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The Standards Initiative – Appendix III

Background document for the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (revised) (Geneva, 23–25 February 2015)

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Introduction

This document is set out in two parts and has been prepared in the context of the follow-up to the decision taken by the Governing Body at its 322nd Session (30 October–13 November 2014) which is reproduced below. It is intended to assist the tripartite constituents and to facilitate the discussion at the meeting in the context of point 1 of the decision.

***Decision on the fifth item on the agenda:
The standards initiative: Follow-up to the 2012 ILC
Committee on the Application of Standards***

Further to the wide-ranging discussion held under the fifth item on the agenda of the Institutional Section, the Governing Body decided to:

- (1) convene a three-day tripartite meeting in February 2015, open to observers with speaking rights through their group, to be chaired by the Chairperson of the Governing Body and composed of 32 Governments, 16 Employers and 16 Workers with a view to reporting to the 323rd Session (March 2015) of the Governing Body on:
 - the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike; and
 - the modalities and practices of strike action at national level;
- (2) place on the agenda of its 323rd Session, the outcome and report from this meeting on the basis of which the Governing Body will take a decision on the necessity or not for a request to the International Court of Justice to render an urgent advisory opinion concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike;
- (3) take the necessary steps to ensure the effective functioning of the Committee on the Application of Standards at the 104th Session of the International Labour Conference, and to this end reconvene the Working Group on the Working Methods of the Conference Committee on the Application of Standards to prepare recommendations to the 323rd Session of the Governing Body in March 2015, in particular with regard to the establishment of the list of cases and the adoption of conclusions;
- (4) defer at this stage further consideration of the possible establishment of a tribunal in accordance with article 37(2) of the Constitution;
- (5) as part of this package, refer to the 323rd Session of the Governing Body the following:
 - (a) the launch of the Standards Review Mechanism (SRM), and to this effect establish a tripartite working party composed of 16 Governments, eight Employers and eight Workers to make proposals to the 323rd Session of the Governing Body in March 2015 on the modalities, scope and timetable of the implementation of the SRM;
 - (b) a request to the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.

(Document GB.322/INS/5(Add.2), paragraph 1, as amended according to the discussion.)

Part I of the document provides a factual background on Convention No. 87 and the right to strike starting from the circumstances of its adoption and subsequent experience in its supervision. It then presents relevant elements of the rules of international law on treaty interpretation, in particular the 1969 Vienna Convention on the Law of Treaties.

Part II provides a broad overview of modalities concerning strike action at the national level in both law and practice.

The tripartite constituents will be keenly aware of the importance for the ILO of the issues under consideration, and of the tripartite discussions that have taken place in the International Labour Conference and in the Governing Body since June 2012.¹

The document does not contain any concrete proposals on the possible options for action. It is however hoped that the factual information would assist constituents in identifying solutions to the issues that have arisen: they are urgently needed.

¹ *Provisional Record No. 19, Part 1(Rev.)*, International Labour Conference, 101st Session, Geneva, 2012; GB.315/INS/4; GB.315/PV, para. 75; GB.316/INS/5/4; GB.316/PV(&Corr.), para. 115; GB.317/INS/4/1; GB/317/PV, paras 52–76; Discussion at the 319th Session, item LILS/4 (no document submitted) in GB.319/PV, paras 548–567; GB.320/LILS/4; GB320/PV, paras 572–599; *Provisional Record No. 13, Part 1*, International Labour Conference, 103rd Session, Geneva, 2014; GB.321/PV, paras 59–68; GB.322/INS/5; GB.322/INS/5(Add.); GB.322/INS/5(Add.1); GB.322/INS/5(Add.2); GB.322/INS/5(Add.3); GB.322/PV/Draft, paras 47–210.

