

**The Interdepartmental Action Programme on Privatization, Restructuring
and Economic Democracy**

**Privatization, labour law and labour relations:
A comparative report**

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opportunities for change, at a time when so many past practices are put into question in national debates over these changes.

We hope that this report provides useful information on some of these possibilities of adaptation as well as change to labour law and labour relations systems, and thus serves a useful purpose in facilitating the structural adjustments that are underway in many countries today. We would like to express our appreciation of the work carried out by the authors of the national studies: Kaiser Bengali, Marcel K. Benie, Honoré Bolger, Lutz Buchner, Marzena Czarnecka, Adrian Goldin, Dawit Gutema, Consuelo Iranzo, Maria Lado, Beata Nasca, Rene Ofreneo, Tomasz Ogodek, Raquel Richter, Marleen Rueda and Jan Wojtyla. Their willingness to share with the project their detailed knowledge of the situation in their national contexts was the basis of this report. We would like to thank our colleagues, Marleen Rueda and Suzanne Nola, for their thorough study of the national papers and for the detailed synthesis they have provided in this report.

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FOREWORD

The pace of privatization of public enterprises has been growing. Important issues that are generally recognized as needing to be resolved include costing assets, floating shares, finding buyers, and maintaining the viability of the enterprise or its successor. Indeed, in some countries, the very existence of a stock exchange may need to be addressed. The assistance of cost accountants and business management consultants is often called upon, to ensure speed and efficiency in these aspects of privatization. These all tend to be difficult but usually manageable problems, and may be said to relate — without in any way wishing to diminish their importance and complexity — to the “brass-tack” aspects of privatization.

However, the human and social dimensions of privatization require equal if not more attention, since worker resistance to change can be considerable and may provide a major obstacle to the privatization process. Workers tend to bear the brunt, at least initially, of change on privatization. Opposition to privatization can arise for a number of reasons: lack of information and consultation at different stages; inadequate social policies covering what may be considered as acquired rights e.g. weakness of compensation in case of job loss, non-portability of pension benefits; inadequate mechanisms for providing employees a voice in the future of their enterprise, and of their terms and conditions of employment; inadequate legislative and administrative framework designed to facilitate the transition of enterprises and employees from one ownership regime to another, from one employment status to another; transition from one regime of work with its specific standards, norms and culture, to another unknown regime.

Beyond such issues specific to the employment status of those affected directly by privatization, workers and their representatives have voiced broader concerns regarding privatization. In many countries, the trade unions tend to be best organized in the public sector. There are fears (born out by a number of the studies undertaken) that privatization will result in a weakening of these unions and, therefore, the trade union movement generally. A corollary of this is the existence of relatively developed systems of human resource management and development strategies in a number of public sector enterprises, as compared to the private sector, in many developing countries. Trade unions tend to be concerned that such progressive practices may lose ground nationally with privatization. Another broader concern is that of the role of the public sector to provide certain types of goods and services to the public at large. In many cases, trade unions and other agents of civil society have questioned privatization programmes that have put into question and/or raised the cost of such services.

These are some of the questions that need to be considered and analysed, as part of the social dimensions of privatization. The present paper — part of a series of working papers under the ILO's Action Programme on Privatization, Restructuring and Economic Democracy, and the input of the Labour Law and Labour Relations Branch to that programme — addresses a variety of these issues, based on the recent experience of a number of diverse countries at different stages of institutional, political and economic development. The findings are not always very positive — for instance, the report tends to find that on the whole there are relatively limited instances of meaningful involvement of employees and their representatives in some of the major decisions relating to privatization. While, on the basis of the countries studied, there is no necessary correlation between workers' participation in such decisions and the relative success of privatization, it seems clear that where there was a greater involvement of employees, there was certainly greater understanding of the issues at stake, and this helped in facilitating the process of change.

In a number of cases, it seems that it is those countries that generally provide for better recognition and protection of employee rights in determining their terms and conditions of employment, and due process of introducing change through bipartite and tripartite mechanisms, that tend to be more successful in managing the change process involved in privatization. In other words, national labour law and labour relations systems may not have been created specifically for such reform programmes; but rather they have tended to be adapted to these new structural exigencies. This does not by any means signify that those countries that have relatively less developed labour law and labour relations systems need simply accept that situation. On the contrary, the challenges that enterprise restructuring, reform and privatization present to national institutions and to the social partners can be essential

opportunities for change, at a time when so many past practices are put into question in national debates over these changes.

We hope that this report provides useful information on some of these possibilities of adaptation as well as change to labour law and labour relations systems, and thus serves a useful purpose in facilitating the structural adjustments that are underway in many countries today. We would like to express our appreciation of the work carried out by the authors of the national studies: Kaiser Bengali, Marcel K. Benie, Honoré Bolger, Lutz Buchner, Marzena Czarnecka, Adrian Goldin, Dawit Gutema, Consuelo Iranzo, Maria Lado, Beata Nasca, Rene Ofreneo, Tomasz Ogodek, Raquel Richter, Marleen Rueda and Jan Wojtyla. Their willingness to share with the project their detailed knowledge of the situation in their national contexts was the basis of this report. We would like to thank our colleagues, Marleen Rueda and Suzanne Nola, for their thorough study of the national papers and for the detailed synthesis they have provided in this report.

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PREFACE

This comparative report is based on ten country case studies¹ commissioned by the ILO on the integration of social provisions into the process of privatization. The countries included in the report: Venezuela; Argentina; Spain; Germany; Poland; Hungary; Ethiopia; Ivory Coast; Pakistan and the Philippines were selected in order to obtain a broad picture of the way in which different labour law and labour relations systems have adjusted to the process of privatization. The case studies were supplemented by in-house research regarding this issue. This report, together with the case studies, forms the contribution of the Labour Law and Labour Relations Branch to the ILO Action Programme on Privatization, Restructuring and Economic Democracy.

Privatization has become a notable feature of economic life in many countries over the past fifteen years. It affects all members of the tripartite constituency, *i.e.* governments, employers and workers. Together with anticipated economic advantages, privatization can also bring significant social constraints. This is especially true in relation to the workers in enterprises undergoing privatization. Labour laws and labour relations machinery have, historically, been important instruments in accommodating social partners' interests and in making economic development socially meaningful. Labour legislation, tripartite consultations and negotiations, collective bargaining and workers' participation have contributed greatly to social peace and co-operation between the social partners in many countries worldwide. These instruments can play the same role in privatization, making it more socially viable.

This project is aimed at reviewing the role of labour law and labour relations machinery in privatization with a view to identifying the potential it has in making the process of ownership change better balanced from both an economic and a social point of view. The overall objective is to identify the social concerns which privatization can generate and to develop a "good practice" knowledge base regarding the way in which labour laws and industrial relations machinery can integrate these concerns into the process of privatization.

Chapter One of this paper highlights the different social and political contexts into which privatization has been introduced in the countries included in this study. It examines the driving forces behind privatization and the objectives pursued. It also considers the different methods of privatization employed in different countries. The chapter concludes by setting out the regulatory framework governing privatization in each of the countries studied.

Chapter Two examines social concerns raised by privatization in terms of labour related issues and the way in which these concerns have been integrated into law and labour relations machinery. The chapter focuses on the protection of workers in enterprises undergoing privatization including their rights to participate in the privatization process and the application of laws regarding transfer of employment and redundancy or retrenchment in the context of privatization.

Chapter Three focuses on the social partners' role in privatization. This includes the position of employers' and workers' organisations in relation to privatization and their role, if any, in the process of privatization. The type of conflict which may arise from privatization is the subject of Chapter Four. This chapter also considers the role of dispute resolution mechanisms in resolving conflicts over privatization.

Information regarding the effects of privatization on conditions of employment and levels of employment in privatised enterprises is provided in some of the country studies. This information is the subject of Chapter Five of the paper. The paper concludes by setting out a number of recommendations and issues for consideration in terms of the integration of social provisions into the process of privatization.

The authors would like to thank Zafar Shaheed, Muneto Ozaki, Anne Trebilcock and María Luz Vega Ruiz for their assistance in the preparation of this paper.

¹ The country studies were prepared by: Consuelo Iranzo and Raquel Richter (Venezuela), Adrian Goldin (Argentina), Kaiser Bengali (Pakistan), Rene Ofreneo (The Philippines), Dawit Gutema (Ethiopia), Marcel Kouadio Benie and Honoré Bolger (Ivory Coast), Lutz Büchner (Germany), Jan Wojtyla, Marzena Czarnecka, and Tomasz Ogodek (Poland), Maria Lado and Beata Nasca (Hungary) and Marleen Rueda (Spain).

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CHAPTER 1

NATIONAL SETTINGS OF PRIVATIZATION

1. Introduction

Over the past 15 years redefinition of the role of the State has taken place in many countries. Privatization has been a central component in this process. Privatization is usually understood as an increase in the share of the private sector in the economy. Privatization can take numerous forms and does not necessarily involve a total transfer of ownership. The management of a public sector undertaking may, for example, be contracted to the private sector or a public entity may lease assets to a private entrepreneur who bears the risks and rewards associated with the use of the assets. Significant 'grass roots' privatization in the sense of the growth of new private firms has also occurred in many central and east European countries.

In the past few years all of the countries analysed in this paper have reduced the role of the State as a supplier and manager of goods and services. The scope and nature of the changes varies from one country to the other, reflecting the different economic and social backgrounds of the countries included in the study. Economic constraints, regional economic integration, the degree of development of the labour law and labour relations system, the democratic tradition and the traditional role of the State in the economy have, among other factors, been influential in determining the way in which privatization has taken place.

In this introductory chapter we briefly examine, when privatization was introduced, the scale of privatization and speed at which it has taken place; the driving forces behind privatization; objectives of privatization and the methods by which privatization has been implemented. The regulatory framework governing privatization in each country is set out at the end.

2. The timing, speed and scale of privatization

The timing of the introduction of privatization and the scale and speed at which it has occurred varies greatly among the countries included in this study. While privatization programmes have been in place in the former West Germany, Spain, the Philippines and the Ivory Coast since the 1980s, privatization did not begin in Ethiopia, for example, until the middle of this decade. In the majority of countries included in the study privatization began in the late 1980s and early 1990s. In Hungary, Poland and the former East Germany this coincided with the collapse of the former communist and socialist regimes in force and was part of the shift from a centrally planned economy to a market economy. In Argentina, Venezuela and Pakistan privatization also began in earnest in the period from 1989–1991. Privatization programmes have been in place in the Ivory Coast and the Philippines since the 1980s, however, the speed at which privatization has occurred in these countries has increased in the period from 1990 onwards.

It is difficult to compare the scale of privatization and speed at which change has occurred in central and eastern Europe with more recent moves to privatise in countries such as Pakistan and Ethiopia. In central and eastern Europe privatization has occurred on a massive scale with thousands of enterprises being transferred from the public to the private sector. Even among these countries, however, the rate of change has varied considerably. While Germany carried out a policy of very rapid privatization of state-owned enterprises in the former East Germany, privatization in Poland, for example, has taken place at a slower rate. In Hungary privatization of small scale retail units and the commercialisation and 'demonopolisation' of state firms has

already taken place. Since 1995 the Government has concentrated on the privatization of public utilities¹. Argentina also followed a policy of rapid privatization with the majority of enterprises being privatised in the period from 1991–1993. The case of Venezuela demonstrates that political changes and turmoil may have an impact on the speed at which privatization is implemented. In this country the programme of privatization came to a halt in the mid 1990s due to political turmoil. It has since been restarted.

In many countries privatization has taken place in stages or waves. Governments have frequently chosen to privatise smaller assets and state owned companies first of all, leaving larger companies and public utilities to be privatised in the second or third 'wave' of privatization. Exceptions to this include a number of Latin American countries where privatization has focused on infrastructure utilities. In the Philippines three stages or 'waves' of privatization can be identified. The first focused on the privatization of state owned corporations and assets. The second focused on infrastructure facilities such as water, power and transport. In a number of cases privatization of utilities has taken place by way of Build — Operate — Transfer schemes. This is where a private operator agrees to undertake the financing and/or running of an infrastructure facility for a certain amount of money before turning it over to the Government. The third wave of privatization in the Philippines involves the opening up of sectors such as health and education to private financing, management or ownership. This stage is currently under discussion and is proving to be highly controversial.

In both Spain and Pakistan the privatization of a number of industrial units took place first of all with the Governments in these countries privatising public utilities only later. Privatization in the area of public utilities and transportation is occurring in Pakistan at the present time and is also highly controversial. In Spain, as in a number of other countries, privatization in sectors such as telecommunications and energy took place after significant restructuring of the public enterprises. The beginning of this pattern may also be observed in Ethiopia where the first wave of privatization has concentrated on retail shops, hotels, restaurants and small industrial undertakings.

3. The driving forces behind privatization

Driving forces behind privatization, government objectives and the methods used to implement privatization identified in the individual country studies are set out in table 1. It is not always easy to separate the driving forces behind privatization from the objectives of privatization. In many cases achievement of the objectives of privatization is a driving force behind the implementation of privatization programmes. In other words factors such as the desire to increase competitiveness and efficiency, to raise government revenue and reduce public sector deficit, and to promote the role of the public sector in the economy may be described as driving forces objectives of privatization. These factors have been an important impetus behind privatization in many of the countries included in the study.

Economic considerations and, in particular, the need to urgently reduce government spending have been a key force behind privatization in all of the countries included in the study. In a number of countries including: Venezuela, Pakistan, the Philippines, the Ivory Coast and Ethiopia, privatization has been a compulsory component of structural adjustment programmes, carried out with the assistance of the International Monetary Fund (IMF) and the World Bank.

¹ R. Van der Hoeven and G. Sziraczki (Editors), *Lessons From Privatization*. International Labour Office, Geneva 1997 page 6.

Ethiopia, for example, launched a market-oriented economic policy at the end of 1991, when the Transitional Government was established after 30 years of civil war. The policy put in place by the Transitional Government in conjunction with the IMF and the World Bank was aimed at gradually replacing the highly centralised command economy with a free market economy. The introduction of privatization in the Ivory Coast was also influenced by the economic crisis that occurred in this country during the 1980s. In conjunction with the World Bank and the IMF, the Ivory Coast has put in place a series of economic restructuring programmes including a comprehensive privatization programme.

Regional economic integration in the form of the European Union has been an important force behind privatization and the way in which it has been carried out in Spain and Germany. The influence of European Union regulation is also beginning to be seen in countries such as Poland and Hungary who wish to join the European Community. Spain and Germany have been attempting to attain the budgetary constraints agreed in the Maastricht Treaty in order to become part of the third phase of Economic and Monetary Union. The criteria include a general government deficit not exceeding 3 percent of GDP and a target for the general government debt/GDP ratio of 60 percent by 1998. At the same time, EU regulations put a limit on State financial aid to unprofitable companies as well as prohibiting the State from acting as a monopoly in the provision of goods and services in some specific sectors, such as telecommunications.

In Poland, Hungary and the former East Germany political transformation was a catalyst for economic change including economic restructuring and privatization. The collapse of the former socialist and communist regimes demolished ideological obstacles to privatization and the basic conditions for private sector development, including laws and regulations regarding private ownership, were established within a remarkably short period of time.² It would, however, be inaccurate to credit all changes in state-owned enterprises to the period of transformation. In Hungary, for example, in the late 1970s and early 1980s, various efforts were made to improve the efficiency of state-owned enterprises. In both Hungary and Poland self-governing structures such as the Enterprise or Workers' council and the General Assembly of Workers were created in order to improve workplace democracy. As demonstrated in Chapters Two and Three these bodies have played an important role in the privatization process in Poland.

In Poland and Hungary a phenomenon known as "spontaneous privatization" was also influential in the process of privatization. Spontaneous privatization describes the re-organisation of state-owned enterprises at their own initiative. Although this did not equate to privatization in the sense of a transfer of ownership or control to the private sector, it made the States intervene and regulate the process of restructuring and privatization in order that they could exercise control in this area. In Hungary, for example, while there were cases of fruitful re-organisation, there were also concerns regarding the contribution of State-company assets to semi-private companies at a rate well below market value. The separation of profitable units from less profitable concerns also raised issues regarding devaluation of state property. Increasing public dissatisfaction with this state of affairs and concerns regarding corruption led the Government of Jozsef Antall to enact legislation regulating privatization.

4. The objectives of privatization

In many countries included in this study improvement in efficiency has been noted as a key objective of privatization. Other common objectives include: the stimulation of both domestic

² Ibid. page 6.

and foreign investment; the reduction of budget deficit -not only as a consequence of sale or transfer but also through increases in tax revenue; the reduction of state subsidies, the creation of a favourable investment climate; the development of capital markets; the generation of revenue for priority government expenditure; the achievement of greater market competitiveness; the promotion of the role of the private sector in the overall economic development of the country; improvement in the quality of goods and services offered and the promotion of broad-based ownership of equity capital. Detailed objectives of privatization in each of the countries included in this study are set out in Table 1.

In countries such as Poland, Hungary, the former East Germany and Ethiopia a further objective of privatization has been, not only to change the economic system, but also to prevent a reversal of the political situation. In other words privatization has been seen as a means of guaranteeing the process of democratisation and a move towards a competitive market.

The objectives of privatization have, in a number of countries, altered alongside economic development and the progression of privatization. The need to increase efficiency was professed to be the primary objective of the first stage of privatization in Spain. Greater attention was later paid to financial revenue³. In Argentina, on the other hand, financial needs came first and the country later looked to efficiency criteria⁴.

5. Methods of privatization

Privatization has taken place by many different methods in the countries included in this study, as presented in table 1. This includes: the public offering or sale of shares; total or partial sales of enterprises (either directly or by tender); management and/or employee buy-outs; allocation of shares to the public or employees either free-of-charge or at a preferential price; debt/equity swaps and the liquidation of public enterprises and sale of their assets⁵. As set out in the introduction, privatization in the broad sense of the word has also included a number of methods which fall short of total transfer of ownership, such as the contracting out of services or the leasing of certain entities to the private sector for a set fee. The exact combination of methods employed in each country will depend upon a variety of economic, social and historical circumstances and upon the priority which is accorded to the various objectives of privatization in the country at issue. Influential factors have included: the development of financial markets and financial institutions; the purchasing power of citizens; the perceived need to encourage foreign investment; and the speed at which privatization is to occur.

In Argentina, for example, two of the main aims of the privatization process at a second stage were to foster competition and to improve the quality of services offered to the public. The Argentinean legal framework for privatization established competitive bidding procedures to be followed on privatization. The prospectus for each entity to be privatised also included specific performance requirements related to investment and improvements in service with

³ Efficiency objectives prevailed in Spain between 1985 and 1991. Privatization aimed at improving the productivity of the public companies through internationalisation and incorporation of new technologies. At the same time, the government intended to reduce the subsidies that it would have to continue giving to keep up with international competition. From 1992 to 1997 budgetary reasons have driven privatization, since the country had a state budgetary deficit and the successive governments made the commitment to become part of the third phase of the European Monetary Union.

⁴ When Argentina started the privatization programme, the country was hit by the debt crisis. Privatization was focused on attracting foreign capital in order to get foreign currency.

⁵ *Privatization in Asia, Europe and Latin America*, OECD, 1996.

which the purchaser was required to comply. Other methods of privatization employed in Argentina are set out in table 1.

Privatization by means of direct sale has occurred in a number of countries. This has often been used to ensure that privatization takes place relatively quickly. It has led to concerns in a number of countries, however, regarding the transparency of the process of privatization and the price at which assets and undertakings have been sold, particularly in the context of sale to foreign investors. In a number of countries, such as the Philippines and the Ivory Coast, the method of direct sale has given way to competitive bidding procedures being put in place.

Competitive bidding procedures indicate that revenue maximization is an objective of privatization. This method has been used extensively in a number of countries including Pakistan and, in more recent years, the Philippines and Ethiopia. In Pakistan, the Privatization Commission considered divestment through the stock exchange, but decided against it. The reason for this decision was that, first of all, most of the enterprises were loss-making units and the value of the shares would have been low and, secondly, the market was in a poor condition during the early 1990s.

In countries where broad-based capital ownership is an objective of privatization, authorities will commonly promote employee share-ownership programmes (ESOPs). These schemes may compensate for a lack of external investors and, where shares have been offered free-of-charge or at a reduced price, they have also served to decrease workers' opposition to privatization. Employee share-ownership schemes and free distribution of shares to workers have been common in Eastern and Central Europe. In these countries at least part of the aim of economic reform has been to create a property owning middle class. The communist ideology that all citizens own the means of production, as well as the fact that capital accumulation in these countries occurred through public ownership, was also influential. In some countries schemes of this nature have been hailed as a form of "economic democracy". In other countries, however, trade unions have criticised ESOPs as a form of popular capitalism. These schemes are discussed in greater detail in Chapters Two and Three of this paper.

Privatization by means of public offerings of shares has been a popular method of privatizing large public utilities in western economies such as Spain and Germany⁶ This method has also been employed extensively in Venezuela and Argentina. Telecommunications, petroleum and gas, electricity and finance are examples of sectors where this method has been used.

Poland, like several other central and east European countries, has given much consideration to workers' involvement in privatization and has utilised more than ten different privatization methods⁷. "Direct Privatization" is the term used to describe privatization where company is privatized without prior transformation into state-owned joint-stock company. Instead, the enterprise is simply struck off the register of state enterprises ("liquidated") and is either: (i) sold; (ii) contributed in kind to a new company; or (iii) leased. Direct privatization has been applied in a considerable number of cases in Poland mainly through employee buy-outs (some 80 percent of all direct privatization cases). Many public enterprises in Poland have been privatized using a decentralised approach, *i.e.* the initiative to privatize has frequently come from the enterprise itself. Privatization has also taken place by means of 'indirect' privatization. This is a two step process. In the first instance, public enterprises are

⁶ Fernández, Z., *El Proceso de Privatización en Europa. Dos pasos Adelante, un Paso Atrás*, Cuadernos de Información Económica num. 119, Madrid, Febrero 1997.

⁷ Schliwa, R. *Enterprise Privatization and Employee Buy-Outs in Poland: An Analysis of the Process*, IPPRED-2, International Labour Office.

