATIONS-RECOMMENDATIONS		<p>2011 AR: The NZCTU indicated that the ILO's cooperation was needed in the review of the New Zealand legislation and practice for compliance with C.87.</p> <p>2009 AR: The NZCTU indicated that the ILO's cooperation was needed in the review of the New Zealand legislation and practice for compliance with C.87.</p> <p>2008 AR: 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>2005 AR: 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>2004 AR: 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>2001 AR: 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>
GOVERNING BODY OBSERVATIONS/RECOMMENDATIONS		<p>2015 AR: At its March 2014 Session, the Governing Body invited the Director-General to: (a) take into account its guidance on key issues and priorities with regard to assisting member States in their efforts to respect, promote and realize fundamental principles and rights at work; and (b) take account of this goal in the Office's resource mobilization initiatives.</p> <p>2013 AR: At its November 2012 Session, the Governing Body requested the Director-General to take full account of the ILO Plan of Action on Fundamental Principles and Rights at Work (2012-2016) and allocate the necessary resources for its implementation. This plan of action is anchored in the universal nature of the fundamental principles and rights at work (FPRW), their inseparable, interrelated and mutually reinforcing qualities and the reaffirmation of their particular importance, both as human rights and enabling conditions. It reflects an integrated approach, which addresses both the linkages among the categories of FPRW and between them, and the other ILO strategic objectives in order to enhance their synergy, efficiency and impact. In this regard, freedom of association and the effective recognition of the right to collective bargaining are particularly emphasized as enabling rights for the achievement of all these strategic objectives.</p> <p>2011 AR: At its March 2010 Session, the Governing Body decided that the recurrent item on the agenda of the 101st Session (2012) of the International Labour Conference should address the ILO strategic objective of promoting and realizing fundamental principles and rights.</p> <p>2009 AR: During its March 2009 Session, the Governing Body included the review of the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work on the agenda of the 99th Session (2010) of the International Labour Conference.</p>
INTERNATIONAL LABOUR CONFERENCE RESOLUTION		<p>2013 AR: In June 2012, following the recurrent item discussion on fundamental principles and rights at work, under the ILO declaration on Social Justice for a Fair Globalization, 2008 and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, the International Labour Conference adopted the Resolution concerning the recurrent discussion on fundamental principles and rights at work. This resolution includes a framework for action for the effective and universal respect, promotion and realization of the FPRW for the period 2012-16. It calls for the Director- General to prepare a plan of action incorporating the priorities laid out in this framework for action for the consideration of the Governing Body at its 316th Session in November 2012.</p> <p>2011 AR: Following a tripartite debate at the Committee on the 1998 Declaration, the 99th Session (2010) of the International Labour Conference adopted a Resolution on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work on 15 June 2010. The text appended to this Resolution supersedes the Annex to the ILO Declaration on Fundamental Principles and Rights at Work, and is entitled "Annex to the 1998 Declaration (Revised)". In particular, the Resolution "[notes] the progress achieved by Members in respecting, promoting and realizing fundamental principles and rights at work and the need to support this progress by maintaining a follow-up procedure. For further information, see pages 3-5 of the following link: http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_143164.pdf.</p>