Part I. ILO Convention No. 87 and the right to strike

I. Introduction

1. The term “strike” is generally understood to cover a refusal to work decided by an organized body of employees as a form of protest, typically in an attempt to gain a concession from their employer. Although this form of action is recognized in the Constitution and/or regulated in the labour legislation of many countries, international labour Conventions, including Convention No. 87, do not contain any express provisions on the right to strike. However, two of the ILO’s supervisory organs, the Governing Body Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have consistently considered that Convention No. 87 covered the right to strike and have developed over the years a body of detailed principles in relation to the scope and limits of that right. Recently, some questions have been raised concerning the legal basis for inferring a right to strike from Convention No. 87 as well as the competence of the Committee of Experts to interpret the provisions of ILO Conventions in general.¹
2. This paper contextualizes in a strictly factual and descriptive manner the ongoing debate around the status and legal value of the ILO principles on the right to strike in the light of the provisions of Convention No. 87. The paper first provides a brief account on the preparatory work that led to the adoption of Convention No. 87 as well as on a few related developments after its adoption. It then reviews the main findings of the ILO supervisory organs in the last 50 years with respect to the scope of the right to strike and the conditions for its legitimate exercise. The paper also offers brief explanations on the rules of international law governing treaty interpretation.
3. The review of the practice of the ILO supervisory organs in the field of the right to strike proceeds in chronological order. Given the extent of such practice, no attempt is made for an exhaustive coverage but instead a summary overview is proposed through key citations and sample references.

II. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

II.1. Negotiating history prior to the adoption of the Convention

4. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), is one of the eight fundamental Conventions adopted by the ILO and ranks among the most ratified ILO Conventions.²

¹ For ease of reference, all relevant background documents, or extracts thereof, have been numbered consecutively and may be accessed at: <https://www.ilo.org/public/english/bureau/leg/c87/interpret.htm>. Accordingly, all document references contained in this paper follow the numbering of the web-posted documents.

² As of 3 February 2015, Convention No. 87 has been ratified by 153 member States. The ratification status is found at: www.ilo.org/normlex.

5. The question of the adoption of international labour standards on freedom of association and industrial relations came before the ILO at the request of the Economic and Social Council of the United Nations, which in March 1947 adopted a resolution requesting that the item “Guarantees for the exercise and development of trade unions rights” be placed on the agenda of the Organization and considered at the next session of the International Labour Conference. The Council had been called upon by the World Federation of Trade Unions and the American Federation of Labor to consider the problem of trade unions rights with reference to a series of questions, including one as “to what extent is the right of workers and their organizations to resort to strikes recognized and protected”.
6. At the request of the Governing Body, the Office prepared a report on “Freedom of Association and Industrial Relations” which was submitted to the 30th Session of the Conference in June 1947 (doc. 3). Together with a survey of legislation and practice, the report contained a proposed resolution concerning freedom of association and industrial relations as well as a list of points which would form the basis for discussion at the Conference (ibid., pp. 127–135). Apart from freedom of association, the report also addressed other important aspects of the so-called “problem of association”, namely the protection of the right to organize and to bargain collectively; collective agreements; voluntary conciliation and arbitration; and cooperation between the public authorities and employers’ and workers’ organizations. While the right to strike was discussed in some length under the topic of voluntary conciliation and arbitration, no reference to it was made in the proposed resolution and the related list of points.
7. In introducing the first paragraph of the proposed resolution on the principles of freedom of association, the Office report noted that while there should be no distinction between workers, public or private, as regards freedom of association, “the recognition of the right of association of public servants in no way prejudices the question of the right of such officials to strike, which is something quite apart from the question under consideration” (ibid., p. 109). This explanation echoes the conclusions that the report draws from the survey of domestic laws and practices on this issue. The report noted that while several legal systems excluded civil servants from the application of the right of association, “the legislature actually intended to debar them from the right to strike and not from the right of association” (ibid., p. 46).
8. In 1947, during the discussions of the Conference Committee on Freedom of Association, an amendment was moved by the Government representative of India with a view to excluding the police and armed forces from “the field of application of freedom of association, because they were not authorised to take part in collective negotiations and had not the right to strike”. The Worker member of France opposed the amendment on the ground that “public employees should enjoy full freedom of association” and “a restrictive Convention could not serve as a model for less advanced countries” and the amendment was eventually rejected (doc. 4, p. 570).
9. In the event, the Conference adopted a resolution concerning freedom of association and the right to organize and to bargain collectively without making any specific reference to the right to strike. The Conference also decided to place on the agenda of its 31st Session the questions of freedom of association and the protection of the right to organize with a view to their consideration under the single-discussion procedure and to this end, a questionnaire was drafted for the consultation of governments (docs 6 and 9).
10. The questionnaire asked, inter alia, whether “it would be desirable to provide that the recognition of the right of association of public officials by international regulation should in no way prejudice the question of the right of such officials to strike”. Most governments replied in the affirmative stressing that the recognition of the right of association of public officials is without prejudice to the question of the right to strike (docs 10 and 11). In analysing the replies of governments, the Office noted that “several Governments have

emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference” (doc. 11, p. 87).³

11. On the basis of the replies from the governments, a final report containing the text of a proposed Convention was placed before the 1948 session of the Conference for final discussion and decision. The discussions at the Conference Committee on Freedom of Association and Industrial Relations did not address the right to strike, and the text of the proposed Convention was adopted with no substantive changes. Only the Government of Portugal recalled that in their replies to the questionnaire, several governments stated more or less explicitly that the drafting of the Convention should not imply the idea that public servants are granted the right to strike, and associated itself to these reservations (doc. 13, p. 232).