'commercialised' or transformed into companies which can be registered on the stock exchange. In the second stage, shares in the new company are transferred to other persons. The "commercialisation" of public enterprises prior to their sale has been a feature of privatization programmes in many countries.

Polish citizens have also had the opportunity to purchase investment vouchers in the so-called "mass privatization programme". Employee ownership is also achieved by means of "give-away shares" to employees. In these cases, employees do not have a say in the initiation or implementation of the privatization process.

Hungary has also employed a 'multi-track' approach to privatization. Privatization has taken place through the sale of shares in companies and through bidding and direct sales. In order to speed up the process of privatization in Hungary, programmes were set up whereby sale contracts were signed without the direct involvement of the privatization agency itself. In the majority of cases, independent consultants acted on behalf of the agency. Privatization has also taken place as a result of management and employee buy-outs through ESOPs. While there has been some free distribution of assets to bodies such as churches, this has been very limited and revenue maximisation has been the primary goal of privatization.

In the former German Democratic Republic, the Treuhandanstalt — or THA, the agency in charge of privatization, privatised more than 13,000 entities between 1990 and 1994⁸. The methods employed by the THA included direct sales, liquidation of non-profit making enterprises, and the transformation of remaining companies into groups of companies. Privatization in Germany as a whole has taken place on a number of levels — federal, Länder and municipal. Each of these different layers of state administration has employed different methods of privatization. These have included the sale of shares through the stock exchange, and the contracting out of services.

The Ivory Coast has also used a number of privatization methods. These include: total or partial leasing of state assets or entities, total or partial sales of assets or entities; leasing of the management of the enterprises, and the liquidation of companies. The government has also set up an ESOP. Liquidation was employed where companies were considered to be a "a danger to Ivorian economic health"⁹. Privatization methods became more transparent after 1990, when the State financial assets were sold using Public Offer Sales through the Abidjan stock market. As in many other countries privatization has been accompanied by liberalisation and deregulation which has allowed private companies to participate in sectors formerly controlled by the State.

6. Regulatory framework

Privatization, independent of its scope and scale, alters the role of the state in the economy. Given its importance, many Governments have chosen to enact statutes and regulations governing the process of privatization. The main laws and regulations governing privatization in the countries included in this study are set out in table 2.

As noted in an OECD publication, both national and international pressures influence the way in which legislation and regulation in this area has been formulated. European Union law, for example, has influenced the development of privatization in its Member States. Internal factors such as: the scope of the process, the methods used, the role of the state in the economy and legal restrictions on the sale of State assets may also be influential. In a number of central

⁸ Ibid. page 63.

⁹ Ibid.

and eastern European countries, for example, the introduction of privatization has been possible only as a result of amendments to the constitution.

Legislation or regulation of the process of privatization may grant political legitimacy to privatization, define the respective competencies of government agencies, and ensure transparency in decision-making and the legal security of transactions. If privatization lacks a legislative foundation, it may be hindered by bureaucratic problems or take place "spontaneously and in an uncontrolled fashion"¹⁰, as it did in certain central and eastern European countries after the collapse of communism.

Legislation may state the objectives to be attained and the procedures to be followed. It may also establish control mechanisms, valuation methods and employee participation programmes. Discussions in Parliament regarding privatization regulation can serve as a forum for debate in which different social actors can express their points of view or concerns.

Privatization has invariably taken place as part of a broader process of market reform which has included the deregulation of markets, the elimination of monopolies, and measures to stimulate foreign investment. These measures have also resulted in the promulgation of, or amendment to, legislation which is frequently connected to legislation regarding privatization.

As demonstrated in table 2, the majority of countries included in this study have enacted specific statutes to regulate the process of privatization. These have frequently been accompanied by more detailed regulations or decrees governing particular aspects of the process. Other countries, however, instead of creating a framework law, have passed enabling legislation for each transaction. In Spain, for example, in the period from 1982 to 1995, (the period in which the former Socialist Government was in force) privatization operations were approved by the Council of Ministers, on a case by case basis. The absence of a law was criticised, mainly by trade unions and left-wing political parties. In June 1996, the new Conservative Government presented a privatization plan for the forthcoming years. This plan is an agreement made in the Council of Ministers that establishes the proceedings and the internal rules to be observed when carrying on privatization. The lack of a specific law governing privatization has been made easy by the private juridical status of many of the companies which have been privatised (*e.g.* Argentaria, Repsol, Telefónica).

In many countries included in this study privatization agencies or committees have been set up to oversee the process of privatization. This has occurred, for example, in Ethiopia, the Ivory Coast, Venezuela, Hungary, Pakistan, the Philippines and in the new federal states of Germany. The composition of these Committees and agencies has varied. In Pakistan, for example, the Committee on Deregulation and Disinvestment was made up of retired generals, senators, members of the National Assembly, banking officials, tax officials, officials of the Corporate Law Authority, federal and provincial Secretaries, representatives of the stock exchanges, representatives of the chambers of commerce and industry, and industrialists. Notably, there were no representatives of labour. This committee was reconstituted in 1991 as the Privatization Commission. The extent to which workers' and employers' organisations or representatives have been represented on Committees or Agencies of this nature is discussed in Chapter Three.

Objectives and tasks of privatization agencies have included: the carrying out of the process of privatization of public enterprises in an orderly and efficient manner; undertaking detailed studies on the financial, technical and economic situation of public enterprises; price evaluation of public enterprises; recommending modalities of privatization; identifying those public enterprises to be privatised with outstanding debt, and facilitating the payment of this

¹⁰ *Privatization in Asia, Europe and Latin America*, OECD, 1996.

debt; coordinating the activities of concerned government offices in the process of privatising public enterprises; creating conditions for the successful completion of the privatization process; preparing detailed records of manpower, assets, financial and legal affairs of public enterprises to be privatised; and generally supervising privatization.

The independence, speed and success of privatization agencies has varied considerably in the countries included in this study. In Hungary, for example, while acknowledging the enormous challenge faced by authorities, certain criticisms can be made of the way in which privatization has proceeded¹¹. Uncertainty and long periods of delay were caused by frequent changes in the law, and changes to the organizational structure and composition of the privatization agency. Similarly, the privatization agency's vaguely defined authority in formulating privatization methods, and the lack of clear competition rules, especially on the ranking of bids, had an unfavourable effect on privatization and, to a certain extent, opened up the way for illegal and immoral practices.

¹¹ Lado, M. and Nacs, B., *Integrating Social Dimensions into Privatization Through Labour Laws and Industrial Relations*, ILO Mimeo 1997.

Table 1: Driving forces, objectives, and methods used

Country	Driving forces	Objectives	Methods used
Argentina	General restructuring programme following the defeat of the import substitution policy. The poor quality of existing services.	Until 1992, to secure funds to pay the external debt and to sustain the stabilisation programme and economic reorganisation. After 1992 it aimed at improving the efficiency and the quality of the public services.	Sale of the company assets Sale of share or part of the company's capital Leasing with or without buying option Management with or without buying option Concession, license or permit to run an activity Employee share-ownership scheme
Ethiopia	Economic and structural adjustment programme sponsored by the IMF and the WB. Public companies running at 20-30 per cent of their capacity	To guarantee the democratisation process and supplement the macro-economic reform programme To raise government revenue and reduce public sector deficit To achieve greater economic efficiency and market competitiveness To promote the role and share of the private sector in the overall economic development of the country.	Sale through competitive bidding Sale of 75 per cent of ownership (the remaining 25 per cent being reserved for sale to interested workers or management) Joint expansion or improvement
Germany	To decrease the government's share in GDP and reduce public debt. Political and economic transformation in the former East Germany European economic integration	Increase revenues and reduce subsidies to state companies To deregulate markets, to increase efficiency and reduce market prices, to mobilise private capital; to increase tax revenue and reduce the number of monopolies To meet requirements of EU regulation	Different methods used at the three levels: federal; municipal and at the state level ("Länder"). These have included: sale through the stock exchange; direct sale and liquidation of company and the contracting out of services.
Hungary	Political and economic transformation "Spontaneous privatization" In more recent years the desire to join the EU	To transform a centralised economy into a market economy To reduce budgetary deficit and pay off foreign and domestic debts. To create a property-owning middle class. To hand over previously mismanaged and underutilised capital to private owners who expected to use it more profitably. Aims vary from industry to industry.	Sale transactions Leasing Employee Share-Ownership Scheme Limited free distribution of property.

Country	Driving forces	Objectives	Methods used
Ivory Coast	Structural adjustment programmes sponsored by the WB and the IMF.	To increase competitiveness of companies To increase opportunities offered by the employment market. To encourage local savings and increase private sector participation in the economy. To increase State budgetary resources through the increase in tax incomes To encourage foreign investment, to increase efficiency and productivity and to reduce the burden of unprofitable companies.	Liberalisation and deregulation in sectors where the State used to act as a monopoly. Liquidation of companies that could "seriously damage the economic health of the country". Concession of management to the private sector, but with the State exerting the control as major owner. Total or partial sale of assets Employee share ownership scheme and concessions to Ivorian citizens.
Pakistan	Agreement with the World Bank/IMF	Enhance allocative efficiency Increase competition Economic democracy, i.e., broad-based ownership of equity capital	Total disinvestment through competitive bidding Partial disinvestment: 26 per cent of the shares offered to private sector, the rest remaining with the State, which will also retain management control. Partial disinvestment: 26 per cent of the shares offered to private sector along with management control. Competitive bidding Employee Share-Ownership Scheme.
Philippines	WB-assisted structural adjustment programme which called for a privatised, deregulated and market driven economic environment	Increase efficiency and improve financial performance To create a favourable investment climate To stimulate private sector participation in the economy and to focus government energies and resources to provision of basic goods and services To broaden the ownership base Develop capital markets To generate revenues for priority government expenditure	Direct buy-outs, either through competitive bidding or negotiations under the supervision of the privatization agency. Purchase of shares offered to the public through the stock exchanges Participation in infrastructure projects via concession of exploitation of infrastructure projects (power generation, highways, rail-based projects, port infrastructures ...) Lease, management contract or joint venture in commercial project or asset Employee buy-outs.

Country	Driving forces	Objectives	Methods used
Poland	Political and economic transformation "Spontaneous privatization" In more recent years the desire to join the EU.	Improve the performance of the enterprise sector, to reduce the size of the public sector, to encourage broad-based ownership.	Liquidation of non-viable enterprises, employee and management buy-outs and leasing of smaller and mid-sized enterprises; free distribution of shares to employees and direct sales of larger enterprises to management employees, or outside investors.
Spain	International competition and European Union membership. Industrial reconversion process.	From 1985 to 1991: to increase efficiency through internationalisation and incorporation of new technologies, relying on foreign investors. To decrease subsidies. From 1992, to alleviate the State deficit in order to accomplish the Maastricht criteria to become part of the third phase of the Monetary Union. EU legal framework also requires the elimination of monopolies and subsidies to public companies.	Direct sale of companies Sale of shares through the stock market.
Venezuela	1989 structural adjustment programme sponsored by the IMF	To encourage free competition and development of competitive companies. The broaden the ownership base. To stimulate new forms of cooperative organization in companies, communitarian management and self management practices. To modernise the activity or the service, transfer technology and improve equipment, resources and productivity.	Sale of shares Sale of the company assets Concessions to private operators to operate activities Transfer of management Employee share-ownership scheme

Table 2: Regulatory framework of privatization

Country	Regulatory framework	Main provisions	Organism in charge of privatization
Argentina	Law 23,696 on State Reform	Empowers the Chief Executive to privatise a list of government companies and assets. Sets privatization methods to be used. Defines the selection proceedings. Control exerted by the National Audit Office or the Union of State Companies, depending on the nature of the privatised company. Sets out the Programme of Shared Property Contains specific regulation on employment protection and labour status. Prohibits to increase the expenses on staff in public companies. Entrusts the Executive to revise all employment regimes in force in the public companies.	There is no specific institution created for managing privatization. Privatization is under direct control of the Executive power.
	Law 23,697 on Economic Emergency	Suspends subsidies in place (industrial promotion, mining promotion ...) Reforms the Central Bank Establishes an emergency budget Introduces a range of measures relative to employment in the Public administration and in State companies and societies.	
Ethiopia	Investment Proclamations No. 15/1992 and 37/1996	The code sets out areas of investment reserved for Ethiopian nationals, together with areas where foreign investors may invest in partnership with domestic investors.	Ethiopian Privatization Agency, responsible for directing and supervising privatization.
	The Public Enterprises Proclamation No. 25/1992	Lays the legal framework under which public enterprises may be operated under the ownership of private investors. The power to decide whether or not a public enterprise should be sold is given to the Council of Ministers. Regulates workers' representation in the Management boards of the companies. Sets out reasons why enterprises may be dissolved.	
	Proclamation No. 87/1994	Establishes an autonomous agency, the Ethiopian Privatization Agency (EPA) to oversee the privatization of public enterprises. The EPA is charged with carrying out the process of privatization. Its powers and duties include: the carrying out of detailed studies on the financial, technical and economic situation of public enterprises; price evaluation of public enterprises; recommendation of modalities of privatization; etc.	
Germany	Trusteeship Act, 17 June 1990	Although the institution managing privatization (Treuhandsanstalt (THA)) was set up under German Democratic Republic law and began its operations on 1 July 1990, the Trusteeship Act charges the THA with the duties of (i) administrate the state-owned firms	The Treuhandsanstalt (THA) manages privatization, reconstruction and reorganization of state-owned enterprises.

Country	Regulatory framework	Main provisions	Organism in charge of privatization
Germany (<i>cont'd</i>)		accordingly to the principles of social market economy; (ii) transfer of the companies to the private sector as quickly as possible, the priority being to privatize rather than to reconstruct firms or parts of firms; (iii) Reorganize firms which can be reconstructed and then privatized; (iv) Provision of real estate for economic purposes; reorganization and privatization of THA assets in agriculture and forestry. At Federal, State and Municipal level different regulations govern privatization. There is no general legislation applicable in all instances.	
Hungary	Act No. VI of 1988 on Business Associations	Allowed state owned enterprises to state-owned enterprises to found limited liability and joint-stock companies and to contribute part of their assets to these newly established business organizations pending the decision of the enterprise councils.	State Privatization and Assets Management Company (resulting from the merger of the Holding Company and the State Property Agency).
	Act No. XIII of 1989 on Transformation of Economic Organisations and Business Associations	Provided for the transformation ("commercialization") of state enterprises and cooperatives into joint stock or limited liability companies. Ownership rights to be exercised by the State Property Agency (SPA), an organization set up specifically for that purpose.	
	Act No. VII of 1990 on State Property Agency and Management of the State Property in the State Enterprises. Amended in June 1990.	Changes to the SPA. The Board of Directors was to be made up of representatives from specific organisations: trade unions, employer's associations; environmental protecting organisations; the social security fund and organisations managing state property. The other six members were elected by the Parliament.	
	Act No. LXXIV of 1990.	The Members of the Board are to be nominated by the Prime Minister	
	Act No. II of 1992	Establishes the State Assets Management Company Ltd, which manages the assets which are to be kept permanently either in whole or in part by the State. Annex I listed the enterprises belonging to the Holding Company, and the Annex 2 contained the list of those public service enterprises in respect of which the minister for the given public service was entitled to exercise the state's ownership rights.	
	Act No. XLIV of 1992	Creates the Employee Share Ownership Programme (ESOP), which provides a way for employees to obtain an equity stake in the company for which they work.	
	Act XXIX of 1995 on the Sale of State-owned Entrepreneurial Assets.	Lays down the priorities for future privatization operations, encouraging capital increases for enterprises under privatization, promoting enterprise restructuring, capital market development and foreign investment, encourages preservation of workplaces.	

Country	Regulatory framework	Main provisions	Organism in charge of privatization
Ivory Coast	Law 70-633 of 5 November 1970 (art. 10)	Establishes the juridical basis for privatising joint ventures. Financial participation of private sector in a joint venture must be determined by a decree.	Privatization and Restructuring Committee.
	Law 80-1071 of 13 September 1980 (art. 47)	Settles the basis for privatization of State entities, defining them and establishing the way they have to be organised.	
	Law 83-798 of 2 August 1983	Modifies the previous law. Establishes compulsory approval by the Council of Ministers for any transfer of State assets.	
	Decree 90-1610 of 28 December 1990	Establishes a list of companies subject to privatization. Establishes the general principles to be followed in privatization. Creates the Technical Cell in charge of executing the programme. Creates the Privatization and Restructuring Committee.	
	Law 94-338 of 9 June 1994 on privatization of State assets in some companies and public entities.	This law is issued in accordance with the Framework Document of Economic Policy signed between the country and the Breton Woods institutions for the 1994-96 biennium. It extends the list of companies to be privatised.	
Pakistan	The Transfer of Managed Establishments Order, 1978	Promulgated under Martial Law — the Order facilitated the return of nationalized enterprises to their original owners. Subsequently, parliament passed two amendment bills in 1986 and 1988 to enlarge the scope of privatization. This was followed by two presidential Ordinances in 1991.	Since 1985 several bodies on privatization have been formed. The Committee on Deregulation and Disinvestment was created in 1990 and reconstituted in 1991 as the Privatization Commission.
	Protection of Economic Reforms Act, 1992	Passed to protect privatized enterprises from re-nationalization: "The ownership, management and control of any banking, commercial manufacturing or other company, establishment or enterprise transferred by the government to any person under any law shall not again be compulsorily acquired or taken over by the Government for any reason whatsoever".	
Philippines	Proclamation No. 50, of 8 December 1986	Creates the Committee on Privatization (COP), the policy and clearing body for privatization, and the Asset Privatization Trust (APT), the organism in charge of developing the marketing to privatise. They were supposed to expire in December 1991, but several acts formerly issued extended this date until December 1999.	Committee on Privatization Asset Privatization Trust

Country	Regulatory framework	Main provisions	Organism in charge of privatization
Philippines (cont'd)	Republic Act No. 6957 (BOT Law)	Creates the Built-Operate-Transfer (BOT) scheme. Pursuant to this scheme a private contractor can undertake the construction and financing of an infrastructure facility and operate it for a fixed period of time (usually 25 years) before turning over the facility to the government.	
	Investment Act 1991	Enables foreign investors to buy government corporations.	
Poland	Law of 23 December 1988 on economic Activity	The law affirmed the equal right of anybody to start economic activity. "Activity" includes production, construction, commercial and service activities. The right to enter such activities is vested in individuals, legal entities, and organisational units having no legal entity.	
	Law of 13 July 1990 on Privatization	States the general principles of privatization, establishing the procedures for the transformation of a State-owned enterprise into a company, distribution of shares to third parties and privatization through liquidation.	
	Law of 14 June 1991 on Companies with Foreign Participation.	Opened investment to foreign companies by allowing them to participate in companies established in Polish territory.	
	Law on National Investment Funds, June 1993	Allows the establishment of National Investment Funds as joint-stock companies.	
	Law on Commercialisation and Privatization of the Public Sector of 8 January 1997.	It allows commercialisation without privatization. Grants greater powers to the relevant Ministry to make decisions regarding privatization.	
Spain	No general legislation. A privatization plan has recently been developed.	Privatization operations are approved on a case by case basis in the Council of Ministers. The Ministerial Order of 26 of June 1996 created a Consultative Organ, the Consejo Consultivo de Privatizaciones.	No specific administrative organ has been created to deal with privatization. All operations are managed by the owners of the shares in the state companies: the State Society of Industrial Participation (SEPI), the State Society of Patrimonial Participation (SEPPA), the State Industrial Agency (AIE) and the ministries owning companies.

Country	Regulatory framework	Main provisions	Organism in charge of privatization
Venezuela	Law of Privatization, March 1992	Designates the Fondo de Inversiones de Venezuela (FIV, Venezuelan Investment Fund) as the organism in charge of executing the privatization policy. Establishes the objectives and principles of privatization (art. 6). Art. 15 regulates the use of the funds resulting from privatization. Art. 7 establishes procedures to guarantee the transparency of the process. Establishes Employee State-Ownership programme	The FIV designs and executes operations, establishes a methodology, runs the process, and evaluates the results.

CHAPTER 2

PRIVATIZATION, LAW AND LABOUR RELATIONS MACHINERY

1. Introduction

Chapter One demonstrates the variety of circumstances in which the process of privatization has taken place in the countries included in this study. The aim of this chapter is to identify social concerns which privatization can generate and to examine the extent to which these concerns have been integrated into labour law and labour relations machinery in each country¹².

2. Social concerns generated by privatization

The process of privatization has generated a diverse range of social concerns such as increased unemployment, access to goods and services, the creation of monopolies and the concentration of wealth. This paper focuses on social concerns which privatization has generated in terms of the labour market. The exact nature and extent of social concerns arising will depend on a complex mixture of political, historical, economic, legal and social factors in each country. Despite considerable disparity in circumstances, it is possible to identify a number of common concerns faced by countries regarding privatization — albeit on a different scale and with different resources available to deal with these issues.

The most straightforward method of identifying these concerns is to consider what is likely to happen to the workforce of a public enterprise or entity on privatization. A number of possibilities present themselves: workers may transfer from the public enterprise to the privatised entity; workers may be retrenched or made redundant; workers may become contractors to the enterprise or employees of contractors or, in some countries, workers may become stakeholders in the enterprise themselves. Each of these possibilities raises a number of social concerns.

2.1. *Transfer*

Concerns raised by the issue of transfer of employment include: the level of information to be provided to employees regarding transfer; whether or not consultation and/or negotiation is to take place regarding the way in which transfer of employment is to proceed; whether or not acquired rights such as leave and severance pay are to be transferred; whether or not pension rights will be transferred and the terms and conditions of employment which will apply in the privatised enterprise. Concerns of workers transferred to the private enterprise rarely cease once privatization has taken place. They may also be concerned regarding extra workloads and the re-negotiation of existing terms and conditions of employment. Continued restructuring of enterprises after privatization is a common phenomenon. While it is not always easy to determine whether this is caused by privatization or by other factors such as increased competition or new technology it leads to continuing concerns for workers regarding job security. Finally, workers in this situation may experience considerable guilt that they are employed while others have been retrenched.