II.2. Related developments after the adoption of the Convention

12. In 1955, a member of the Governing Body Committee on Standing Orders and the Application of Conventions and Recommendations suggested that the report form used for the purposes of regular reporting on the application of Convention No. 87 could be supplemented by including two additional questions relating to provisions in national legislation restricting the right to strike and to provisions applicable with regard to freedom of association for public employees. The Committee noted, in this respect, that “the Freedom of Association and Protection of the Right to Organise Convention does not cover the right to strike” and considered that “it would not be advisable to include in the form of annual report a question which would go beyond the obligations accepted by ratifying States” (doc. 14, p. 188).
13. Reference to the right to strike in relation to Convention No. 87 was also made in two resolutions adopted by the International Labour Conference. The *Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation*, adopted in 1957, makes express reference to Convention No. 87 in its preamble and calls upon member States to ensure “the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers” (doc. 15). The *Resolution concerning Trade Union Rights and Their Relation to Civil Liberties*, adopted in 1970, recalls that Convention No. 87 lays down “basic standards of freedom of association for trade union purposes”, “reaffirms the ILO’s specific competence in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties” and invites the Governing Body to instruct the Director-General “to prepare reports on law and practice in matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO”, giving particular attention to a series of questions, including the right to strike (doc. 16).⁴ In contrast, the *Resolution concerning the 40th anniversary of the adoption of*

³ In 1948, the Office submitted a report to the Conference on the other aspects of industrial relations. In relation to conciliation and arbitration, the report included a survey on domestic law and practice concerning “temporary legal restrictions of strikes and lockouts” (doc. 12, pp. 111–118).

⁴ In yet another *Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea-Bissau*, adopted in 1972, the Conference referred to “Portuguese trade union legislation which is in open and flagrant contradiction with the letter and the spirit of ILO standards”, in particular Convention No. 87, and considered that the workers of Angola, Mozambique and Guinea-Bissau were “denied basic trade union rights including, above all, the right to set up free and democratic

the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), adopted in 1987 with a view to recall the fundamental principles enshrined in the Convention and launch an appeal for its ratification, contains no reference to the right to strike (docs 17 and 18).

14. Mention should also be made of at least one initiative suggesting that standard-setting action should be undertaken with regard to the right to strike. In October 1991, the Government of Colombia requested the Director-General “to include the question of a Convention on the right to strike on the agenda” of the Conference. The Governing Body discussed this proposal in two consecutive sessions and whereas several voices were raised in favour of an international instrument, or at least a general discussion on the subject, it finally decided not to place an item concerning the right to strike on the agenda of the Conference (docs 19 and 20).

III. Supervision of obligations arising under or relating to Conventions

III.1. Committee of Experts on the Application of Conventions and Recommendations

15. The Committee of Experts evaluates the conformity of national legislation on the basis of regular reports received from member States and prepares country-specific comments. The Committee is also responsible for carrying out on an annual basis a General Survey of national laws and practices relating to a specific Convention or group of Conventions, chosen by the Governing Body. In fulfilling its functions over the years, the Committee has commented extensively on the duties and obligations arising out of Convention No. 87, including with regard to the protection of the right to strike.⁵
16. To date, the Committee of Experts has prepared five General Surveys on Convention No. 87. In the 1959 General Survey, the Committee of Experts reviewed state practice as regards legal restrictions on the right to strike and indicated that:

the problem of the prohibition of strikes by workers other than public officials acting in the name of the public powers raises questions which are often complex and delicate. It is certain that such a prohibition may sometimes constitute a considerable restriction of the potential activities of trade unions. ... there is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), according to which “the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for” in the Convention, and especially the freedom of action of trade union organisations in defence of their occupational interests; it is therefore necessary that, in every case in which certain

trade unions and to join them, the right of assembly, the right to elect their officers freely and the right to strike”.