Transfer of employment may also raise concerns regarding workers' status. The transfer from employee to contractor is discussed below. A number of workers in public enterprises are classified as civil servants with permanent status. Transfer of these employees must, in theory at least, take place voluntarily. In a number of countries creative ways of employing

¹² The law in this area has shown a tendency to develop rapidly over short periods of time and recourse should be had to national legal sources before placing reliance on the law specified in this paper.

civil servants in private companies such as 'leasing' of workers have been developed. The rights of this group of workers requires special consideration because their rights to take industrial action and to bargain collectively may be curtailed by national legislation.

2.2. Redundancy

In many countries privatization has led to the redundancy and/or retrenchment of workers. This has implications — at least in the short term - for unemployment levels and for the various social concerns which this phenomenon generates. The way in which redundancies are carried out and measures which have been introduced to cushion the impact of redundancies on privatization raise social concerns of their own.

Lay-offs in the context of privatization are frequently carried out by means of voluntary redundancy or early retirement schemes. While these schemes may result in reduced opposition to the process of restructuring — they may also lead to the loss of skilled and experienced workers. This can have serious implications for efficiency. An example of this is the use of "golden handshake" payments during the first wave of privatization in Pakistan. While the scheme removed the need for compulsory redundancies and reduced political opposition to the process of privatization it also encouraged many productive workers to resign. Careful consideration must, therefore, be given to the design of schemes of this nature.

Compulsory redundancies have been also used to reduce the workforce of enterprises either prior to, during, or after privatization. The selection of workers for redundancy also raises social concerns. Selection criteria may be prescribed by legislation or agreed with the workforce. Criteria such as performance, or "last on — first off" are frequently utilised. In countries such as Ethiopia and Germany for example, consideration is also given to those with dependants. Selection criteria such as "last on — first off" may, however, have discriminatory effects on groups such as women, minorities and the disabled who have only recently obtained positions in the public sector in a number of countries. Such procedures may also discriminate against younger, and in some cases, better qualified workers.

The level of information provided to workers regarding redundancies and/or the level of consultation and negotiation regarding this issue also raises a number of concerns. Lack of information regarding the future may lead to anxiety, rumours, lack of productivity and, eventually, unrest. Evidence from the country studies suggests that conflict over privatization decreases where workers' representatives are informed, consulted and given the opportunity to negotiate regarding changes which are likely to occur on privatization, including redundancies. Procedures of this nature do have the potential to slow down the process of privatization, however, which may lead to the devaluation of assets. In a number of countries procedures have been put in place whereby workers' representatives and/or labour administrations are informed and consulted regarding the likelihood of mass redundancies. One concern which arises out of these procedures is whether or not workers are in a position to utilise mechanisms prescribed by law. Another issue of concern is the possible evasion of these rules by management.

Severance payments are frequently provided to workers who are laid off as a result of privatization. Where unemployment is severe and long lasting, these payments may be necessary to ensure that workers are able to meet existing liabilities such as mortgage or rental payments, or simply to meet the cost of living for themselves and their families. Where workers obtain another position quickly or are approaching retirement, however, these payments may represent something of a windfall. In Hungary and Poland, workers who are eligible to receive a pension do not receive severance pay. Despite the importance of these payments, little research exists regarding their use. Anecdotal evidence from at least one country included in this study, namely Pakistan, indicates that payments of this nature have

often been invested in business ventures which fail. The provision, use, and appropriate distribution of severance payments and whether or not they should be accompanied by some form of impartial financial counselling is another issue of concern regarding privatization.

In some countries measures have been used to delay redundancies or to spread the effects of their impact¹³. One example of this is subsidised short time working which has been used extensively in the former East Germany. Measures such as this can have considerable cost implications — on the other hand the cost of subsidised working must be balanced against the cost of unemployment benefits. Another example in the same country is the use of “survival pacts” whereby workers have agreed to a number of concessions — such as shorter hours, lesser wages or the greater use of unpaid leave in order to preserve jobs. These pacts or agreements — while preserving jobs — do raise issues regarding the exploitation of workers. Another method which has been used in the context of privatization and civil service restructuring, in Argentina for example, is a freeze on recruitment. While this may help to prevent further redundancies it has implications for workers outside the enterprise and, in particular, younger workers, who may have difficulties to join the labour market.

Other measures utilised to assist workers in enterprises earmarked for privatization include: job search assistance; training or retraining programmes; job creation schemes; business advisory services; counselling and support for the development of small and medium sized business enterprises; unemployment benefits; preference for re-employment and re-engagement of redundant workers and preference in awarding contracts for services formerly performed by the public enterprise to contractors who were employees of the enterprise¹⁴. In some countries use has been made of existing facilities while in other countries special facilities have been developed for this purpose. Concerns raised by these measures include the effectiveness of training schemes, the cost of these measures and the ability of employees to successfully operate small and medium sized enterprises.

Benefits such as preference for re-engagement - whether in the privatised enterprise or in other state projects — can benefit employees of state-owned enterprises over unemployed people generally. Preference for contractors who were formerly employees raises similar concerns, together with concerns regarding competition and costs to consumers. In countries with limited resources the extent of assistance which should be provided to employees who lose their jobs on privatization is a complex issue. Public sector workers may already represent a privileged group and the provision of extensive benefits to this group may result in the further exclusion of other workers. On the other hand public sector workers in these countries may support considerable numbers of dependants. In less developed countries public sector employment may provide one of the few examples of developed human resource management. The loss of this example may have implications for human resource management in the country generally.

2.3. Contractors

The contracting out of services performed by public enterprises to the private sector is a common feature of privatization in many countries. While, in many cases, this does not represent complete privatization in the sense that responsibility for provision of services is frequently retained by the State, it may have serious social implications. Contracting out of services may lead to redundancies and/or, where workers in the public enterprises are employed by the contractor, to alteration in terms and conditions of employment. Where workers in the public enterprise become contractors themselves this can raise concerns

¹³ Van der Hoeven and Sziraczki (Editors) *Lessons From Privatization*, ILO Geneva 1997, p. 12.

¹⁴ Ibid.

regarding business skills and the exploitation of workers. This issue is discussed in greater detail in Chapter Five.

3. The integration of social concerns into privatization by means of law and labour relations machinery

Social concerns have been integrated into the process of privatization in different ways and to a different extent in each of the countries included in this study. While some countries have relied on existing law and labour relations machinery to deal with social concerns arising, others have introduced specific measures in labour law or in statutes and regulations regarding privatization. Particular measures which apply to social concerns arising out of the process of privatization in each country are described below.

3.1. Spain

There have been no specific amendments to labour law in Spain as a result of privatization nor are there any statutes regulating the process of privatization which include provisions regarding social protection. Social concerns arising out of privatization have been dealt with by way of existing labour law and industrial relations machinery. This includes agreements which have been negotiated regarding the social consequences of privatization.

The main piece of legislation governing the employment relationship in Spain is the *Estatuto de los Trabajadores* ("Workers' Charter") which was originally enacted in 1980. The Workers' Statute underwent considerable reform in 1994 as part of the reform of the labour market undertaken by the Socialist government in power at that time. The amendment reduced employers' obligations in the event of collective redundancy and conferred significant extra powers on bargaining parties in terms of the negotiation of terms and conditions of employment through collective bargaining. This included greater freedom to enter into part time and temporary contracts of employment.

In a number of other countries included in this study privatization has been carried out at the same time as general labour market reform including revision of the law regulating employment relationships. In Poland and Hungary, for example, reform of labour law carried out at the same time as privatization has also reduced the protection afforded to workers in areas such as dismissal for economic reasons and permitted greater recourse to the use of more flexible forms of employment contracts. Amendments of this nature are usually aimed at 'reducing barriers to employment'. They can lead to the development of flexible solutions to the issue of workforce reduction such as the greater use of part time employment in order to preserve jobs. At the same time measures such as the relaxation of controls on dismissal for economic reasons can exacerbate the effects of privatization. It is not without some degree of irony, therefore, that we discuss the integration of social dimensions into privatization in countries which have recently undergone extensive labour market reform.

The Workers' Statute applies to the majority of employment relationships in Spain. The employment of certain public sector workers is governed by administrative law, however, this category is limited. In general, workers in enterprises which have been privatised in Spain have been employed pursuant to contracts of employment governed by the Workers' Charter.

The provisions of the Workers' Statute regarding termination of employment for economic reasons and collective dismissal are relevant in the context of privatization. These provisions may be superseded or supplemented by collective agreements concerning these issues. In Spain economic dismissal can be based on organisational, production related, technological or economic reasons. Where the dismissal is not part of a pattern of collective dismissals the

employer is required to provide the employee with a written communication setting out the reason for dismissal together with a minimum of 30 days notice. Employees in this position will also receive severance pay.

The provisions of the Workers' Statute in relation to transfer of employment are relevant in the context of privatization. These provisions are in accordance with a European Community directive concerning this issue¹⁵. The application of the transfer of undertakings directive in the context of privatization and, in particular, the contracting out of services has been a controversial issue at European level. While the exact extent of the application of the Directive in this context continues to be developed by the European Court of Justice the provisions of the Workers' Statute regarding transfer of employment have been applied in a number of instances of privatization in Spain.

The law regarding transfer of undertakings sets out a number of obligations in terms of the provision of information and consultation of workers' representatives prior to transfer. A change in ownership or in the title by which an owner holds a business will not terminate the labour relationship. Labour contracts are assigned to the new owner without alteration in the duties, acquired rights (such as severance pay) or seniority of employees. The law applies to the transfer of the whole or part of the business in question. The law regarding transfer does not prevent dismissal for economic or technological reasons, however, it does mean that transfer in itself is not a valid ground for dismissal.

Spanish law also provides workers in enterprises of a certain size with rights to information and consultation regarding the business of the employer. A number of these rights will be important in the context of privatization. Representation of workers for this purpose is provided by works' councils or shop stewards. In addition to the rights to information and consultation in the context of collective redundancies and transfer of employment noted above, Works councils and shop stewards also have the right to be informed at least once every three months in relation to the situation in the general economic sphere, the situation in terms of production and sales, the future prospects for employment and what type of employment this will be.

Works councils and shop stewards have the right to make reports to management regarding workforce restructuring and lay-offs; reduction of the working day, changes in work organisation, hours of work, bonus and incentive schemes, the evolution of jobs, merger of the enterprise and changes to the status of the enterprise. They are responsible for the negotiation of agreements in the case of lay off for economic or technological reasons and for the negotiation of collective bargaining agreements.

The role of collective bargaining in determining terms and conditions of employment in Spain is strong. The social partners have considerable experience in negotiating agreements regarding terms and conditions of employment at a number of levels, including enterprise level. This includes agreements regarding workforce reduction. Considerable restructuring took place in Spain in the period 1974-1982 with the loss of approximately 816,000 jobs. Workforce reduction is a phenomenon which is by no means associated exclusively with privatization in Spain.

The major issues facing industrial relations in Spain today are unemployment and the increased use of fixed term or temporary contracts. While privatization is not the only, or even the main, cause of these conditions it is a contributing factor. Following the provisions

¹⁵ Council Directive 77/187 of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. OJ L61, 5.3.77.

contained in the 1994 new law, which included greater incentives to work part time, parties negotiating reductions of the workforce on privatization have increased the use of part time work in order to preserve jobs. While agreements such as this have obvious advantages it is important that they do not become exploitative. Benefits should be granted to workers on a pro rata basis.

Voluntary lay offs and incentives for early retirement are the main methods which have been used to reduce the workforce on privatization. Such are the cases of Telefónica, the former state owned telecommunications company, and Repsol, the former state owned energy company.

3.2. *Germany*

Workers' rights on privatization have been protected by a combination of: existing labour law and labour relations machinery (including statutes and collective agreements); civil service law; and measures in statutes regulating privatization. In addition a number of special measures have been adopted in the former East Germany in order to ease the enormous transition which has occurred there over a very short space of time. The position in Germany is complicated by the fact that privatization has taken place on three levels: federal, state and municipal and by the fact that two different legal systems have recently been integrated. As a result of reunification West German labour law has also become law in the new Eastern States. A number of limited exceptions were made in certain areas for transitional periods. For all these reasons, only basic provisions of general application will be discussed here.

Labour law in Germany applies to employment relationships based on private contracts¹⁶. There are three classes of public sector worker: wage earning; salaried and career civil servants. While the first two groups have essentially the same rights as private sector employees, the employment relationship of career civil servants or '*Beamte*' is governed by a special section of administrative law. While career public servants have the right to form associations, they cannot engage in collective bargaining, nor do they possess the right to strike. The latter point is an issue of some controversy, however, as career public servants are employed in a number of fields apart from public administration, such as telecommunications and education.

As a result of privatization, a number of career public servants have transferred to the private sector and agreed to forgo their status as civil servants in exchange for other benefits. The transition to the private sector can bring advantages for these workers such as the right to strike and bargaining autonomy. It also brings a series of disadvantages, however, such as the loss of permanent status and other benefits in relation to pensions and health insurance. As civil servants' contracts can only be terminated with the agreement of the civil servant, a number of creative solutions have been developed on privatization. These include the leasing of civil servants to the newly formed private companies and the deeming of civil servants to be on leave.

Regulation regarding transfer of employment is in accordance with the European Directive regarding this issue. The legislation provides for automatic transfer of employment provided the employee agrees. The transferee is bound by existing employment relationships as at the date of transfer. This includes collective agreements and works or staff council agreements. Collective agreements retain their validity for one year after the date of transfer. Special regulations exist regarding the transfer of staff councils to works councils. Special regulations also exist regarding transfer in the context of the splitting of companies. Difficulties have

¹⁶ Although certain employment laws are not applicable to senior managers.

arisen in relation to the transfer of pension rights from Government schemes. To date solutions have been developed on a case by case basis.

The works' council, and its equivalent in the public sector — the staff council, plays an important role in industrial relations in Germany. Although works' councils and staff councils are formally different structures their position is essentially the same in both sectors and most protective legislation makes no distinction between the two bodies. Works' and staff councils are institutionally separate from unions. In practice, however, unions often have considerable influence as to who is elected to these bodies. Councils can be formed in every establishment where there are at least ten employees entitled to vote of whom at least three have been employed for six months or longer. In a number of smaller establishments works councils have not been formed. In this case employees effectively lose the rights afforded to these bodies.

Employees in certain large companies, including public companies, in Germany are also granted rights to participate on the supervisory boards of companies. The details of this are set out in the Workplace Labour Relations Act 1952 and the Codetermination Act of 1976. Special rules apply to companies in the coal, iron and steel industries.

Agreements regarding the social impact of privatization are commonly negotiated once the legal framework for privatization has been passed by parliament. These agreements have contained welfare measures such as: voluntary redundancy and retirement schemes; internal welfare institutions; housing assistance; health insurance and measures regarding levels of employment in the privatised enterprise. The possibilities for negotiation by civil servants are obviously more limited. There have been some discussions, however, in relation to issues such as pensions and other implementation issues. Agreements have also been signed by the public entity and the purchaser of the enterprise which contain provisions regarding labour. These have included agreements regarding the level of employees to be retained in the enterprise and on some occasions agreements to lease the employees of the enterprise from the public entity. Workers' representatives have also been involved in the negotiation of these agreements.

Jobs have also been preserved by the use of 'survival pacts' agreed on a collaborative basis between employers, works councillors, workers and in some cases the relevant state administration. In a number of cases the latter body has provided subsidies in order to preserve jobs. Survival pacts have either ignored the relevant collective agreements in force or opted out of these agreements on the basis of hardship clauses.

Measures to promote employment have been adopted at a federal level and in a number of German states. These measures have been particularly important in the former Eastern states. They have included subsidies for 'short time working'. In addition credit has been made available through a variety of sources for business development, particularly in relation to small and medium sized business enterprises. Some general early retirement schemes have also been introduced.

3.3. Hungary

A number of means provide protection for workers affected by the privatization process in Hungary: provisions of existing labour law and labour relations machinery (including collective agreements); amendments to labour law as a result of privatization, and provisions in statutes and regulations regarding privatization. When discussing the integration of the social dimension into the process of privatization in Hungary it is important to remember that the Labour Code was completely revised in 1992 in order to meet the needs of a market economy and, more recently, amendments have taken place in order to ensure the approximation of Hungarian labour law to European standards. In many instances protection for workers is weaker than that which existed under the former socialist regime.

The Labour Code (Act XXII of 1992), as amended, applies to all employment relationships unless another Act provides otherwise. Act XXXIII of 1992 governs the employment relationship of civil servants, that is employees of institutions financed by the state budget such as public health, education, culture and research. Act XXIII of 1992 applies to public employees, that is employees of the central and regional bodies of state administration. The provisions of the Labour Code have applied to the majority of employees of enterprises which have been privatised to date.

As in Spain and Germany, protection is provided to employees under privatization by the provisions of the Labour Code concerning: termination of employment for economic reasons; collective redundancies; transfer of employment and workers' participation. Employees can be dismissed for reasons connected with the employer's operation. In this instance, the employer must give a clear, true and reasonable reason for dismissal. Employees are entitled to notice and, in some instances severance pay, although this will depend on the length of service. Severance pay is lower than in many Western European countries. Employees receive an amount equal to one months average earnings after three years of service increasing to a maximum of 6 months after 25 years of service. More generous provisions have been negotiated in agreements regarding benefits to be provided to workers on privatization. Pursuant to the Labour Code an employee is not eligible for severance pay if he or she is eligible to receive an old age pension, has been granted a pension or on the expiry of a secondary occupation¹⁷.

As in Spain and Germany, a change in the control of an undertaking on privatization is not, in itself, a sufficient reason for dismissal. Prior to a recent amendment to the Labour Code there were no statutory regulations regarding this issue. There was a binding decision of the Supreme Court, however, which laid down the principle that, in the case of take-over, where there was no change in the working circumstances of employees, but only in the legal identity of the employer, employment relationships were continuous in relation to rights regarding notice and severance pay. Section 85A of the Labour Code now provides for the automatic transfer of the employment contract of workers employed by the transferor at the moment of transfer of the undertaking. As in Spain and Germany this provision does not prevent dismissal for reasons of redundancy.

As a result of economic transformation — in which privatization has played a key role — and as a result of collapse of the economy, unemployment has become a serious and long term problem. The Government has introduced a series of measures in an attempt to combat unemployment and provide support for those who have become unemployed. These measures have relevance to those who become unemployed as a result of privatization. Act IV of 1991 — the Act on Employment Policy — established a National Labour Centre, together with local labour centres, charged with a number of tasks including: the allocation and payment of unemployment benefits¹⁸; assisting in the prevention of unemployment; promoting employment opportunities and carrying out labour exchange, counselling and advisory services¹⁹. The Act also establishes two tripartite bodies: the Labour Market Commission and the National Training

¹⁷ L. Nagy, "Transformation of Labour Law and Industrial Relations in Hungary", in Blanpain and Nagy (Editors), *Labour Law and Industrial Relations in Central and Eastern Europe*, The Hague, 1996, p. 73.

¹⁸ The provision of unemployment benefits in Hungary is dependant on the duration of the preceding employment and the mode of cessation. Benefits are provided for a limited time and their size gradually decreases. In some cases it is possible for an unemployed person approaching retirement to receive his or her retirement pension in advance. This is usually on the basis that the employer or the State repays a certain amount to social security until the person reaches retirement age.

¹⁹ *Supra*, at note 13, p. 73.

Council. The former body allocates assets of the unemployment solidarity fund while the latter decides on projects in relation to vocational training. The Labour Market Commission is entitled to be consulted on draft rules affecting employment proposed by the Government.

A number of measures have been introduced with the aim of re-integrating the unemployed into the job market. These measures include: the registration of job vacancies and unemployed persons; advisory and information services and training and re-training courses. Efforts have also been made to create new job opportunities by means of assistance in setting up new businesses and economic support for the creation of new full time and part time positions²⁰.

Measures regarding workers' protection have also been included in law and regulations regarding the privatization process itself. Government Decree No. 119/1991 regarding the participation of workers in the restructuring of state owned enterprises is an early example. Matters of relevance to employees such as the discount available to employees on purchase of shares also feature in the Property Policy Guidelines (the parliamentary resolution governing the activities of the Privatization agency). The main emphasis in Hungary has been the maximisation of profits rather than employment policy considerations however. The 1992 law on privatization also stated that an employment plan should be considered by state owned enterprises to be privatised. Since 1995 the privatization agency has been required to consult the Ministry of Labour in relation to decisions regarding privatization.

3.4. Poland

Protection for workers on privatization in Poland has been provided by: existing labour laws, and labour relations machinery (including collective agreements), and, to a lesser extent, provisions included in Statutes and Regulations regarding privatization. As in Hungary a number of measures have been introduced regarding employment and unemployment which are relevant in the context of privatization. Employee share ownership schemes and, in particular, employee leasing has also played an important role in privatization in Poland.

As in Hungary, alterations to labour law which have accompanied the transition from a centrally planned economy to a free market economy have reduced the level of protection afforded to employees generally. The fundamental concept of the right to work enshrined in the previous Constitution and given effect by the principle of full employment has been eroded to little more than an ideological concept. Nevertheless there are a number of provisions of labour law which offer employees protection during the transformation process. As in Hungary the content of a number of these provisions has been influenced by Poland's desire to become a part of the European Union.

Labour laws, including the Labour Code, and the various other statutes which regulate industrial relations in Poland, generally apply to both the public and the private sector. Workers may be lawfully dismissed for reasons connected with the operational requirements of the employer such as structural, technological, production based or other economic reasons. Workers may also be lawfully dismissed for refusing a proposed change in conditions of employment and remuneration. A proposed change of this nature may not be arbitrary and must be justified by either a reason which would be grounds for termination with notice, or for any other adequate reason. Where a worker is dismissed on these grounds he or she is entitled to notice. The employer must also provide the relevant trade union with notice in writing. The union is given an opportunity to give its opinion concerning the dismissal. Although the trade union's opinion is non-binding it can be of importance to the final decision and in any dispute.

²⁰ Supra, at note 13, p. 74.

The law regarding transfer of employment is contained in Article 23 of the Labour Code. It is in line with the European Directive on this issue. Article 6 of the law of 30 August 1996 confirms that this provision applies on the commercialisation and privatization of enterprises.

Privatization has, in many instances, resulted in downsizing of both production and staffing levels. Where this has occurred "social pacts" have been entered into, providing extra benefits to employees who are made redundant on privatization. These have included: conditions on termination; training and retraining schemes; agreements regarding levels of employment in the privatised enterprise, wage plans; and agreements in relation to the union's position in the privatised enterprise. Unfortunately few of these pacts have been legally binding and reports suggest that they have often been violated²¹. They have occasionally been viewed by the Ministry of Ownership Transformation as obstacles to privatization since potential investors may be discouraged from investing in companies where employment adjustment agreements create obstacles to human resource management after privatization.

As in other 'transition' economies Poland has experienced a rapid increase in unemployment and a decline in general living conditions as a result of the creation of a free market economy and as a result of economic recession in the early 1990s. Successive governments during the transformation period have attempted to ameliorate the effects of these changes because of the dangers of social unrest and because of promises to combine the implementation of a free market economy with an active social policy²².

Since 1989 a number of Statutes have been passed with the specific aim of combatting unemployment. They are similar to the measures passed in Hungary, including: the registration of unemployed people; the provision of government employment agency services; the provision of vocational training; job training and retraining programmes; and the authorisation of administrative employment offices to undertake initiatives to create new jobs. During training and retraining participants receive financial allowances²³. Financial assistance can be granted to employers to create new jobs and to the organisers of public works projects. The unemployed may also receive loans for carrying out business activities. Unemployment benefits were established in Poland in 1989. Since their introduction the criteria for eligibility have been narrowed and the amount of benefit payable has been reduced.

3.5. Pakistan

In Pakistan protection of workers on privatization has been through the mechanism of agreements negotiated between trade unions or workers in enterprises to be privatised and the Government regarding this issue. In addition to the existing labour legislation and industrial relations framework, there have been special bodies and laws developed specifically for preparing the ground for privatization²⁴.

Privatization began in earnest in Pakistan in 1990. At the same time as the Government announced its new policy regarding privatization strong resistance emerged from active and vocal public sector unions²⁵. Workers in public sector enterprises, in general, enjoy greater benefits in terms of security of employment, retirement pensions, medical facilities and access

²¹ Ibid., p. 7.

²² Supra, at note ?, p. 85.

²³ Ibid., p. 94.

²⁴ Pursuant to the Constitution, labour law in Pakistan can be made by both the National Assembly and by Provincial Assemblies. It does not, therefore, conform to a uniform standard. Persons who work for the Federal and Provincial Governments are classified as civil servants and their employment is governed by the Civil Servants Act, 1973.

²⁵ S. Aziz, *Privatization in Pakistan*, Development Centre Studies, p. 32.

to low interest loans than workers in the private sector²⁶. Public sector workers feared retrenchment and reduction in terms and conditions of employment as a result of privatization. In 1991 a number of public sector workers joined together to form the All Pakistan State Employees Workers' Action Committee ("APSEWAC") which issued a number of statements opposing privatization and threats regarding plans to block the process. After advertisements for enterprises were issued, representatives of potential investors and evaluation consultants were prevented from visiting factories and examining records and account books. The Government, fearful that the process could be blocked and apprehensive of the ability of the opposition to exploit the situation set up a cabinet committee to negotiate with representatives of APSEWAC. After comprehensive negotiations an agreement was signed on 15 October 1991. The agreement applied to the privatization of manufacturing concerns only. It covered the majority of enterprises privatised in the 'first wave' of privatization in Pakistan which took place in the early 1990s. The 'second wave' of privatization, occurring at this moment, involves remaining industrial units identified by the government as suitable for privatization and, more controversially, the privatization of parts of the transportation, energy and telecommunications sectors, in addition to a number of other public utilities. Privatization of parts of the financial sector began in the early 1990s and is ongoing. The second wave of privatization has led to considerable controversy and protest. Agreements between workers and management have been negotiated on a case by case basis. The original APSEWAC agreement set a strong precedent in terms of the types of provisions which have been included in future agreements regarding privatization²⁷.

In general the agreement was proclaimed as a success by all parties²⁸. It provided workers with considerably more rights than the basic law and a number of options from which to choose. In general it appears that most of the provisions of the Agreement have been complied with. A voluntary reduction of staff was successful in the sense that the number of workers opting for a golden handshake scheme, which provided workers with a lump sum payment to five months salary for each year of service, meant that there was no need for forced or compulsory redundancies in the enterprises covered by the Agreement. One commentator has also noted that while the amount paid out by the Government pursuant to this Agreement has

²⁶ Labour legislation in Pakistan covers a small proportion of the workforce only. Even fewer employees are eligible for pensions and other social security benefits although attempts are being made to increase the coverage of these benefits.

²⁷ The APSEWAC agreement consisted of three separate parts granting workers in enterprises to be privatised three different options. Pursuant to Part 'A' workers could opt to continue in employment after privatization. These workers were to be offered 10% of the unit at a mutually agreed price. The new employers were not permitted to dismiss or alter the terms and conditions of employment of these workers for at least one year after privatisation. Those who were terminated after this time were entitled to an unemployment benefit of Rs. 1000 per month from the Government for a maximum of two years.

Part 'B' of the package was known as the 'golden handshake scheme'. Employees who opted for this part of the agreement - a form of voluntary redundancy package - received a lump sum payment equivalent to five months salary for each year of service. This is considerably more generous than the provision for severance pay contained in the basic statute governing termination of employment: The Industrial and Commercial Employment (Standing Orders) Ordinance 1968. This provides for a gratuity equivalent to 20 days wages for every year of service or part thereof in excess of six months. Labour rehabilitation programmes were to be set up to assist redundant workers, including training in new occupations. A roster of surplus workers was also to be created.

Pursuant to part 'C' of the agreement workers were also granted the right to match the highest offer received for the unit. They were entitled to mobilise the unit's gratuity and provident fund for this purpose.

²⁸ International Labour Organisation, *Pakistan: Privatization, Employment, Retraining and Social Protection*, Geneva, 1996, p. 5.

been high it may well have led to higher bids for units covered by the Agreement because investors would anticipate fewer labour problems.

As stated above protection for workers in units being privatised at the present time is being agreed on a case by case basis. The privatization of a number of public utilities is proving to be contentious and there have been a number of protests regarding privatization in these areas in the past 12 months. Privatization in a number of public utilities has raised the issue of the rights of civil servants in relation to joining trade unions, collective bargaining and strike action. It has also raised the issue of constraints on strike action because of the operation of the Essential Services (Maintenance) Act 1952. This Act covers all public utility services and grants extensive powers to the Government regarding the declaration of organisations as 'essential'. The law empowers the Government to ban impending strikes and to order strikes to be called off. This may have serious implications for the bargaining power of workers in relation to agreements regarding privatization.

Concern has also been expressed regarding the recent extension of the definition of 'civil servant' in certain statutes. The Service Tribunals (Amendment) Act 1997 amended the definition of 'civil servant' for the purposes of the Service Tribunals Act to include workers and employees of semi autonomous statutory bodies such as the Water and Power Development Authority (WAPDA) This will prevent workers in such bodies from being able to seek redress in the labour courts. This may have serious implications for the rights of these workers on privatization.

3.6. *The Philippines*

Protection for workers on privatization has been through the provisions of existing labour law together with agreements negotiated between various stakeholders on an ad hoc basis. Measures regarding the position of workers on privatization have also been included in legislation regulating privatization however these provisions have been deemed to be explicitly 'anti-labour'.

The Labour Code is the main piece of legislation regulating terms and conditions of employment and labour relations in the Philippines. The application of the Labour Code in the public sector depends on the nature of the agency or enterprise by which a worker is employed. Workers in public enterprises created by special law or charter and subsidiaries of these enterprises are classified as public servants. Workers in public enterprises which are incorporated under Corporation Law and which are registered on the Securities and Exchange Commission as private corporations but which are totally or partly owned or controlled by government corporations are governed by the provisions of the Labour Code. The Labour Code also applies to enterprises which were originally created as private corporations but were subsequently acquired by the Government.

There are two key distinctions used in Filipino labour law. The first is between regular employment and non regular employment, such as casual work, and the second is between management and 'rank and file' workers. Protection against dismissal, other than for just cause, applies to all employees in regular employment. While prohibition against dismissal for just cause applies to both managerial and rank and file workers, the requirement to obtain a clearance to terminate (discussed below) applies to rank and file workers only. A managerial worker is one who is vested with powers and prerogatives to lay down and execute management policies and/or to hire and fire employees.

Retrenchment and redundancy are valid reasons for dismissal at the initiative of the employer. Retrenchment occurs where an employer is forced to reduce staff in order to protect the viability of the business. Employees who are terminated on these grounds are entitled to separation pay of at least one month, or half a month's pay for every year of service whichever

is higher. Redundancy occurs where an employees' position is terminated due to economic or technical reasons such as the installation of labour saving devices, or reorganisation of the enterprise. In the case of redundancy employees are entitled to at least one month's pay for every year of service. Collective agreements may contain more favourable provisions.

There are a number of sections of the law governing privatization, Proclamation No. 50, as amended by Proclamation No. 50A, which apply to workers in state owned enterprises on privatization. Section 25(4) of the Proclamation provides that the Philippine's Asset Privatization Trust ("APT") may adopt and implement cost reduction measures to enhance the viability and disposability of government corporations to potential buyers. The section expressly notes that this may include personnel retrenchment plans. Section 27 of the Proclamation expressly provides that upon the sale or other disposition of a government corporation employer-employee relations terminate by operation of law. The section also states that no officers or employees retain any vested right to future employment in the privatised or disposed corporation and the owners have full and absolute discretion to retain or dismiss the officers and employees and to hire replacements. Section 31 of the Proclamation provides that no court or administrative agency shall issue any restraining order or injunctions against the APT in connection with the sale, or disposition of assets pursuant to the Proclamation. The section also provides that no order or injunction can be issued against the purchaser of assets to prevent him or her from taking possession of the assets purchased.

The aim of these sections is clear. Buyers of Government corporations are to be free of any obligations to employees of the said corporations. The new owners can elect to retain employees or other officers at their will. The aim of section 31 is to prevent lawsuits by employees, or unions who attempt to exert their rights in terms of job security or union security. The Supreme Court has ruled that the effect of section 31 is to prevent the Department of Labour and Employment ("DOLE") or its attached agency, the National Labour Relations Commission ("NLRC") from having any jurisdiction over industrial disputes regarding privatization.

One of the effects of section 27 is that workers who have worked in public corporations for long periods of time may be classed as probationary employees in the enterprise formed by privatization. This is what occurred when the Metropolitan Waterworks and Sewerage System ("MWSS") was privatised. The new owners of the MWSS did, however, choose to otherwise respect the tenure and benefits of former employees of the government corporation and existing collective bargaining agreements. In a country where there are no shortage of workers willing to work for relatively low wages, the provisions of Proclamation 50 provide no security whatsoever for employees or officers of government corporations to be privatised.

It is hardly surprising that the provisions of Proclamation 50 have been controversial. During the presidency of Mrs Corazón Aquino attempts were made to promulgate legislation providing protection, in terms of job security and existing terms and conditions of employment, for employees of corporations undergoing privatization. These bills, however, failed to become law. In reaction, however, to continuing demands for protection for employees and officers of corporations undergoing privatization, the Republic Act 7661 of 1993, which extended the life of the APT and the Philippines' Committee on Privatization, contained a small concession to labour. Section 2(a) of this Act provided that in the disposition of assets in corporate form there shall be no undue dislocation of labour unless all benefits provided by existing laws or collective bargaining agreements are complied with and provided that 'old qualified personnel' shall be given preference in the hiring of new personnel by the new owners. While this section has provided workers with some more definite rights on termination it does not repeal any of

the controversial sections of Proclamation No. 50. It was, therefore, only a small step forward in terms of the protection of workers.

Agreements regarding privatization between the Government body and the new owner have contained provisions regarding personnel of government corporations. The negotiation of these conditions by the APT with the new owners has been on a case by case basis. The agreement signed on privatization of the MWSS, for example, provided for a severance payment to transferring employees and payments for employees who did not wish to transfer. An early retirement incentive package was also created with the aim of reducing the number of employees prior to privatization. The 'rank and file' supervisory unions were also recognised under the agreement. This agreement is obviously an improvement on the provisions of Proclamation 50. It was denounced by employees of the MWSS however.

The integration of social provisions into the process of privatization does not appear to have been a priority in the Philippines. The Governments' priority has, presumably, been to attract investors and purchasers of public enterprises by attempting to create entities free of human resource liabilities. While more favourable agreements regarding employees have been negotiated with new owners as part of the agreement to purchase public corporations the Government appears to have preferred that such agreements be negotiated on an informal basis. Workers' protection on privatization depends, therefore, to a considerable extent on the influence of the APT and the goodwill of the new owner in particular transactions.

3.7. Ethiopia

As set out in the introduction, privatization is a recent phenomenon in Ethiopia and has, to date, proceeded on a relatively small scale compared to other countries included in this study. At the same time, Ethiopia is a country which has, only recently, emerged from armed conflict. The impact on levels of employment than the process of privatization has generated has been far lower than the demobilisation of hundreds of thousands of soldiers and civil service restructuring. The further reduction of employment opportunities through privatization could, however, aggravate poverty and social exclusion and in turn refuel conflict. This militates in favour of extreme care being exercised in the way in which privatization is carried out.

Social protection for employees in the face of privatization has been provided by: existing labour law, negotiated agreements concerning this issue and by the Government's safety net programme. The main statute governing employment relationships in Ethiopia is Labour Proclamation No. 42/1993. While the Proclamation covers only a small percentage of workers in Ethiopia it is relevant to employees in state owned enterprises. The Proclamation does not apply to persons holding managerial posts who are engaged in major managerial functions or to persons such as members of the armed forces, the police force, employees of state administration or judges whose employment relationship is governed by special laws. The preamble to the Proclamation states that it is intended to equate with international labour law instruments and with the political, economic and social policies of the transitional government. Ethiopia provides another example of a country where labour market reform has been implemented recently alongside more general economic reform.

Pursuant to the Labour Proclamation employment may be justifiably terminated on a number of grounds in connection with the organisational or operational requirements of the undertaking. Employees dismissed on these grounds are entitled to notice of termination in writing setting out the reason for dismissal and the date on which termination will take effect. The length of notice is specified in the Labour Proclamation although this can be extended by individual or collective employment contracts.

The Proclamation sets out a number of rules in relation to selection for redundancy. Wherever collective dismissal takes place workers having skills and higher rates of productivity are to be given priority in terms of retention. In the case of equal skill and productivity, the Proclamation sets out the order in which the reduction of staff is to take place. Those with the shortest length of service are to be dismissed first of all ("last on-first off"). If service is equal then the number of dependants is taken into account. Preference in terms of retention is also given to: those disabled by an employment injury; workers' representatives and expectant mothers. Collective agreements may define rights and procedures for dismissal, including collective dismissal. These provisions must be at least as favourable as the provisions contained in the Labour Proclamation. Where an undertaking ceases to operate permanently and in the case of collective dismissals the worker is entitled, in addition to normal severance pay, to a sum equal to sixty times his or her average daily wage for the last week of service.

In terms of protection on transfer of employment Article 23(2) of the Proclamation provides that the amalgamation or division or transfer of ownership of an undertaking will not have the effect of terminating a contract of employment, nor modifying it (Article 16). This will not prevent dismissal for reasons connected with the operational requirements of the undertaking. As in other countries included in this study problems have arisen in relation to pension rights as the existing legal framework does not provide for the automatic transfer of workers' pension rights on privatization. The law requires revision in order that this matter is taken into account. To date solutions to this problem have been developed on a case by case basis.

As privatization is a recent phenomenon in Ethiopia and as there is very little information available regarding the way in which the process has taken place to date it is difficult to assess the impact of the provisions referred to above on this process. In particular there is little information available regarding whether or not privatization has led to a reduction of the workforce at the time of privatization or in companies which have been privatised or whether, in fact, it has led to an increase in employment. In the study done by David Gutema of 8 of the 119 enterprises privatised in Ethiopia in the period March 1995–February 1997, 64 employees out of a total of 690 employees were made redundant after privatization. On the other hand 75 workers had joined the enterprises included in the study after privatization. In individual case studies of three enterprises privatised during this period there had been no forced redundancies and employment had increased in two enterprises. Whether or not overall trends reflect what has occurred in these companies is unknown however.

There is a serious lack of general vocational training and employment policy measures in Ethiopia. While specific measures were introduced in order to deal with the demobilisation of soldiers, measures of this nature may also be needed if privatization results in an increase in unemployment as it has in many of the other countries included in this study.

3.8. *The Ivory Coast*

The integration of social provisions into the process of privatization in the Ivory Coast has been by way of existing law and negotiated agreements. Workers in enterprises undergoing privatization have also had the opportunity to purchase shares in the company formed by privatization. The main statute governing labour relations in the Ivory Coast is the Organic Labour Code of 12 January 1995. This law attempted to introduce greater flexibility to the labour market. It liberalised the law regarding recruitment and economic dismissal and authorised the use of job placement agencies. It also authorises new forms of employment contracts which may be utilised by employers.

Many workers in public sector enterprises in the Ivory Coast are classified as civil servants and are not, therefore, subject to the provisions of the Labour Code. A considerable number

of these workers were 'detached' from the civil service to work in state owned companies. On privatization these workers have had the choice of returning to, or resigning from, the civil service. Workers who have chosen to leave the civil service and have not been offered positions in the privatised company have been granted the benefits provided to ordinary workers on economic dismissal. The nature of these benefits are discussed below. Workers in public enterprises who are not classified as civil servants and workers in privatised companies are covered by the provisions of the Labour Code.

In a considerable number of transactions the State has attempted to oblige purchasers to take on existing staff. In certain cases there has also been an obligation on the purchaser to maintain levels of staff for certain periods. Many recently privatised companies have found it difficult to sustain existing staff levels, however, and a number of redundancies have occurred in privatised enterprises.

Several statutes and regulations govern termination of employment for economic reasons in privatised enterprises.²⁹ Termination of employment is justifiable on a number of economic grounds including operational changes, technological changes and restructuring. Where a worker is dismissed on these grounds he or she is entitled to notice in writing setting out the reasons for termination together with severance pay. The length of notice is dependant upon the length of service and the occupational group of the worker in question. Severance pay is also dependant on length of service.

Provision regarding transfer of employment have been included in the new Labour Code. This offers workers in public enterprises covered by this statute protection on privatization. New employers are able to modify some conditions of employment unilaterally. Substantial changes require the approval of the employer however.

Employers are obliged by the law of 3 April 1996 on vocational training to train or reconvert the surplus workforce. The law sets out no sanction, however, where the employer fails to comply. In many cases employers have breached this obligation.

In a number of cases dismissed workers have proposed projects for which they have received financial assistance from either the Government or their former employer. Unfortunately few of these projects have turned out to be viable. In many cases workers have required more than financial assistance to transform them from employees to independent business people. In a number of recent cases of privatization, for example the privatization of the Ports of Abidjan, trade union confederations such as ANAM have explored the building up of joint ventures with external investors in order to tender for work which is to be out sourced. Trade unions are also beginning to explore the inclusion of clauses regarding priority for dismissed workers in terms of the awarding of contracts in documents regarding privatization.

Special measures apply to privatization in the agricultural and agroindustrial sectors in light of the importance of food production and in order to guarantee continuity in actions taken by the Government in this area. This has included obligations on purchasers of companies in this sector to maintain existing social structures and the existing workforce.

3.9. Argentina

In 1989 Argentina embarked on an aggressive policy of public sector reform in which privatization was to play a key role. Due to the anticipated speed and scale of privatization a number of provisions concerning labour were included in the various laws and regulations

²⁹ These include: the Labour Code of 12 January 1995; the law regarding dismissal for economic reasons of 11 September 1992; the Decree on length of notice and termination of 7 March 1996 and the decree in relation to severance pay of 7 March 1996.

governing privatization. These provisions do not invariably grant workers protection on privatization. While some attempt to preserve workers' rights, others grant the Executive power to alter terms and conditions of employment prior to privatization in order to make enterprises more attractive to purchasers and so carry out the overall aim of the privatization project. Certain provisions of labour law will also apply in the context of privatization. A number of applicable measures, such as those regarding collective redundancies and strikes, have been promulgated or amended in the period in which privatization, and economic restructuring generally, has taken place. Measures regarding training programmes and the promotion of employment have also been enacted in this period together with an employee share ownership scheme.

Sources of labour law in Argentina include; the Constitution; Act No. 20744 governing contracts of employment ("ECA"); Act No. 24013 of 13 November 1991 — the National Employment Act ("NEA"); Act No. 24467 of 25 March 1995 governing small and medium sized industries and Decree No. 2072/94 of 25 November 1994 regulating procedures for the prevention of crises and outlining measures to be adopted in the event of collective dismissal.

These laws apply to workers in state owned enterprises. Labour laws do not apply to persons employed by the national, provincial or municipal civil service, except where they are expressly included within its scope or within that of collective labour agreements.

Termination of employment is justifiable on a number of economic grounds including lack of work, reduction of work and *force majeure*. A worker dismissed on these grounds is entitled to notice of termination, together with compensation equivalent to half that provided in cases of termination without good cause.

Supplementing the provisions of the NEA, Decree No. 2072/94 of 25 November 1994 states that when the procedure for crisis prevention is initiated at the instance of the employer and affects enterprises employing more than 50 workers, the initial application should, as a minimum, clearly state the measures the enterprise proposes to overcome the crisis or to minimise its effects. Among others, measures proposed by the employer must refer to: effects on employment and any proposals for preserving employment; functional schedule and wage mobility; investments, technological innovation, production adjustment and organisational changes; retraining skills and upgrading for the workforce; internal and external reassignment of excess workers and the assistance scheme for reassignment; assistance in the creation of productive ventures for excess workers

The employer must also note the number of staff reductions, the category of each worker and the compensation packages offered to each worker concerned. Where termination of employment results from an agreement between the employer and the trade union representing the workers, the Ministry of Labour and Social Security, at the time of approval of the agreement, will grant increases in unemployment benefits fixed by regulation within available resources. A considerable proportion of redundancies on privatization been carried out by way of voluntary redundancy schemes.

There has been some confusion regarding the position of workers on transfer of employment from the public to the private sector as a result of privatization. Pursuant to Chapter IV of the Law on State Reform certain rights are expressly maintained on transfer of employment to a new owner as a result of privatization. This includes all social security rights and rights to trade union affiliation, unless the appropriate authority resolves otherwise. Certain decrees have been issued in relation to specific instances of privatization providing that certain benefits will be maintained for those employees who are offered employment with the new owner. The agreement regarding the privatization of the national gas company, for example, provided that the new owner was obliged to provide employees with the same health benefits

as had been provided by the State. Decree No. 48/93 states the general principle that remuneration and seniority acquired are to be maintained in the privatised company both when the contract of employment remains unmodified on privatization and when the contract of employment terminates and a new contract begins.

Article 15 of the Law on State Reform grants the executive the power to carry out any judicial act or proceeding necessary to carry out the objectives of the law. Decree 1105/89, issued pursuant Article 15, states that no privatised company will be responsible for the non-fulfilment of working agreements or other provisions acquired prior to privatization. The economic consequences which flow from this are assumed by the State. The Law of State Reform provides that were the company is privatised the State will assume all of its debts.

As a result of concerns over protest regarding privatization the Executive decided to regulate the right to strike in public services through a Decree issued in 1990. This decree was controversial because it allows strikes to be regulated by the State after the process of mediation and arbitration. One of the purposes of the decree was to demonstrate to buyers of companies to be privatised that the State was prepared to intervene in disputes over privatization in order to protect their interests.

The decree sets out the essential services which must be respected when a strike is declared. Workers who do not respect the provision of these services are subject to sanctions. A complaint was made to the International Labour Organisation regarding the application of this law.

The Argentinean Case: Privatization and Changes in Labour Law

A number of provisions concerning labour are included in the two fundamental laws regulating privatization in Argentina, the Law on State Reform and the Law on Economic Emergency. The Law on Economic Emergency contains provisions placing limits on expenditure on human resources in the civil service and in state companies, including companies to undergo privatization. A number of Decrees have also been issued in relation to this matter. Decree 435/90, for example, prevents extra hours and promotions for certain workers, freezes plans to fill vacancies and makes retirement procedures obligatory. Other measures to control expenses have also been put in place such as Decree 287/92 concerning voluntary retrenchment plans. The decree sets out categories of workers who may be included in these plans, criteria for calculating the compensation to be paid to employees, and the need for programmes to be approved by the State Secretary.

The Law on Economic Emergency also sets out the framework for programmes aimed at improving productivity in enterprises to be privatised through the participation of workers and employees in information and consultation committees. The law contains a provision recommending that the Executive revise employment regimes in force in the public sector and in companies to be privatised. The law suggests collective bargaining as the means by which agreements are to be revised or re-negotiated. Pursuant to decree 435/90 all State Corporations were obliged to denounce collective agreements in force and re-negotiate them through collective bargaining. If within 90 days an agreement was not reached the parties were obliged to forward to the Minister of Finance a summary of the stage of negotiations, solutions proposed, points for discussion. If after a 20 day extension no agreement could be reached the Executive could then decide the measures to be taken with the aim of 'correcting all elements that can render the objectives of productivity and efficiency difficult to obtain.'

These laws lead to considerable negotiating activity in enterprises to be privatised including the re-negotiation of collective agreements in the railways; air transport; gas and petroleum; electricity and telecommunications sectors. Collective agreements in these areas prior to privatization were often quite rigid and contained a high level of worker protection. Re-negotiation of these agreements led to considerably more flexible arrangements being put in place.

The Law on State Reform establishes a number of basic principles in relation to privatization and employment. Article 41 states that loss of employment should be avoided if possible as a result of privatization. This is, however, within the framework of stable and efficient production. Article 42 of this law states that workers are to continue to be protected by legal institutions, conventions and administrative provisions of labour law.

Article 15 of the Law on State Reform grants the Executive the power to carry out any judicial act or proceeding necessary to carry out the objectives of the law. Decree 1105/89, issued pursuant to Article 15, states that no privatised company will be responsible for the non-fulfilment of working agreements or other provisions acquired prior to privatization. The economic consequences which flow from this are assumed by the State. The Law of State Reform provides that where a company is privatised the State will assume all of its debts.

It was understood that as a result of the above provisions that the normal provisions of the law regarding transfer of employment, which provide that the purchaser of a business acquires the terms and conditions of employment entered into by his or her predecessor, were inapplicable in the context of privatization. In 1996, however, the Supreme Court ruled that the Decree 1105/89 was contrary to Article 42 of the Law on State Reform. As the majority of state companies have already been privatised in Argentina, it appears that this ruling is unlikely to have a major impact.

3.10. Venezuela

As set out in Chapter One, privatization in Venezuela has taken place within the context of considerable political turmoil. This is hardly surprising given the rate at which structural adjustment and privatization took place in this country in the period from 1990 - 1993. Social provisions, integrated into the process of privatization, have undergone some changes since privatization first took place in Venezuela. In general terms, protection for workers on privatization has been provided by labour law, negotiated agreements and, since 1992, measures in instruments regarding privatization. Measures to support the unemployed have also been introduced together with programmes providing vocational training. An employee share ownership scheme has also been created by the Government.

The main statute governing employment relationships in Venezuela is the Organic Labour Code. This governs employment relationships in both state owned and private companies. Career officials and white collar workers employed in national, state or municipal administration and in other public bodies are classified as civil servants and their employment is governed partially by administrative law. In matters not regulated by administrative law, however, they enjoy the same benefits and protection as other workers.

Employment in the informal sector in Venezuela has grown significantly over the past decade. In 1996 it was estimated that over 50 percent of workers were employed in the informal sector. Collective bargaining is not highly developed and the coverage of collective agreements is limited. Exceptions to this are the public sector and the oil and petroleum industry. As a result of privatization and economic restructuring generally the coverage of collective bargaining has decreased.

Termination of employment on economic grounds related to the operation of the enterprise is justifiable pursuant to the Organic Labour Code. Since 1989 dismissal on this basis has been prohibited without the prior authorisation of the labour administration. The trade union to which workers belong or, in the absence of a trade union, the workers themselves, must be notified of the employer's application.

Workers are entitled to notice of dismissal or compensation in lieu of notice. The length of notice depends upon the length of service. On termination workers are also entitled to certain benefits - the amount of which will depend upon the length of service and the extent to which workers have chosen to take up these benefits during employment. The law in this area has recently been revised as a result of a tripartite agreement. Workers have a right to a seniority bonus that accrues interest and can be paid either during, or on termination of employment. When the employment relationship ends workers also have a right to a benefit, based on length of service, 75% of which can be paid in advance. In the past there has been considerable delay in the payment of benefits to employees. The law now sets out certain time limits within which employees must be paid the amount to which they are entitled.

Up until 1992 there were no specific rules governing transfer of employment from the public sector to the private sector on privatization. The privatization of the national airline and the railways took place prior to this date. Problems arose from the lack of regulation in this area. As a result of these problems, and as a result of trade union demands, a section regarding transfer of employment was included in the Law on Privatization of 10 March 1992. Article 23 of this law provides that transfer of employment on privatization does not affect workers' terms and conditions of employment including collective agreements. Existing benefits cannot be altered unless they are replaced by other benefits which, on an overall basis, either maintain or improve workers' terms and conditions of employment.

In 1989 an unemployment benefit was created to compensate for the effect that privatization and economic restructuring generally was anticipated to have on levels of

employment. A number of vocational training programmes have also been created in order to ease the effects of privatization. Article 15 of the law regarding privatization initially specified that 15 per cent of the funds from privatization should be spent on vocational training schemes for workers made redundant on³⁰. Courses were to last a maximum of 180 days and workers were to be paid 75 percent of their former salary while taking these courses. In 1993 the benefit paid to workers was lowered from 75 percent of salary to 75 percent of basic salary only. As a considerable proportion of salary in Venezuela is comprised of extra emoluments and bonuses this significantly reduced the benefit payable to employees on these programmes. Unfortunately the application of the law regarding vocational training has been disappointing. The coverage of schemes has been scarce and many workers showed little interest in the training as the labour market showed little sign of being able to absorb unemployed workers. In 1995 the obligation to dedicate 15 per cent of the proceeds of privatization to this area was repealed.

³⁰ The law also specified that funds be devoted, inter alia, to technological development, works with social objectives and to programmes of child protection and nutrition.

CHAPTER 3

NEGOTIATING PRIVATIZATION

1. Introduction

This chapter explores the role of workers' and employers' organisations in privatization and the position that the social partners in the various countries have taken in relation to the process. The special challenge which privatization creates for workers' organisations is the subject of the paragraph *Participation in the form of employee share ownership schemes*, discussed later in this chapter.

The role which workers' and employers organisations can play in privatization can vary greatly. Involvement may take place at a number of stages of the process, for example, at the level of design and implementation of legislation, in decisions, both individual and more general, regarding privatization or in terms of agreements regarding redundancy of workers on privatization. The degree of involvement can also vary — from the provision of information, to consultation, to negotiation regarding any of these issues. In the majority of countries included in this study the role of the social partners in the design and implementation of privatization has been small. In general, Governments seem to prefer to implement privatization programmes unilaterally. Where participation has taken place it has usually been at company level -and most often pursuant to provisions of the law regarding the provision of information and/or consultation of workers in the context of redundancy or transfer of employment.

Privatization has brought a number of constraints for workers in public enterprises. It is not surprising, therefore, that its spread has not been popular among workers' organisations - particularly those operating in the public sphere. On the other hand, many employers' organisations have been in favour of privatization, although they too have complaints about the way in which it has been implemented in some countries. Criticism of privatization has been expressed on both ideological and practical grounds. The debate regarding privatization has, in many countries, focused on the scope, pace and methods of privatization rather than whether or not privatization should take place.

2. Social partner's position

Privatization has taken different approaches in the different countries as a result of the diverse economical and historical backgrounds. Arguments in favour of and against privatization are also influenced by the way the process is being carried out in the different economies. Although some common trends may be pointed out, specific conditions of every country must be taken into account when giving a general overview of the social partners' respective positions.

Ideological and political tendencies seem to play a main role when defining social partners' position regarding privatization. As K. Bengali points out³¹, privatization has become essentially a highly doctrinaire issue. Those who subscribe to a "free market" ideology support privatization on the grounds that the state should exit from the commercial arena altogether, irrespective of the possible relative benefits of state enterprises. Those who subscribe to the "centrally planned economies" ideology oppose privatization irrespective of the fiscal burden imposed by loss making concerns.

³¹ Bengali, K., *Social Dimensions in Privatization in Pakistan*, International Labour Office, Geneva, 1997, mimeo.

Some support the idea of limiting the role of the state to a provider of goods and services which can't be provided by privates. Others defend the state as an engine of production. This, together with social consequences of privatization, explains why trade unions and employers' organisations have been requesting a say in the debate and asking to take an active role in privatization.

2.1. Workers' Organisations' position

Generally speaking, workers' organisations have been active in demonstrating their concerns regarding privatization. They fear the consequences of privatization in terms of changing working conditions in the public company sector, since in most of the countries they have traditionally been better than in the private sector, in particular in terms of employment security. These fears have encouraged workers' organisations to demand a more active role in privatization. This has often been denied.

In the majority of the countries studied the debate has appeared to focus on concrete aspects of the way in which privatization has been carried out.

Confronted with the Government's determination to privatise, workers' organisations in many countries have taken a "practical approach". Some have attempted to develop a cooperative strategy with a view to influencing the way in which privatization takes place: the scope, the speed of the process, the methods used, the sectors involved, the role that the state plays as a guarantor of basic services, *etc.*

There are some variations in accordance with the efficiency of the public companies operating in the different economies.

Unions supporting privatization

In countries where the public company sector is performing badly, there is little room for workers' organisations to oppose privatization. Privatization has had the support of some unions in countries such as Venezuela, Hungary and Poland. There are no data on trade unions' position in Ethiopia or Ivory Coast, but opposition does not appear to have been strong. Not forgetting the limited role that unions were able to play in privatization, efficiency reasons may have also been important.

The debate on privatization in Venezuela was important in 1991, when public opinion, in light of the deterioration of public services, showed strong support for the idea that some state companies should be privately run. The redefinition of the role of the state was widely accepted, and the opposition focused on the scope of privatization. There was no consensus, however, on the sectors to be retained by the State.

Trade unions requested for the right to representation in the management organs of the privatized companies, to consultation mechanisms concerning strategic development plans for the company, to preserve social benefits in force and to maintain the size of the workforce. Initially those demands were accepted, but, afterwards and in line with the anti-union policy developed by the authorities, these were gradually abandoned.

In Hungary and Poland the collapse of the socialist regime demolished the ideological obstacles to the reorganisation of the economy on the basis of private ownership. Private ownership came to acquire a positive connotation, i.e. there emerged an understanding among the actors that they are somewhat "better than the State". M. Lado and B. Nacsa³² highlight the difficult role of trade unions in representing workers' interests at the first stage of

³² Lado, M. and Nacsa, B., *Integrating Social Dimensions into Privatization through Labour laws and Industrial Relations*, MIMEO, ILO Geneva 1997.

privatization. Where new economic, social and political systems were emerging out of the ruins of a failed communist experiment, the employees and the trade union leaders were facing difficulties in defining the nature of the interests of the workers. For a long time, there was a widely shared view in Hungarian society that any opposition to the way economic changes were being done was a challenge of economic reform in general. In this context, the reforms were understood to serve the interests of the whole country, and opposition to them would be considered as opposition to the introduction of "Western living standards". Regarding privatization, this meant that, if trade union fought for strong participation rights and the protection of the workers in the course of transformation, they might have been stigmatised as representing very particular interests which had just been overthrown and acting with immoral selfishness against the interest of the nation.

In both countries, workers' representation organs have participated in privatization at the company level in Poland, while in Hungary trade unions representing approximately 90 per cent of the workers have negotiated at the national level through a special committee created for dealing with privatization issues.

The Argentinean case shows another example of union cooperation with the State in privatization, although different unions have had different approaches within the same country, according to their ideological commitment and to their links to political parties. The unions' position has also changed along with the process. Trade unions opposed privatization in the first years of the privatization (1989-90), but followed different strategies. Some trade unions, in particular those operating in state companies and some who represented middle class-workers, followed the confrontation line, while others chose the option of the "hard negotiation". A third group which represented the majority of workers, opted for the "soft negotiation", supporting the government and its restructure policies. This was explained by the ideological proximity of the strongest trade union in Argentina to the Government, both peronists.

From 1991, even the more radical trade unions started to change their attitude towards having more cooperation with the government. Some analysts interpret this process as a consequence of decreasing trade union power, while others consider it a pragmatic adaptation to the ongoing transformations.

The German experience shows another example of trade union adaptation to privatization. During the 1970s and 1980s, public sector unions campaigned against privatization under the slogan "Privatization — an Attack on the Welfare State". Unions were against privatization because they perceived that there would be a worsening of working conditions for them, a decrease in the quality of public services and an increase in their cost. There has been a change in the union's position since then, no doubt connected to a sense of inevitability about the process. Some accept the possibility of opening certain sectors to private ownership. Unions have been asking for the rights of employees to be safeguarded, and political, economic and social implications to be taken into account when carrying out privatization in exchange for union support.

Unions opposing privatization

In countries where efficient public companies have been privatized, the debate has focused more on ideological issues: What should be the role of the state?; Should the state be an engine of production?; Are basic services going to be universally provided after privatization? This appears to be the case in Spain.

In Spain, unions have opposed privatization, although they have failed to mobilise workers generally against the process. Since most of the privatized companies are among the most

profitable ones in the country, they reject the goal of increasing efficiency given by the government as the main objective for privatization. As working conditions in Spain are usually regulated by collective agreement in all the privatized companies, unions fears do not focus on the deterioration of conditions of employment, but on the ideological implications of privatization and on the way privatization has been carried out. Unions support the state as an engine of industrial production. They also regret the lack of transparency of the overall process. Privatization operations have, to date, been approved by the Council of Ministers and are not discussed in the Parliament. The two biggest Spanish trade unions have demanded a law on privatization, in which objectives and procedures are stated. In this way, evaluation of privatization could be carried out afterwards.

Unions argue that privatization has been carried out for solely financial goals, without due consideration for industrial policy. Besides, the fact that banks are constituting the core-ownership in large privatized industrial companies worries unions. The lack of experience in industrial business makes unions think that banks will seek quick profitability, and will not be willing to invest the amounts of money in enterprises that industrial companies require. Unions support the state as a major shareholder in privatised companies. They consider that the state should participate in the companies as a guarantor of universal basic services. This is why unions have opposed the total sale of companies providing basic services, such as Telefónica (telecommunications company) or Repsol (energy). According to unions, some activities cannot be privatised, such as education and health.

In the Philippines, workers' reaction to privatization has been generally reactive. This was largely because employee organisations were not informed about the programme, much less about the provisions of proclamation No. 50³³ which has serious implications for employee tenure. It was not until 1987, for example, that the effects of section 27 of Proclamation 50 became well known. There has also been debate and controversy about the way privatization has been carried out, in particular about the lack of transparency; about delays in the process that lead to sharp declines in the market value of corporation and assets due to the deterioration of their physical and/or financial conditions; about concentration of wealth in few hands. The reduction of the government's commitment to the provision of social services is also an issue of concern, since the government has declared in the Philippines that the third wave of privatization would focus on social services, including hospitals. There is alarm that the government is giving up on its mandate to serve the poor and marginalised sectors of the economy.

Finally, it has to be pointed out that in some countries problems arise within the trade unions, as the approach to privatization is different depending on the levels of action. This way, in Spain unions at the confederal level tend to have a strong speech against privatization, highly politicised, while unions at the company level tend to be more cooperative. In Venezuela and Ivory Coast unions' position to privatization happens to be the opposite: closer to political spheres, at the national level unions tend to support privatization, while at the company level they tend to be more belligerent. In Ivory Coast, unions at the company level are ready to resort to strikes if they consider this to be necessary, while at the confederal level the most important trade union ask for patience and negotiation.

³³ As discusses in chapter 2, Proclamation No. 50 or Privatization Law contains provisions (25 and 27) that are deemed to be explicitly anti-labour. Section 25(4) provides that the Philippine Asset Privatization Trust ("ATP") may adopt and implement cost reduction measures to enhance the viability and disposability of government corporations to potential buyers. This may include personnel retrenchment plans. Section 27 provides that upon the sale or other disposition of a government corporation employer-employee relations terminate by operations of law.

Challenges for workers' organizations

Privatization and economic restructuring have had considerable effects on trade unions. In many countries unions have been weakened by privatization and workers have been obliged to reorganise in order to adapt to new structures formed by re-organization of enterprises.

In Argentina, for example, the large State trade unions or federations, that operated in a small number of large companies, were forced to restructure on privatization as a result of the splitting up of large companies into small units for selling purposes. Company trade unions, operating in big state companies, found it hard to adapt to a new environment of smaller companies. For example, the State gaz company (Gas del Estado) was divided into ten different companies as a result of privatization. The former Argentinean federation of Workers of Gas del Estado had to restructure and was reconverted into the Federation of Workers of Industrial workers of Natural Gas in the Argentinean Republic. The same happened with the railway trade union, the petrol unions, etc.

Out-sourcing is a common phenomenon in some privatised companies. Out-sourcing means some workers are no longer covered by the existing trade unions. Some unions have attempted to represent these workers by adapting their statutes to cover new categories of workers.

Other challenges for unions relate to the appearance of new business activities, previously non existent, that determines the creation of new specific trade unions or the redefinition of the role of existing ones. Another change is produced when workers grouped in a sectoral union operating in the state sector have to be reconverted into another sectoral union, operating in the private sector.

Union rights may also be curtailed by the State if opposition to privatization or economic restructuring is foreseen, as has been the case in Pakistan, Venezuela and Argentina. The right to form and join trade unions is today severely curtailed in these countries, with the bulk of the public sector employees denied the right to form or join trade unions or engage in collective bargaining.

In Venezuela, the State has attempted to weaken unions and bribe union leaders through the transfer of funds to their leaders in exchange for social peace. State strategies included accusing union leaders of corruption, as in the AEROPOSTAL case. In this airline company, trade union opposition to negotiate reduction of the workforce prior to privatization was broken when the management opened an investigation in the company and found that the leader of one of the three unions had made illegitimate use of plane tickets, for which he was arrested and accused of corruption.

2.2. The Employers' organisations

Employers' organisations have not been as active as trade unions in defining their position in support of or against privatization. In some countries, such as Hungary, Poland and Ethiopia, this is explained by the fact that employers' organizations are a relatively new phenomenon. In many countries employers' organizations are not directly effected by the process. In general terms, however, many have been in favour of the process.

Reasons for employers' organizations to be in favour of privatization include the fact that privatization may increase business opportunities that were not available before privatization. Secondly, employers may consider the public company sector as an unfair competitor, highly subsidized by the state and operating in highly regulated markets. Privatization is often accompanied by a process of market deregulation, which may be seen positively by employers.

In Spain, the major employer's organisation, the CEOE, has clearly supported privatization. According to the organization, privatization, along with deregulation and the restriction of State subsidies to companies will increase overall efficiency and, therefore, the competitiveness of the economy, reducing, at the same time, fiscal imbalances.

From the CEOE point of view, the State should not necessarily keep the control of privatised companies. The public sector should operate on equal terms with the private sector. The organisation recognises that some activities should be kept in public hands, but the companies have to operate under private juridical status.

While employers' federations have generally been in favour of privatization, some have criticized various aspects of the way in which it has been carried out and the lack of

involvement in the process. In Venezuela, the largest employers' organization, FEDECÁMARAS, has criticised the slowness of the process and political interferences from the government side.

Although employers' organizations have not been very active, they may enrich privatization by contributing to their experience and suggestions in many areas, such as management practices; human resource policies; training of employees; incentives to hire employees; business start up; marketing support and commercial aspects of the process such as the regulation of monopolies in the private sector.

3. Involvement of the social partners in privatization

The involvement of employers' and workers' organisations is important in terms of how the process is carried out and its consequences. Where social partners are involved in privatization they can better understand the reasons for privatization and may be able to make constructive suggestions regarding the way in which the process should proceed. Workers' organizations have frequently requested greater involvement in decision making regarding privatization. However their demands have rarely met with much success.

The process of privatization, the way in which it is to proceed and measures to protect workers affected by the process, should be designed and implemented with the co-operation and participation of employers' organization and workers' organisations and, in particular, those most affected by its outcome.

Degree of involvement

In the majority of the countries included in this study, workers' and employers' organizations have played a small role, if any, in privatization policy. Participation which has taken place has usually been pursuant to the provisions of labour regulation discussed in chapter 2. In some cases this has led to bargaining, often on an informal basis, regarding matters such as the terms and conditions on which workers are to be made redundant. Social partner's involvement in actual decision making has been slight however. Hungary and Poland are exceptions to this rule.

In a number of countries unions and employers' organization have been consulted at the national level in the designing of privatization or in the implementation of specific privatization operations. This is the case of Venezuela, Ethiopia and Germany. It has to be pointed out, nevertheless, that the final decision is taken by the government.

Social partners' participation in privatization is influenced by the role that they play in the economic and social life of a country. Given the (now largely historic) role of self-management organs in state owned enterprises in Poland and Hungary, it is little wonder that workers in these countries have, in the past, enjoyed greater formal participation rights in privatization than in many other countries. The Polish case may help to explain the role workers have played in privatization of self-management companies in former centralised economies.

Strong participatory rights in the management of state owned enterprises have, until recently, given workers in Poland a greater say in decisions regarding privatization than workers in many other countries. As noted in chapter Two, the law governing this matter was altered in 1997 granting greater powers to the relevant Minister to decide whether or not an enterprise is to be privatised.

Approximately 80 percent of all direct privatization in Poland has occurred by way of employee leasing. This means that the initiative to privatise comes directly from the company concerned. Unlike other countries in Central and Eastern Europe, privatization in Poland is quite decentralised and is not administered by a single privatization agency.

The final approval for privatization was given by the Minister of Property Transformations. In many cases this came down to a choice between sale or leasing by workers and depended on the ability of the workers to pay the leasing fee. Workers have been granted a number of special concessions in this area³⁴. In addition extra assistance and concessions have been granted in certain areas of the country where unemployment is particularly high. On transformation to a private company the activities of the self management organs cease. Management organs in private enterprises consist of a Supervisory Board and a Management Board. The law guarantees employee representation on the Supervisory Board of private companies, however, in practice their influence appears to be minimal.

While this method of privatization obviously permitted employees to participate in decisions regarding privatization at enterprise level the choice was at times illusory, due to financial pressure on the enterprise which would have resulted, in the absence of privatization, in its liquidation. Questions were also raised as to whether or not the Government was, by this method, avoiding political responsibility for making people redundant. As decisions regarding privatization are now made by the relevant Ministry these questions are largely academic.

Institutions allowing workers' and employers' involvement

In a number of countries, special institutions have been created at a national level to act as consultative bodies in privatization. This has been the case of Hungary, Ethiopia, Germany and Venezuela. The success of these committees varies depending on the country, but it seems to be a common issue the absence of a real decision power of their members.

In some of those institutions, social partners have been involved in the designing of privatization (see table 3). In Venezuela, for instance, some national level consultation took place when privatization was first implemented. A tripartite committee was created in August 1989 by decree. It was composed of the representatives of the Ministries of Finance and Development, the head of the Central Office for Coordination and Planning (CORDIPLAN), the president of the FIV, the General Attorney of the Republic, a representative of the Venezuelan Workers Confederation (CTV) and a representative of FEDECÁMARAS³⁵. The committee developed the general principles of the privatization programme that was approved by the Council of Ministers in August 1990. These principles included the need to rationalise and render the public sector more competitive, the demonopolization of some activities and sectors and the democratization of the economy by incorporating into production the presence of diverse organizations and economic associations, such as small and medium producers, professional and managerial associations or national and international investors. These general guidelines were incorporated into the VII Plan of the Nation approved in 1990.

In terms of discussing concrete instances of privatization the committee did no more than discuss the particular case of the Compañía Anónima Nacional de Teléfonos de Venezuela (CANTV), one of the most important privatization operations that took place in 1991. CTV leaders complained many times about the uselessness of their presence in the committee and about the scarcity of information provided by the Government. Tripartite negotiations were relevant in some particular cases, but, in general, no compromise agreements were reached. At the very least, however, large trade unions and employers associations were able to put forward their points of view about the process, about how and what to privatize.

³⁴ For details of this process see: R. Schliwa, *Enterprise Privatization and Employee Buy Outs in Poland*, International Labour Office, Geneva, 1997.

³⁵ Decree No. 371 of 27 July 1989.

After the privatization law was approved in 1992, the only mechanism that involved workers in the process of privatization was the obligation of the FIV to inform workers affected by privatization about the legal and financial situation of the enterprise to be privatised and the way in which transfer was to take place.

In Germany, on the basis of the investment policy started in 1985, a number of independent commission of experts and expert committees have been put in place to help designing privatization. These committees play a consultation role and are composed by representatives of the academic world and the industry, politicians and trade unionists. Their different views on specific privatization operations influence the national political debate, but are not necessarily integrated into the government privatization policy. At the länder level, unions have a stronger influence on privatization due to their tight relations with political parties.

Participation mechanisms existed in Poland and Hungary through works councils. In Poland two self management organs - the General Assembly of Workers and the Workers' Council - have existed in state owned enterprises since 1981. The General Assembly is made up of all the workers in the enterprise. It is called twice a year and is entitled to express an opinion on every matter relevant to the enterprise. Its responsibilities include: establishing the statute of the enterprise; multi-year business plans and giving opinions on problems in the enterprise. The Workers' Council consists of elected representatives of the workforce. It approves or takes important decisions, appoints management and sets wages. The role of the owner of the enterprise is represented by the branch of the relevant ministry, known as the founding body. The self management organs are separate from trade unions although in practice trade unions are frequently influential in who is appointed to the Workers' Council.

The new law regarding commercialisation and privatization of the public sector issued, the 8th of January 1997 gives greater power to the Finance Minister and less power to company's employee self management organs. The law provides that the Minister now decides the issue of commercialisation and only obliged to inform the Director and the Workers' Council of the enterprise. It appears that this law was accepted by trade unions because employees are now able to obtain 15 per cent of the shares in the company free of charge.

In Hungary certain workers and their representatives were involved in decision making regarding privatization during the period of spontaneous privatization. As discussed in Chapter One, this was not privatization in the true sense as in most cases assets remained state property.

While policies and practices are primarily the preserve of the Government some rights to consultation at a national level regarding socio-economic matters do exist in Hungary. The tripartite National Conciliation Council (NCC) is a forum dedicated to discussing socio economic matters of national importance³⁶. In May 1991 a separate privatization committee (PRC) was established to deal with questions of privatization within the framework of the NCC. A number of trade unions participate in the NCC³⁷. While, in theory, a number of

³⁶ The National Conciliation Council was established in 1990 to further the identification and reconciliation of the economic and social interests of the partners involved and to provide a forum for consultation in order to prevent the development of potential conflicts.

³⁷ Trade unions participating in the NCC are: the National Confederation of Hungarian Trade Unions (MSZOSZ), considered the successor of the old socialist confederation. It is the biggest Confederation integrating about 20 regional and 100 professional unions; the Democratic League of Independent Trade Unions (LIGA), founded as an alternative to trade union activity in the early stages of political transition by about 200 newly organised trade unions. It is labelled as being liberal; the National Confederation of Worker's Councils (MOSZ), which has a Christian ideological foundation and played a large role in the fight for ESOP; the Co-operative Forum
(continued...)

aspects of the design and implementation of privatization should have been discussed at this level, the government did not, in the period from 1991 to 1993, follow the statutes of the NCC and did not provide the Committee with data it had requested, or did, but just after the formulation of the final proposal on the issue.

There have been some examples of proper discussion in Hungary between the government and the social partners. For example, the Ministry of Justice invited the representatives of the PRC to discuss the legislative proposals in 1992 on various aspects of privatization. Similarly, the PRC played an important role in the preparation of Government Decree No. 119/1991 on participation rights of employees in the course of restructuring state-owned enterprises and the act concerning employee share ownership programmes. In the period from 1994 onwards there has been some alteration in the attitude of the Government. The most important step was that sectoral trade unions were invited into sessions of the Sectoral Privatization Committee of the Government. Aspects of previous practice have continued, however. For example, no opportunity was given to discuss the regulation of competition in privatization.

In many countries the lack of involvement of the social partners in the design, implementation and overseeing of privatization projects appears to be deliberate. In Pakistan, for example, a Committee on Deregulation and Disinvestment was formed in 1990. Among its 31 members, there were no labour representatives. This Committee was reconstituted in 1991 as the Privatization Commission and, once again, labour representatives were conspicuously absent. Neither workers' representatives nor employers' organisations are represented on the Ivory Coast's privatization Committee and workers and their representatives have had no formal input into decisions regarding privatization at either national or company level.

As a result of protest by workers and threats to disrupt the privatization process, workers' representatives in Pakistan were at least able to negotiate with the Government regarding the fate of workers in some state owned enterprises. As discussed in chapter two an agreement was reached in Pakistan in October 1991 between public sector workers in the All Pakistan State Employees Workers' Action Committee (APSEWAC) and the Government. It appears that fear, on both sides, and political concerns were the driving force behind the signing of this agreement. It appears that the government was seriously concerned about the ability of labour to bring the privatization process to a halt before it had begun. It was also apprehensive regarding the ability of the political opposition to exploit the situation and use the occasion to re-establish support among labour.

On the workers' side, the reasons for labour "capitulation" from what was originally a strong position against privatization at the beginning of the process were:

- (1) Public sector workers feared retrenchment and reduction in terms and conditions of employment as a result of privatization.
- (2) APSEWAC leaders were convinced that the government was fully committed to privatization and would brook no opposition. Based on past experience with military as well as civilian governments, it was apprehensive that brute force would be used to subdue labour opposition.
- (3) APSEWAC was not confident of support from within its own rank-and-file if they were launch an agitation on the privatization issue. Both, government and labour, therefore perceived their own position as weak vis-a-vis the other. The government wanted labour

³⁷ (...continued)

of Trade Unions (SZEF) is a public sector confederation established in 1990 by the old socialist trade unions. Other unions are the Confederation of Autonomous Trade Unions (ASZSZ) and the Confederation of Professional Workers (ESTZ).

Table 3: Institutions allowing workers and employers' involvement in privatization decisions

Country	Bipartite/Tripartite institutions	Unilateral bodies	Bargaining at the plant level	Success of bargaining
Argentina	There is no tripartite institution created to deal with privatization.	There is no special body created to deal with privatization.	There is no recognition of the right of information and consultation at the plant level on changes affecting the company ¹ .	
Ethiopia	Since 1994, the Ethiopian Privatization Agency (EPA) is in charge of carrying out privatization. The Board of Management is composed by five permanent members designated by the government. When discussions about a specific company are on the agenda, the chairman of the board of the enterprise and a worker representative are invited to take part as non-voting members.		Proclamation No. 25/1992 establishes two bodies in public enterprises: a supervising authority and a management board. The supervising authority is the body that can propose to the Council of ministers the dissolution, amalgamation, division or transfer of an enterprise under its control. The management board, made up from 3 to 12 members, has to have workers representatives, which number cannot exceed one-third of the total components.	In fact, the power of the management boards is very limited and does not seem to play any role in privatization. Proclamation No. 25/1992 gives the council of ministers the power to decide any sale.
Germany	Negotiations regarding privatization take place at the national level (Federal, Länder and, sometimes, Municipality level). At Federal level, there is a chance for unions to influence legislation: all parties have the opportunity to comment on privatization projects requested by the Upper House of Parliament. The Lower House establishes permanent committees of experts corresponding to the departments of the Federal Government. These committees organise hearings in which all parties concerned have the possibility of making comments on drafts of legislation before the parliamentary decision.	Enterprise-level bargaining usually starts after the legal framework for privatization has been passed. The bargaining involves social problems which derive from changes in the organizational structure.	Social partners have been involved in decisions regarding privatization. Prior to a number of privatization processes, the expert committees have, at times, included employee representatives. While the conclusion of these committees do not necessarily become official policy, there is at least some chance to add to the debate.	

Country	Bipartite/Tripartite institutions	Unilateral bodies	Bargaining at the plant level	Success of bargaining
Germany (cont'd)	At the level of the Länder, unions have influence due to the strong ties they have with political parties. There is, however, no formal participation. In municipalities, unions exert also an informal influence.			
Hungary	The tripartite National Conciliation Council (NCC), established in 1990, is a forum dedicated to discussing socio-economic matters of national importance. In May 1991, a separate privatization committee (PRC) was established to deal with questions of privatization within the framework of the NCC.		Workers have some rights to information and consultation regarding privatization through the mechanisms of works councils. They also have the right to be consulted regarding transfer of employment and redundancy.	While a number of aspects of the design and implementation of privatization should have been discussed at the national level, in the period from 1991 to 1993 the government did not follow the statutes of the NCC and did not provide the NCC with the data it had requested, or did, but just after the formulation of the final proposal on the issue. On the other hand, the PRC played an important role in the preparation of the Government Decree No. 119/1991 on participation rights of employees in the course of restructuring state-owned enterprises and the act concerning employee share-ownership programmes.
Côte d'Ivoire	No tripartite institution has been created to deal with privatization.		Workers do not play any active role at the plant level in decisions regarding privatization.	

Country	Bipartite/Tripartite institutions	Unilateral bodies	Bargaining at the plant level	Success of bargaining
Pakistan	No tripartite institution has been created to deal with privatization. There has been an agreement between the All Pakistan State Employees Workers' Action Committee (APSEWAC) and the Government in 1991 regarding the fate of workers in some state-owned enterprise.	The Committee on Deregulation and Disinvestment was formed in 1990. Among its 31 members there are no labour representatives. The Committee was reconstituted in 1991 as the Privatization Commission, again with no labour representatives.	No negotiation on privatization at the plant level.	
Philippines	The privatization programme was conceived and implemented without any consultation with labour.	The Asset Privatization Trust, the marketing arm for privatization, and the Committee on Privatization, the policy body, were created in 1986.	No formal discussions on privatization seem to have taken place in enterprises.	
Poland	Although there is no bipartite/tripartite body, agreements regarding privatization involving the State have become common and can include economic support for employees of transformed enterprises. These involve special programmes dedicated to different age and professional groups or specially constructed protection packages which can help to motivate employees to start individual economic activity or seek employment outside liquidated companies.		Two self-management organs — the General Assembly of Workers and the Workers' Council — have existed in state-owned enterprises since 1981. The workers' council, consisting of elected representatives of the workforce, approves or takes important decisions, appoints management and sets wages. Prior to recent changes in the law, privatization could be initiated by the enterprise through a request to the representative of the responsible governmental agency in the region. This step could be taken by the workers' council. The new law regarding commercialization and privatization issued in January 1997 gives greater power to the Treasury minister and less power to the company's employee self-management organs.	While this method of participation permitted employees to participate in decisions regarding privatization at enterprise level, the choice was at times illusory. This was due to financial pressures on the enterprise which would have resulted, in the absence of privatization, in its liquidation. It is possible to identify two phases of privatization. In the first phase, employees were given almost total control regarding the decision to privatize. In the second, starting in 1997 due to a change in the law, the rights of employees have been curtailed and the government has far greater powers. Nevertheless, it seems that employee representatives still retain a role in determining the terms and conditions upon which transfer takes place.

Country	Bipartite/Tripartite institutions	Unilateral bodies	Bargaining at the plant level	Success of bargaining
Spain	No tripartite body has been created to deal with privatization.	No specific organ has been created to deal with privatization. The Ministerial Order of 26 June 1996 created the Privatization Consulting Council. This is a technical committee that provides technical support and controls the process.	No special role has been given to workers' representatives in privatization at the plant level, apart from the normal participatory rights provided by legislation. Decisions regarding privatization are not taken by the company itself. Negotiation on workforce reduction may take place at the plant level.	Bargaining has taken place often in privatized companies to deal with social consequences of privatization, in particular with work force reduction.
Venezuela	A tripartite committee was created in August 1989 by decree, and composed of the representatives of the Ministries of Finance and Development, the head of the Central Office for Coordination and Planning (CORDIPLAN), the president of the FIV, the General Attorney of the Republic, a representative of the Venezuelan Workers Confederation (CTV) and a representative of FEDECÁMARAS, the employers' most important organization. After the privatization law was approved in 1992, the only mechanism that involved workers in the process of privatization was the obligation of the FIV to inform workers affected by privatization about the legal and financial situation of the enterprise to be privatized and the way in which transfer was to take place.	The Venezuelan Investment Fund is the national body dealing with privatization.	Privatization is not an issue bargained at the plant level.	The committee developed the general principles of the privatization programme that was approved by the Council of Ministers in 1990. These principles were incorporated into the VII Plan of the Nation. In terms of discussing concrete instances of privatization, the committee did not more than discuss the particular case of the telecom company (CANTV), one of the most important privatization operations that took place in 1991. CTV leaders complained many times about the uselessness of their presence in the committee and about the scarcity of information provided by the Government. Tripartite negotiations were relevant in some particular cases, but in general no compromise agreement was reached.

¹ Despite the lack of a regulatory framework, we presume that workers are provided with information on privatization decisions at the plant level.

to accept privatization at any cost, and labour, assuming that privatization was inevitable, was prepared to accept the best available deal.

Factors affecting workers' and employers' involvement in privatization

Why is it that in so many countries the social partners, and in particular workers' organisations who are directly affected by the process, have had so little to say in the design and implementation of privatization? Workers' organizations are seen, in many cases, as obstacles to the speed of the process. Authorities in many countries tend to see social partners' participation as an unwanted interference and a source of economic demands. Lack of consultation and attention to workers' concerns can, however, delay restructuring, as is demonstrated by the Venezuelan case, where social and political unrest over economic restructuring, including privatization paralysed the process between 1993 and 1995.

In Venezuela large companies and economic groups wanted deregulation of the economy and privatization to be accelerated. They also wanted greater investment in infrastructure and the reduction of the fiscal deficit. On the other hand, small and medium size companies demanded a more considered approach to privatization including slower and more selective deregulation and measures put in place to compensate for the unfavourable economic environment (credit facilities, for instance). Trade unions lacked political power to influence government decisions. The credibility of trade unions also declined in this period, in particular the CTV (Venezuelan Workers Confederation), the most important union in the country.

In other countries, Governments have been afraid that social actors' participation could deter foreign investment in enterprises to be privatised. Where all affected parties are involved in decisions regarding privatization, however, and agreements are reached regarding the way in which it is to proceed then this may have a positive effect on stability and encourage rather than deter foreign investment.

The perceived strength of trade unions and their capacity to mobilise workers appears to be another key element in the level of participation of workers' representatives in privatization both in terms of decisions regarding privatization and in terms of workers' participation at enterprise level regarding social pacts or agreements. Weak or non existent trade union power in an enterprise may encourage managers to take decisions unilaterally, since no open conflict will arise as a result. A lack of open conflict in enterprises undergoing privatization does not always imply a healthy atmosphere however. Rumours, anxiety and general unrest short of actual conflict may also have serious implications for efficiency.

In some countries, governments appear to be of the opinion that mechanisms provided by law are sufficient to cope with the social consequences of privatization. In Spain, for example, workers enjoy relatively strong rights in labour law on transfer or redundancy including rights to information and consultation and rights to compensation. In addition agreements providing extra benefits have frequently been negotiated on privatization. Workers and employers' organizations have not, however, been consulted or informed about privatization policies or plans at a national level. Privatization processes are approved by the Council of Ministers without prior consultation with social actors. The Government has in many cases relied on the strength of collective bargaining. The tendency in Spain has been towards widening its competence and transforming it into a major source of labour regulation.

The fact that formal bargaining over privatization does not take place does not imply that no measures have been taken to cushion the impact of the process. In a number of countries, such as the Ivory Coast and the Philippines organisms in charge of privatization have attempted to reach agreements with new owners regarding maintenance of the existing workforce and

measures have been put in place in order to foster employment in many countries undergoing privatization. The preference for a number of countries appears to be to do this on an informal level, however, without the input of the social partners.

4. Employee share ownership programmes:

A mechanism for workers' participation?

As stated in Chapter One, a notable feature of privatization in many countries included in this study has been the establishment of various forms of employee share ownership programmes (ESOPs). These schemes have taken a considerable number of forms depending on the country at issue. They may be viewed as a form of employee participation in privatization, although they do not necessarily result in protection of employees. Some have seen the acquisition of shares by managers and employees in enterprises as a positive development which encourages productivity, better labour relations and economic democracy. Other commentators view it as a form of popular capitalism — an exploitative way of obtaining workers support for privatization or, at least, weakening the opposition of workers and their representatives for the process. Other commentators have expressed fears that employees will use their controlling power to maintain employment levels higher than those compatible with profit maximization or will otherwise use their power to influence some decisions in the company incompatible with productivity and economic profitability. The real position will depend very much on the scheme at issue, and the institutional framework within which it is introduced.

Argentina's form of ESOP scheme is regulated by Law 23,696 on State Reform. The programme is not limited to workers. Clients and suppliers of the enterprise to be privatised may also purchase shares on preferential conditions. In practice, however, schemes set up in Argentina to date have included workers only. On privatization the State decides the share of capital to be devoted to workers. The price of the shares is set by the State. ESOPs may take place also when a license or concession is transferred. Workers taking part in the ESOPs may organise and choose two representatives to coordinate and manage the shares and the rights derived from the property. ESOP schemes have been popular in Argentina. In the period up to April 1997, 49 ESOP were implemented in companies operating in the electricity, gaz, telephone, petrol, air transport, banking and insurance sectors. Property transferred to workers in most cases represented approximately 10 percent of the share capital. Employee owners do not therefore have a controlling share in enterprises. Transferred shares had a nominal value of \$1.271 billion and a market value of \$3 billion. The number of workers participating in the different programmes is estimated to be approximately 75,000.³⁸

Trade union participation in ESOPs has varied over time. Unions have attempted to exercise control over various programmes. Union participation in Argentina derives from the way the programme is organised. Under the provisions contained in the privatization regulation, workers can not make a free use of the shares until they are completely paid for purchased. Until then, they belong to a fund and the exercise of the rights has to be exerted commonly.

At a first stage and in some cases, specifications recognised the right of trade unions to represent workers attached to an ESOP. This criterium was afterwards modified by the State, which determined that inclusion in ESOPs should be done on an individual basis. Nevertheless, the State allowed unions to represent the worker individually. The situation changed in 1993,

³⁸ Goldin, A., *Privatización y Relaciones Laborales: El Caso Argentino*, ILO Geneva, 1997.

when a decree prohibited any mediator to act on the workers behalf. From then on, membership was on a strictly individual basis.

In the face of a legal system clearly limiting trade union action, unions have tried to manage ESOPs, because it would give them a remarkable power, specially, the possibility to place a member on the board of directors in the privatized companies. In the case of Aerolineas Argentinas, the privatized air company, unions managed to place in the board of directors the general secretary of one of the unions, but the Ministry of Economy opposed the decision. The bad economic and financial results made the state freeze the ESOP. Trade unions, nevertheless, succeeded in participating actively in some other ESOPs.

From 1992 a registry of consulting companies was created allowing them to manage ESOPs, with the aim of excluding trade union implication. According to the Ministry of Labour, the fight for the control of the highly valuable packet of shares could "foster bureaucratization and commercialization in the Argentinean unions".

ESOPs do not appear to have been an instrument of workers' participation in the companies in Argentina. In many cases workers have preferred pay for shares straight away in order to sell at a market price and so make a profit. In the two privatized electricity plants, for example, workers sold a large number of shares to a Chilean company, the major shareholder. Even though the operation was highly profitable for the workers, it was considered to be a failure by the union, which was unable to maintain the status as a minor ESOPs share holder or its representative in the board of directors. More recently, the State has authorised the sale of ESOP shares in YPF, S.A. Shares were sold to workers in June 1993 at a cost of \$19 each. In mid 1997 their value was approximately \$31. The majority vast of workers expressed their desire to sell the shares (4,596 workers wished to sell their shares while just 4 were opposed). According to Goldin,³⁹ other ESOPs have followed the same trend.

It appears, therefore, that ESOPs in Argentina are being utilised as a means of distributing some of the profits of privatization to workers, thereby reducing opposition to privatization rather than as a means of promoting participation in property and management.

ESOPs have been widely utilised as part of privatization in Central and Eastern Europe. Laws regulating ESOPs were introduced in Hungary, for example, in 1992. Act XLIV of 1992 set procedures for workers participation in enterprises to be privatised. The current law regulating ESOPs is contained in this Act and in the 1995 law regarding privatization⁴⁰.

In Hungary there are two basic forms of property acquisition by employees. The first is the preferential acquisition of property — which may be as much as 10–15 percent of the company's subscribed capital — at discounted rates, and the second is the MRP, the Hungarian ESOP where employees participate in a tender for purchasing the company's property alongside external investors⁴¹. Preferential credit and tax concessions have been made available to employees in order to assist them to participate in tenders for companies. Although workers' organisations devoted considerable efforts to making the terms of share purchases favourable to employees it appears, from studies done to date, that management has had a far greater influence than either employees themselves or workers' organisations on whether or not buyouts occur and the way in which they are implemented⁴². While there was considerable hope

³⁹ Ibid p 26.

⁴⁰ Act XXXIX of 1995 on Privatization.

⁴¹ B. Galgoczi and J. Horvka: *Employee Ownership in Hungary: The Role of Employers and Workers' Organisations*, International Labour Office, Geneva, 1997, p. 2.

⁴² L. Neumann "Circumventing Trade Unions in Hungary: Old and New Channels of Wage Bargaining", (continued...)

that employee buyouts would alter employment relations between management and labour and lead to higher productivity and profitability it appears that, in many cases, these hopes have not been realised⁴³. Nor does it appear that these companies have followed particularly worker friendly wage and employment policies. The reasons for this are connected with the strong position of management in many of these companies and poor economic performance. In a number of companies the MRP scheme has been used in an attempt to preserve jobs when no other investors have shown interest.

Employee ownership programmes have also been an important feature of privatization in Poland. There are a large number of methods of privatization in Poland. In some cases workers have been able to obtain shares in the company free of charge. In others workers have been able to purchase or lease the operation themselves, or with the assistance of outside investors. All privatization processes have involved some form of employee ownership⁴⁴. Employees of enterprises following the "indirect" privatization method were offered 20 per cent of capital equity at half price. This was later transformed into a 10 per cent free share, which was subsequently raised to 15 per cent. As set out above, employee ownership has also been an important feature of direct privatization with numerous examples of direct privatization taking place by means of employee leasing. Where workers are involved in purchases or lease buy outs of enterprises workers' representatives — in the form of Works' Councils, or, indirectly, trade unions have then been involved, on some occasions, in the preparation of business plans, valuations, arranging financial participation of workers as well as negotiating social pacts regarding lay-offs etc. Workers and trade unions have been confronted with a need to redefine traditional roles beyond the protection of workers' rights and preservation of employment to encompass the needs of workers in schemes of this nature. While some non-profit bodies have been set up in Poland to assist in this task it appears that further support is needed in this area.

ESOPs in Poland have served as an instrument to gain workers support for privatization. In 1993 a General Agreement on the transformation of State Owned Enterprises was concluded between the Government, trade unions and employers' associations. Its purpose was to gain greater trade union support for the process of privatization. In exchange for their support employees were granted certain wage guarantees, free distribution of 10% of the shares of newly formed companies and certain guarantees regarding participation in the management of newly formed enterprises. The Law governing privatization was altered in 1997, granting greater powers to the relevant Minister regarding privatization decisions and limiting workers participation in the processes. The change in the law was accepted by trade union groups on the basis that employees would receive 15% of the shares of the company free of charge on privatization.

Prior to the introduction of ESOPs in Poland and Hungary there was considerable debate regarding whether or not schemes of this nature should be introduced. The last thing that many new post-communist leaders wished to promote was the emergence of significant new forms of employee management⁴⁵. Nuti notes a number of reasons why, despite concerns, schemes of this nature were introduced in many companies, namely: (i) to reverse the effects of earlier attempts at reforming the old system that had introduced employee-self management, notably in Poland and to a smaller extent in Hungary. Paradoxically, these earlier attempts at reform

⁴² (...continued)

European Journal of Industrial Relations 197.

⁴³ Ibid.

⁴⁴ Nuti, D.M., *Employee Ownership in Polish Privatization*, Privatization Surprises in Transitional Economies, Uvalic M. and Vaughan-Whitehead, D, ILO 19967, p. 165.

⁴⁵ Ibid., p. 171.

became an obstacle to subsequent transition, which could only be overcome by converting self-management into co-ownership⁴⁶; (ii) as a natural consequence of transition, employee ownership was also introduced with the transformation of former pseudo-co-operatives (public sector co-operatives) into genuine co-operatives run by elected officials and independent from central organs; (iii) to win over employee support for the transition in spite of concern for its short-run adverse effects on real wages and on mass unemployment; (iv) to find buyers for the low and often negative value of some state enterprises, for which there could not have been other takers and would have been liquidated. Besides, the shortage of domestic capital placed employees in a good position with respect to domestic outsiders⁴⁷.

The ESOP was one of the most developed parts of the Venezuelan Privatization law approved in June 1992. Pursuant to the law up to 20 per cent of the shares in state owned enterprise were to be reserved for workers on privatization on favourable conditions. In 1993 the law regarding this issue was altered to the effect that the transfer of shares to workers was required to take place within a certain time limit.

In 1993 the law in this area was modified. First, it obliged the company to devote 10 per cent of the shares to be offered to workers. And, secondly, in case no agreement is reached in a 90 day period, the shares can be offered to other buyers.

ESOPs have also been a feature of privatization in the Ivory Coast and, in theory at least, in Ethiopia. In the Ivory Coast few workers have taken up the option of purchasing shares in companies on privatization despite the existence of preferential conditions. Levels of domestic savings in the Ivory Coast are generally low. In Ethiopia provision exists for ESOPs in law. To date privatization by this method has not really started although this may change in the near future. In Pakistan workers negotiated, as part of the APSEWAC agreement, the right to match the highest bid made on privatization. Employee ownership has taken place in a few instances of privatization in Pakistan.

While employee ownership can offer considerable benefits for employees it may also lead to exploitation. It should not be a means to avoid political responsibility for redundancies nor should it lead to employees investing considerable sums of money, including redundancy payments or social funds in enterprises which are not viable. Consideration should also be given to whether or not employee ownership schemes are fulfilling the purposes for which they were created including whether or not all workers are benefiting from these schemes or, in reality, a small group of management employees.

⁴⁶ Privatization of state enterprises with self-management provisions required employees to surrender their 100 per cent entitlement to, say, 20 per cent of property rights (that part of property rights that involved the right to appoint and dismiss managers, to use and control capital, and the right to appropriate some of the results). For them, to do so willingly employees had to be given, instead, say, 20 per cent of full property rights (including the entitlement to any increase capital value and the free disposal of capital, which they did not have before).

⁴⁷ For more information about the success of these schemes, see Uvalic, M. and Vaughan-Whitehead (Editors), *D, Privatization Surprises in Transitional Economies*, ILO 1997, Ch. 5.

CHAPTER 4

CONFLICT OVER PRIVATIZATION

1. Introduction

Information regarding conflict which has occurred during the process of privatization is included in a number of the studies upon which this report is based. While the level of information available on this topic is not extensive, a number of preliminary observations can be made regarding the type of conflict which has arisen as a result of privatization and the various methods by which disputes have been resolved. Conflict has occurred over the decision to privatise, the way in which privatization has taken place and in companies after privatization has occurred. It has included strikes, other industrial action (such as occupation of the workplace by employees), general protest rallies, political conflict and legal disputes. In many countries, conflict over privatization has taken place as part of protest over economic restructuring generally.

2. Conflict over the decision to privatize

As discussed in Chapter Three, workers' organisations in the majority of countries have opposed privatization on both ideological and pragmatic grounds. In some countries this has led to general protest action and/or strike action against privatization. Protest has also occurred over individual instances of privatization and the decision to privatise sensitive sectors of the economy. In Pakistan, for example, the labour alliance APSEWAC was vocal in its opposition to privatization. Protest against the Government's plans included a strike and the obstruction of potential investors and evaluation consultants. Conflict in relation to the privatization of manufacturing concerns was resolved after extensive negotiations resulted in an agreement regarding the way in which privatization was to proceed. The privatization of public utilities which is occurring in Pakistan at the present time has led to another wave of protest action. This has included countrywide protests organised by the National Labour Federation and protests in individual units selected for privatization such as: the railways; the Water and Power Development Authorities (WAPDA) and a number of thermal energy projects. The conflict concerns whether or not privatization should take place in these sectors and the protection which is to be offered to workers in utilities on privatization.

Opposition to the privatization of particular sectors of the economy has also taken place in Venezuela and in Spain. While some Venezuelan workers' organisations accepted that the role of the Government required redefinition, they opposed privatization in 'strategic sectors'. This opposition was based on their arguments that particular industries such as oil should not be permitted to fall into foreign hands and that the provision of certain services such as health should be maintained by the Government. Despite opposition to privatization in the oil and petrochemical industries privatization has taken place in these sectors. Considerable social turmoil over the effects of economic restructuring has occurred in a number of Latin American countries. In Venezuela during the period 1989-1992 there were thousands of protests, some of which concerned privatization. Political instability as a result of social turmoil in this country paralysed the process of privatization during the period 1993-1995. Privatization began again in 1996 after restructuring of the organism in charge of privatization, the FIV.

In the Philippines there has also been general protest regarding the process of privatization, coupled with disputes in individual instances. At a conference in 1988 a number of workers' organisations adopted a document setting out the opposition to the Government's privatization programme. This document set out labour's concerns regarding privatization and

demanding that the process be suspended and a tripartite body put in place to review its operation. At the same time as voicing concerns regarding whether or not privatization should occur, the document signalled a number of matters to be taken into account should the process of privatization continue. A labour alliance was formed entitled 'Labour Initiatives Against Privatization' or LIAP. This Alliance faded from view in 1991 while privatization has continued in the Philippines.

In some countries, such as Spain, workers' organisations have taken a stand against privatization but have not attempted to mobilise their members or the public in general protest action against privatization. Leaders of these groups may anticipate that such action would have little support among citizens. Instead, action in Spain has concentrated on particular instances of privatization and the way privatization is to be carried out. A number of disputes have occurred in the heavy industrial sector where massive redundancies have been carried out. Workers' organisations have attempted to draw attention to the devastating effects that privatization and economic restructuring can have on particular regions. Protest over privatization has been combined with protest over issues such as deregulation and the withdrawal of subsidies which has had a greater effect on levels of employment in Spain.

In a number of cases conflict over privatization has taken place at a political level. In Germany, for example, different political parties at different levels of state administration, have taken different positions over the issue of privatization. Positions on this issue have shifted over a number of years. In many countries included in the study, however, there has been a consensus among the major political parties that privatization must proceed. In several cases privatization has been a condition attached to loans from the World Bank/IMF and Governments have had little choice regarding this matter.

Workers' organisations have not always acted with a united voice over whether or not privatization should take place. In Argentina, for example, in the early stages of privatization, some trade unions were bitterly opposed to privatization and entered into confrontation with the Government. Others chose to accept the Government's decision and to negotiate over the way in which privatization was to take place. The political links of trade unions can be important in terms of the stance taken on this issue. In other countries, formerly strong links between workers' organisations and political parties have been weakened over the issue of privatization.

Not all workers' organisations have been opposed to privatization. In Poland, for example, there has been a high degree of social acceptance of the process of privatization and less conflict than in many other countries regarding decisions to privatise. The fact that workers have, until recently, had an important voice in many instances of privatization is at least partially responsible for this fact. It will be interesting to observe if this position changes with the change in the law in 1997.

One factor which may have led to a lack of, or reduction in, protest over privatization in both Poland and Hungary is identified in the study on privatization in Hungary. The authors of this study note the existence of a widely held belief in Eastern Europe at the time of transition that any challenge to the 'marketisation' strategy of the State was a challenge to economic reform in general. They point out that trade unions fighting against privatization and for greater protection of workers in the process of privatization may have been stigmatised as selfish and acting against the greater interests of the nation. They also quote David Ost's theory that in the political climate of central and eastern European nations there is some expectation

that trade unions will sacrifice workers' interests in order to create a bourgeois class which will, in theory at least, promote the development of the economy in the future⁴⁹.

The level of conflict within a particular country at any one time is not always uniform and may have a regional dimension which corresponds to areas which are hardest hit by privatization or economic restructuring.

3. Conflict over the way in which privatization takes place

In the majority of countries included in this study conflict appears to have been concentrated on the way in which privatization is to take place. Even where workers' organisations have formally opposed the principle of privatization few have concentrated their protest efforts in this area. It is possible to detect a sense of inevitability regarding the process of privatization. In countries, such as Argentina, this sense appears to have developed over time. In other countries, national political consensus over the issue of privatization and the necessity of privatization as a condition of loans by international institutions, appears to have reinforced this feeling.

Lack of information and consultation regarding the development and implementation of privatization programmes has been a source of conflict in a number of countries. As the authors of the report on privatization in the Ivory Coast have pointed out, where workers are not informed or consulted regarding the likelihood of privatization this can lead to rumours and unrest. Even where this does not result in full blown conflict, it may have serious implications for efficiency.

Concerns regarding job security have also given rise to protest. This includes: disputes over terms and conditions of transfer of employment; disputes over the way in which redundancies or retrenchment plans are to be carried out; disputes in relation to severance pay and disputes over the level of ongoing support to be provided to unemployed workers. Demonstrations, occupations and protests against the industrial restructuring programme of the Treuhandanstalt (THA) occurred in Germany in the period 1990–1992.

In countries where legislation regulates transfer of employment, such as Spain, Germany, Poland and Hungary there has been less conflict regarding terms and conditions of transfer than in countries such as the Philippines where employees face alteration in terms and conditions of employment on privatization. The privatization of the Metropolitan Waterworks and Sewerage System (MWSS) in the Philippines provides an example of protest by employees over the way in which privatization is to take place. An alliance was formed by workers in the enterprise against privatization. The protests included demonstrations and graffiti during bidding, the signing of the contract and the actual commencement of the contract. While workers at the MWSS received greater benefits than those prescribed by the provisions of Proclamation No. 50, they were to be classified as probationary employees in the new enterprise. This gave rise to grave fears regarding job security after privatization. Some conflict may have been avoided through greater consultation with workers. In this case the provisions of the law give employees little confidence that their interests will be taken into account on privatization.

Disputes have also arisen over the terms and conditions upon which employees are to be made redundant or retrenched from enterprises on privatization. The negotiation of terms and conditions of redundancy packages and procedures for redundancy by management and

⁴⁹ D. Ost, "The Politics of Interest in Post Communist East Europe", *Theory and Society*, August 1993 p. 454–459.

worker's representatives appears to reduce the potential for conflict. While the process of negotiation can take time it does appear to lead to a smoother transition process. As one commentator from Pakistan has pointed out, a lack of labour problems may also lead to higher bids from investors for enterprises to be privatised⁵⁰. The imposition of plans by management, on the other hand, can lead to protest and strikes. When part of the naval construction industry in Spain was restructured prior to privatization the company outlined plans to halve the company's workforce by way of a voluntary redundancy package. The company's plan was proposed without consultation and led to protests and strikes by workers. The workers' representatives, in this case, the UGT and the CCOO, rejected the company's plans and demanded negotiations. After 15 months of negotiations, an agreement regarding this issue was signed. This agreement included provisions concerning greater flexibility in working time allowing greater numbers of employees to retain their positions after privatization.

Conflict during the process of privatization has not been confined to labour issues. Disputes have also concerned: bidding procedures; foreign investment in companies; the destination of funds from privatization; the possibility of private monopolies arising and concerns regarding the provision of services after privatization. At times, protest regarding these issues has been combined with protest over labour matters. Other parties apart from workers have also expressed concern regarding the process of privatization and its effects. In the Philippines, for example, the National Council of Churches issued, in November 1996, a resolution expressing opposition to the Government's plans to privatise hospitals. The resolution expressed concern that this action would lead to the denial of basic health services to people and the 'contractualisation' of services of health workers resulting in loss of security of tenure, and non-payment of benefits.

As well as industrial action and protest, privatization has also led to a number of legal disputes. These can also delay the process of privatization and deter potential investors. Legal disputes have concerned matters such as: bidding procedures; title to assets to be privatised; the constitutionality of privatization together with industrial issues such as whether or not certain dismissals are justifiable and the meaning of certain provisions of the law regarding privatization.

4. Conflict in companies after privatization has taken place

Conflict regarding privatization has not been confined to the process of privatization itself. Disputes have also arisen in companies after privatization has taken place. To some extent the timing of disputes will depend on whether or not restructuring of companies takes place prior to, or after privatization. In the Ivory Coast, for example, a number of disputes have occurred post privatization because the majority of restructuring has taken place at this time. In many companies the process of restructuring is ongoing and the potential for disputes arises both prior to and after privatization has taken place. Restructuring can take place for a number of reasons apart from the need to reduce the workforce inherited from the public enterprise. Increased competition and developments in technology have affected workforce requirements in both public and private enterprises.

Conflict has occurred in privatised companies for many of the same reasons as in enterprises prior to privatization: lack of information; fears regarding job security; anxiety regarding the future and concerns regarding alterations to terms and conditions of employment. In Spain one of the biggest industrial disputes of the past decade occurred in a privatised car

⁵⁰ Aziz, *supra* at note.

plant — SEAT. The car plant was privatised in 1986. It has had ongoing social problems, however, in relation to continued restructuring of the plant which has led to thousands of redundancies. Strikes and demonstrations occurred in 1994 and 1995 as a result of redundancies. In 1995 management and unions finally agreed to resolve matters with an early retirement scheme.

In some cases disputes have arisen where companies or the State have neglected to fulfil promises made on privatization in relation to issues such as job guarantees or services. In Poland for example conflict has arisen over this issue in some privatised companies. In Pakistan there have been complaints regarding the Government's failure to deliver training and retraining schemes and to set up a pool of surplus workers as promised in the APSEWAC agreement.

An important issue which has given rise to unrest after privatization in several countries, for example, Ethiopia and Germany, is the issue of the transfer of pension rights from the public to the private sector. This matter has frequently been neglected in the regulatory framework of privatization. Solutions to this problem have been devised on a case by case basis but, in some cases, only after unrest or legal disputes regarding this issue. It is clear that the question of the transfer of pension rights should be considered at the very beginning of the privatization process.

In countries such as Germany, Poland and the Ivory Coast there were expectations among workers that wages would increase after privatization. Lack of wage increases in privatised companies has been a source of social unrest. In the former east Germany for example a strike took place after the announcement by the Saxon Metalworking Employers' Association that it intended to terminate a two year old collective agreement containing a three year plan to bring wages level to those in west Germany. Because of deteriorating economic conditions the employers considered the agreement was unrealistic. After a two week strike the dispute was settled through negotiations.

5. Conflict resolution

No countries in this study appear to have introduced special dispute resolution mechanisms solely to resolve disputes arising on privatization. Countries appear, by and large, to have relied on general dispute resolution mechanisms, where these exist, to resolve disputes over privatization. Success in this area is frequently related to the efficacy of existing systems of conflict resolution and to the success of more informal mechanisms of resolving disputes.

Existing structures for dispute resolution have been used to resolve disputes arising from privatization in both Spain and Germany with some success. In these countries there is a strong tradition of negotiated settlement of disputes which has flowed through into agreements regarding privatization. Even where traditional procedures have not been followed the culture of negotiation in these two countries has been influential in resolving disputes.

In some countries the law regarding dispute resolution has been altered at the same time as privatization programmes have been introduced. A new law regulating the right to strike was introduced in Argentina at the time of privatization at least in part because of fears regarding unrest over privatization. This law requires mediation and arbitration of disputes prior to strike action and has, itself led to conflict and complaints regarding breaches of the principle of freedom of association. A special unit also exists as part of the Ministry of Labour in the Ivory Coast to deal with disputes over privatization. Lengthy procedural requirements prior to strike action in the Ivory Coast have also meant that workers have, in many instances, initiated conciliation. This has also reduced the level of strike action in this country. The Ministry in charge of the sector where the dispute is taking place will also intervene in some disputes in

an attempt to reconcile interests. In Poland many disputes which have arisen in the context of privatization have been resolved pursuant to the law of 23 May 1991 on collective conflict settlement. Employers are obliged to negotiate with employees pursuant to this law where they reject employee's demands. They are also obliged to inform the regional work inspector regarding the existence of a dispute. Where parties are unable to negotiate a resolution they are required to submit matters to a neutral mediator. Only if the matter does not resolve itself does the right to strike exist.

In some countries dispute resolution has remained unpredictable and anarchic. In the Philippines there is no clear agency responsible for disputes which arise in this area. Proclamation 50 prevents the Department of Labour or the NLRC from intervening in industrial disputes over privatization. If settlements do take place it is because the new owner has been co-operative with the Asset Privatization Trust (APT) and employees. The APT has attempted to take some role in this area, however, there are no clear rules by which it proceeds and it has no specific mandate. This has contributed to ongoing social unrest over privatization in the Philippines.

In Pakistan disputes appear to have been resolved by negotiations prompted by industrial action and political pressure rather than through formal dispute resolution mechanisms. Effective lobbying by pressure groups in order to gain concessions on privatization also has the potential to reduce conflict. In Poland, for example, management and labour, acting together, have been able to gain concessions from the Government on privatization.

6. Conclusions

Some links can be drawn between the extent of integration of social concerns into the process of privatization and the level of conflict which has occurred in individual countries. Conflict over privatization in Poland, for example, has, to date, been generally lower than conflict in Venezuela. The level of conflict is not solely dependant on this issue, however, and will also depend on other social, institutional and political factors such as: parties' expectations; the capacity of the labour market to absorb redundant workers; the willingness of the Government and workers' organisations to engage in disputes; the relative strength of the parties; public support for the process of privatization and the extent to which parties are willing to take part in dispute resolution.

Conflict of itself is not necessarily a negative phenomenon in this context. In a number of cases it has resulted in a more balanced approach being taken by Governments to the process of privatization with greater concern being shown for the social concerns generated by privatization as well as its economic results. Prolonged, bitter and violent conflict can, however, be destructive for all parties involved. It can lead to increased anxiety for those effected by privatization together with lengthy delays which may in turn lead to the devaluation of assets. Workers' involvement in privatization, adequate compensation for workers who lose their jobs as a result of privatization and the availability of an efficient and fair dispute resolution mechanism can help to ease transition which occurs on privatization.

CHAPTER 5

THE SOCIAL DIMENSIONS OF PRIVATIZATION

1. Effects of privatization on employment in privatized enterprises

Privatization has taken place in the countries included in this study in a variety of different social and economic contexts. The impact of privatization has varied in accordance with a number of factors, some of which relate to the way in which privatization programmes have been carried out, while others, such as the share of public enterprise employment in the economy, or the potential of the economy to generate employment, relate to social and economic conditions generally⁵¹.

While detailed consideration of the effects of privatization on employment in privatised enterprises is beyond the scope of this paper, information is provided in a number of the country studies on: forms of employment contracting; patterns in industrial relations (discussed in Chapter Three), levels of employment and terms and conditions of employment in privatised enterprises.

A number of commentators have noted the difficulty of obtaining information in this area. While in countries such as Ethiopia and Pakistan, reliable labour market information and statistics are difficult to obtain in any circumstances, it appears that privatization itself may have had an effect on employment. As enterprises enter the private sector, information regarding staff numbers and terms and conditions of employment may be classified as commercially sensitive. One of the arguments advanced in favour of privatization is that it will, in the long term, increase the capacity of the economy to generate employment. In order to assess whether privatization is meeting this objective there is a clear need for long term monitoring of employment in privatised enterprises.

A further difficulty in this area is separating the effects of privatization from other economic reforms which have occurred at the same time. Advances in technology have also had an adverse impact on employment levels. Given the above factors the observations made in this section must be considered tentative and further detailed research needs to be carried out in this area.

Forms of contracting

In a number of countries including Argentina, Hungary, Pakistan and Spain there has been a growing tendency, in privatised enterprises, to resort to 'non-regular' forms of employment. This includes the increased use of casual and fixed term workers and contractors. In countries such as Spain part time employment has also increased on privatization. More flexible forms of employment can assist in preserving jobs and may result in a lowering of fixed labour costs enabling enterprises to compete successfully in deregulated markets. They may also lead to exploitation. Privatization is not the only reason that companies have increased their use of non-regular forms of employment. Changes in technology and changes in the law allowing new forms of contracts have also been influential.

The use of contractors may have deleterious effects on job security and conditions of work generally. In Pakistan, a number of workers who elected to receive golden handshake payments on privatization have returned to work as contractors in privatised enterprises. These workers have reduced security of employment and remuneration and receive few, if any additional

⁵¹ Supra at note ?, at p. ?.

benefits. In countries where employers are important providers of benefits such as medical care and education for employees' children the loss of benefits of this nature is significant.

As Rolph Van der Hoeven and Gyorgy Sziracki have pointed out the growing use of non regular employment raises the issue of what safeguards should be put in place to ensure that the benefits to enterprises of flexible labour relations are not coupled with a general deterioration in wages, benefits and working conditions⁵². For both employers and workers, the benefits of flexibility have to be balanced by a careful consideration of equitable conditions of employment⁵³.

Levels of Employment

In the majority of countries included in this study levels of employment have dropped, at least in the short term, in privatised enterprises. Once again it is difficult to distinguish the effect of privatization on employment levels from other factors such as new technology. To the extent that it is possible to isolate privatization as a factor it would appear that this has had a negative effect on employment levels in most countries included in this study. In many countries the effects of privatization on employment levels have been dwarfed by the effects of public service restructuring generally⁵⁴.

In many central and eastern European countries the scale of redundancies on privatization has been huge and the labour market has proved incapable of absorbing those who have been made redundant on privatization. This trend can also be observed in Pakistan where a number of public utilities to be privatised are grossly overstaffed. In a number of countries employees have moved directly from employment to job training schemes and so do not appear in the unemployment figures immediately after privatization. Underemployment as a result of privatization is another problem which is not readily observable in statistics on unemployment. Employment in the informal sector has also increased in Venezuela and Pakistan in the period in which privatization programmes have been in place.

There may be some exceptions to the above rule. In David Gutema's study of 8 enterprises in Ethiopia, while redundancies had taken place, there had been a slight overall increase in employment in privatised enterprises. As the size of this sample was small and as privatization has only just begun in Ethiopia it is difficult to draw any conclusions from these figures, however. In the enterprises studied it appears that those who were made redundant tended to be unskilled workers while those employed had better qualifications. The same trend was observed in a study of 19 enterprises carried out in Ivory Coast. It appears, therefore, that privatization may be having a disparate impact on lower skilled workers in these countries.

Terms and Conditions of Employment

From the limited information provided it is difficult to observe many general trends in terms and conditions of employment in privatised enterprises. As demonstrated in Chapter Two the application of legislation on transfer of employment has ensured some continuity in terms and conditions of employment, at least in the short term, in some countries. In countries where legislation of this nature does not exist, such as the Philippines and Argentina, there has been considerable alteration in terms and conditions of employment on privatization. In Argentina

⁵² Supra at note ?, at p. 16.

⁵³ Ibid.

⁵⁴ Ibid., at p. 11.

this was done by negotiation in many instances and led to more flexible terms and conditions of employment in privatised enterprises.

Job security has decreased as a result of privatization in some countries. The Philippines is a notable example of this as workers in privatised companies are frequently classified as probationary employees despite long service in the public sector. In countries where a number of workers in public sector enterprises were classified as civil servants such as Germany or the Ivory Coast, employment security for workers who have transferred to the private sector has also decreased. Privatization may offer these workers other benefits such as the right to strike or collective bargaining. In the Ivory Coast many civil servants anticipated that privatization would bring an increase in wages in return for stricter work discipline. The failure of wage increases to materialise in privatised companies in the Ivory Coast, Poland and Ethiopia has been a cause of social unrest.

A decrease in non-wage benefits has been noted in some countries. Reduction in payment for overtime also appears to be common. On a more positive note the study on the Ivory Coast notes an improvement in human resource management and conditions of work in privatised enterprises, mainly as a result of better technology. The Argentinean study also notes greater expenditure on training in privatised enterprises.

2. Integrating the social dimension into privatization

While integration of social provisions into the process of privatization cannot prevent all social dislocation arising as a result of privatization, it can do much to ease the transition and make ownership change on privatization better balanced from both an economic and a social point of view.

The disparity which exists in terms of political, economic, social and legal circumstances among the countries included in the study makes the formulation of detailed recommendations applicable in all situations difficult. What may be an appropriate and successful measure in one context may be inappropriate in another depending on the institutional and legal framework and the manner in which the measure is introduced. Countries undergoing privatization programmes do, however, face a number of similar issues albeit it on a different scale with different resources available to deal with these issues, which makes it possible to draw together some concluding remarks.

General Comments

The social dimension of privatization must be viewed as an integral part of the privatization process. A balance needs to be sought between the economic objectives of privatization and the needs of workers for equitable and adequate protection. Countries which fail to pay sufficient attention to the negative consequences of privatization risk strong opposition from both workers and the public at large which can hinder or in some cases prevent privatization taking place.

Judging from the information available, it seems clear that consideration of the social dimension of privatization should take place from the very beginning of the process. Review of the adequacy of labour law and labour relations machinery to provide adequate protection on privatization should also take place between different phases of privatization.

The process of privatization, including decisions regarding privatization, the way in which it is to proceed and measures to protect workers affected by the process, should be designed and implemented with the co-operation and participation of employers' organisations and

workers' organisations and, in particular, those most affected by its outcome. This is also a need for the privatization process to be transparent and accountable.

In connection with this last point, information should be provided to the general public, the social partners and, in particular, to those affected by privatization at all stages of the process. Lack of information can lead to severe anxiety, rumours and ultimately social unrest which can undermine the entire privatization project.

While the exact nature of protection for workers who are dismissed as a result of privatization and the method by which protection exists (*i.e.* by law, by negotiated agreement or by a combination of these mechanisms) will vary according to national circumstances, workers in this situation should receive certain guarantees, for example: measures guaranteeing some form of income and assistance in finding alternative employment.

Privatization should be seen as a means to create sustainable human development rather than an end in itself. Reviews should be carried out to determine the success of the process according to a broad criteria including both economic and social considerations⁵⁵.

Issues to be addressed

Social dimensions can be integrated into the privatization process in a number of ways: by means of existing labour law; by amendments to labour law; by means of provisions included in laws regulating privatization and by labour relations machinery. In some countries the issues discussed below are a matter for labour law in the sense of statutes and regulations, while in others they are a matter for negotiation or consultation. Experience demonstrates that the following issues should be addressed:

(1) *Transfer of employment*

It is important that all aspects of transfer of employment of workers from the public to the private sector are considered. This includes: workers' status (this includes issues such as the civil servant status of some public workers and whether or not workers in the privatised enterprises will be considered to be employees or contractors); terms and conditions of employment in the privatised enterprise (including the effect on collective agreements); union and representation rights in the privatised enterprise; accrued benefits such as holiday pay, severance pay and, in addition, pension rights. The latter issue has been neglected in a number of countries and the result of this has been anxiety, unrest and expensive litigation.

(2) *Redundancy and/or retrenchment*

In all of the countries included in the study the process of privatization has resulted in the retrenchment or redundancy of workers. As stated above, workers who lose their jobs as a result of privatization should benefit from special protection. This protection should be both substantive (in the sense that there must be a genuine reason for the redundancy) and procedural (in the sense that the redundancy should be carried out fairly). The provisions of ILO Convention 158 and Recommendation 166 can provide considerable guidance in this area.

⁵⁵ In addition to pursuing other means for achieving acceptability, transparency and accountability, the process of privatization could usefully take into account the relevant principles and ideas contained in the following international labour standards: Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948; Convention No. 98: Right to Organise and Collective Bargaining, 1949; Recommendation No. 91: Collective Agreements 1951; Convention No. 154: Collective Bargaining, 1981; Recommendation No. 163: Collective Bargaining, 1981; Recommendation No. 92: Voluntary Conciliation and Arbitration, 1951; Convention No. 151: Labour Relations (Public Service), 1978; Recommendation No. 159: Labour Relations (Public Service), 1982; Convention No. 158 Termination of Employment, 1982; Recommendation No. 166: Termination of Employment, 1982; Convention No. 168: The Employment Promotion and Protection Against Employment Convention, 1988.

In some countries the law prescribes the method by which redundancies should be carried out while in other countries this is an issue for negotiation between workers and employers. In many countries the law is seen as guaranteeing minimum protection for workers and further agreements regarding redundancy and/or retrenchment are negotiated providing workers with additional protection. Where employees have been guaranteed certain minimum rights by law and, in addition, negotiations have taken place about the methods by which redundancies are carried out and the forms of assistance to be provided to workers this has often resulted in a relatively smooth transition process.

In countries where resources are scarce the question of the means by which assistance should be granted to workers who lose their jobs raises complex issues. In many cases public sector workers represent a relatively privileged group. The provision of extensive benefits and privileges to this group, whether financial or by other means, can result in further exclusion of other persons. On the other hand public sector workers in many countries support a considerable number of dependants apart from the nuclear family. Attention must be given to these issues within a national context of consultation and establishing priorities.

(a) Procedures

Careful consideration should be given to the procedure by which redundancies are carried out. In a number of countries voluntary redundancy schemes, or alternatively, incentives to early retirement have been put in place. These can have both positive and negative effects. While in many countries these schemes, have resulted in reduction in staff numbers with less resistance than compulsory schemes they can result in the loss to the enterprise of experienced and skilled workers. Careful consideration must therefore be given by all parties to the levels at which these incentives are set and to the timing of redundancies.

Compulsory redundancies are also a common phenomenon, being utilised by both the state as employer prior to privatization and during the process itself, and by private employers in the new enterprise. Like voluntary redundancy schemes, compulsory redundancy can involve substantial costs to various Government organs and funds. In a number of instances international agencies have provided assistance in the form of loans in order to meet these costs. The costs associated with increased unemployment should also be taken into account. Compulsory redundancies can also engender considerable opposition from workers. Therefore workers and their representatives should be involved and consulted regarding all aspects of the privatization process and, in particular, redundancies. This can help to reduce the level of conflict which takes place during privatization.

The question of the selection criteria for redundancy is also important. Criteria such as "last on, first off" and performance based assessments are commonly utilised. In some countries consideration is also given to those with dependants. Procedures such as "last on, first off" can have discriminatory effects on groups such as women, minorities and disabled people in countries where these groups have only recently obtained jobs in the public sector. Such procedures may also discriminate against younger, and in some cases, better educated employees whose skills should be retained by the enterprise. Care should be taken, therefore, to ensure that the privatization process does not have the effect of undermining policies for improving the status of disadvantaged groups.

Prior to any redundancies taking place consideration should be given to alternatives to redundancy. This process should involve workers and their representatives. In some countries this has resulted in the greater use of part-time work or extended leave provisions. These forms of work can help in some instances to preserve jobs. At the same time, however, consideration should be given to the conditions of use of such contracts in order to prevent abuse. Employees in this situation should receive benefits on a pro-rata basis. Other methods which have been

used include freezes on employment in companies undergoing privatization. The long term effects of such methods should also be taken into consideration.

In a number of countries special provisions exist in terms of the procedure for collective redundancies. These procedures can facilitate the search for alternatives and agreement on the terms and conditions on which redundancies take place. Care should be taken to ensure that these provisions are not evaded and that workers' representatives are in a position to use the tools provided to negotiate.

(b) Forms of support

As stated in the general guidelines the provision of support to employees who lose their jobs as a result of privatization is important. While the resources available to support workers will vary according to national circumstances the following matters should be considered:

- (i) Compensation for redundancy or severance pay
- (ii) Financial and personal counselling
- (iii) Establishment of pools for the redeployment of redundant workers
- (iv) Training and retraining schemes
- (v) Access to special credit
- (vi) Technical and financial assistance for redundant employees in terms of establishing their own enterprises
- (vii) Preference for re-employment
- (viii) Preference for re-engagement in other State projects
- (ix) Preference in awarding contracts for services formerly performed by the public enterprise to contractors who were employees of the enterprise. (This should not be used as a means to avoid the payment of compensation to dismissed workers.)

Some of the services described above and in paragraphs 3, 4 and 5 below may be provided through the assistance of local and national authorities. Privatization is often carried out as a part of general economic restructuring. General services may have been designed to cope with social issues arising from this process. These may also be relevant during privatization and in the subsequent restructuring of privatised companies. The human resource implications for those workers who are retained in public enterprises may also require consideration, not only in concrete terms such as training, but also in more sensitive terms. For instance, workers in this position may experience considerable guilt and may also be anxious regarding their future employment prospects. This can have implications for efficiency, and needs carefully monitoring.

3. Provision of unemployment benefits

In some countries the need for a comprehensive social insurance scheme may be seen as more important than extensive assistance to redundant workers on privatization. On the other hand the provision of a scheme of this nature may be unrealistic given resources available. In some countries it may be necessary to strike a balance between attempts to expand existing social insurance systems and the services referred to in paragraph 2(b) above.

4. Provision of comprehensive employment services

Employment services can include: the registration of job vacancies; vocational counselling; job training and retraining schemes; initiatives to create new jobs; and measures to assist persons to set up their own enterprises. They may also be responsible for initiatives to create

jobs in areas where unemployment is highest. In some countries the provision of these services by a national body is unrealistic but public enterprises undergoing privatization may be able to provide some assistance in these areas.

5. Provision of training and retraining schemes

The provision of training and re-training schemes is a frequent feature of assistance or 'safety net' packages. There has been some controversy regarding the effectiveness of these types of schemes. It is clear that the real ability of these schemes to re-integrate employees in jobs must be considered. The training system should, wherever possible, be part of a national vocational training and certification system which recognises skills and experience wherever they have been attained. The schemes should be monitored in terms of effectiveness and adapted to the needs of the labour market.

6. The participation of the social partners

The involvement of employers' and workers' organisations and, in particular, of those most affected by privatization, is important in terms of how the process proceeds and its consequences. Social dialogue is even more critical in the sense that the State is also an employer in this context, and therefore needs to send out the right signals in such periods of key transition. Within the State different organs may take different approaches rendering the process more complex.

The process of privatization has important implications, not only in terms of the future development of enterprises, but also for the status of workers, working conditions and in some cases for the labour market as a whole. This is why the social partners cannot be ignored during privatization, both at the national and at enterprise level.

Three degrees of participation can be established and pursued:

- (a) **Information:** The necessity for the provision of information is highlighted above. Malaise and conflict in companies to be privatised often arises because of a lack of information provided to workers. Confronted with little to go on apart from rumours, workers may oppose privatization.

Information mechanisms should be developed if they are not already established. Workers should be aware of all decisions that may affect the future of the enterprise and, therefore, their jobs. In particular, they should be informed of the reasons and objectives of privatization, of the advantages and risks for the enterprise, about the social consequences and working condition changes. A transparent process can help to engage the support of the workers in the company for the privatization process.

Employers' organizations should also be provided with information. They may then be able to enrich the process by contributing their experience and suggestions in relation to issues such as: management practices; human resource policies; training of employees; incentives to hire employees; business start up; marketing support and commercial aspects of the process such as the regulation of monopolies in the private sector.

- (b) **Consultation:** A higher degree of workers' participation in the company is provided through the establishment of consultation mechanisms aimed at seeking the opinion of the workers in relation to the issues affecting the enterprise. Workers should be able to express their concerns regarding privatization to management prior to management making decisions in this area. This mechanism can aid management in taking into consideration workers' and their representatives' opinions and in providing constructive solutions to the privatization process.

- (c) **Negotiation:** Negotiation is of course the most comprehensive form of workers' participation. It implies bargaining by management with workers and their representatives regarding the privatization with a view to reaching a final agreement.

The provision of information, consultation and negotiation can take place on a number of levels and at many different stages of the privatization process. Employers and workers' organisations should, in general, be free to decide the level at which these processes take place: national level, sectoral level or enterprise level. The appropriate level depends on the issue to be negotiated (wages, training, retrenchment plans, creation of employment, other social benefits ...) and on the locus of organisation, resources and real skills of the social actors. In order that bargaining systems operate effectively, workers' representatives in both centralised and decentralised systems of labour relations require information on diverse issues, so that they may have all the tools necessary to analyse all aspects of the privatization process.

Bargaining may guarantee a process less subject to conflict, but to be effective it also requires that actors have a certain degree of technical skill and bargaining practice. Actors should have a full understanding of the economic and institutional issues that affect privatization. It may be necessary for technical assistance to be provided to the social partners in this respect.

Participation can lengthen the process of privatization. This can sometimes have an adverse impact on the value of enterprises to be privatised and may discourage potential investors. This fact should not be neglected. On the other hand, negotiated settlements can also mean the establishment of good labour relations and fewer problems in the future, with long term positive efficiency results.

Participation should not end when an enterprise is privatized. Privatization can result in a change in terms of employment and working conditions, because in a number of countries the public sector provides better terms and conditions than the private sector. This change may be traumatic for workers, but problems can be minimized with an adequate participation mechanism. In a number of countries public sector employment has served as an example in terms of human resource policies and in terms and conditions of employment. The loss or diminution of the "example value" of public employment should be taken into consideration.

In many countries public sector unions represent the power base of the union movement. Privatization, and economic restructuring generally, has had negative implications for union strength. The restructuring of public enterprises has meant that unions themselves have had to reorganise. The implications of the diminution in strength of the workers' organisations for social dialogue need to be considered seriously, since they pose an important institutional problem of national labour relations.