⁵ The Committee of Experts was established in 1926 as a distinguished body of 20 independent authorities appointed by the Governing Body to serve in their personal capacities. The Committee draws up two types of comments: observations in cases of serious failure to comply with obligations under a Convention, and direct requests which deal with technical issues or matters of secondary importance. General Surveys are established mainly on the basis of reports submitted by all member States under article 19 of the Constitution (whether or not they have ratified the concerned Conventions) and information communicated by employers’ and workers’ organizations. These surveys allow the Committee of Experts to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding their application, and to identify means of overcoming these obstacles.

workers are prohibited from striking, adequate guarantees should be accorded to such workers in order fully to safeguard their interests (doc. 21, para. 68).

17. In the General Survey of 1973, the Committee of Experts elaborated further on the various types of restrictions applicable to the right to strike in different countries and concluded that “a general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities (Article 3)” (doc. 22, para. 107). Turning to special categories of workers, especially public servants and workers in essential services, the Committee stated that:

with regard to the former, it may be considered that the recognition of the principle of freedom of association does not necessarily imply the right to strike. ... Strikes in essential services are also forbidden in a number of countries The Committee on Freedom of Association has called attention to the abuses that might arise out of an excessively wide definition in the law of the term “essential services” and has suggested that the prohibition of strikes should be confined to services which are essential in the strict sense of the term. (ibid., para. 109).

The Committee of Experts concluded that “in all the cases where strikes may be prohibited for certain workers, particularly civil servants and persons engaged in essential services, it is important that sufficient guarantees should be accorded to these workers in order to safeguard their interests” (ibid., para. 111).

18. In the 1983 General Survey, the Committee of Experts expressed the view that “the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests” (doc. 23, para. 200). After making reference to Article 8 of the International Covenant on Economic, Social and Cultural Rights⁶ and the European Social Charter as recognizing explicitly the right to strike at the international and regional levels respectively, the Committee of Experts

⁶ Article 8 of the Covenant reads as follows:

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

reiterated its position that “a general ban on strikes seriously limits the means at the disposal of trade unions to further and defend the interests of their members (Article 10 of the Convention) and their right to organize their activities (Article 3) and is, therefore, not compatible with the principles of freedom of association” (ibid., para. 205). Reviewing national laws imposing specific restrictions on strike action, the Committee reaffirmed that “the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi-public or private, would become meaningless if the legislation defined the public service or essential services too broadly” (ibid., para. 214) and also suggested that “restrictions relating to the objectives of a strike and to the methods used should be sufficiently reasonable as not to result in practice in a total prohibition or an excessive limitation of the exercise of the right to strike” (ibid., para. 226).

- 19.** The General Survey of 1994 contained an entire chapter on the right to strike. For the first time, the Committee of Experts’ analysis is preceded by some general observations on the process which has led the Committee to establish certain principles on this subject. The Committee observed, in this connection, that “although the right to strike is not explicitly stated in the ILO Constitution or in the Declaration of Philadelphia, nor specifically recognized in Conventions Nos 87 and 98, it seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87” and added that “during the discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted” (doc. 24, para. 142). The Committee went on to say that “in the absence of an express provision on the right to strike in the basic texts, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject” (ibid., para. 145), and recalled its views expressed in the three previous General Surveys on the compatibility of a general prohibition of strikes with Convention No. 87 by stating that its “reasoning is based on the recognized right of workers’ and employers’ organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87).” (ibid., para. 147). Referring specifically to Article 3, the Committee expressed the opinion that “the ordinary meaning of the word ‘programmes’ includes strike action” and also that strike action is “an activity of workers’ organizations within the meaning of Article 3” (ibid., paras 148–149). In concluding its general observations, the Committee confirmed “its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87”, but added that “the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by provisions laying down conditions for, or restrictions on, the exercise of this fundamental right” (ibid., para. 151).

- 20.** In the 2012 General Survey, the Committee of Experts explained at the outset that:

it was mainly on the basis of Article 3 of the Convention, which sets out the right of workers’ organizations to organize their activities and to formulate their programmes, and Article 10, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association) (doc. 25, para. 117).

The Committee observed that the “absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose” and while recognizing the preparatory work as an important supplementary interpretative source, drew attention to “other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years” (ibid., para. 118). The Committee reaffirmed that “the right to strike derives from the Convention”, and took the view that

“the principles developed over time on a tripartite basis should give rise to little controversy” as they only sought to ensure that this right was duly recognized and protected in practice (*ibid.*, para. 119).

21. A large number of observations that the Committee of Experts addresses every year on the application of standards related to freedom of association contain comments on a broad spectrum of issues concerning the scope and purpose as well as the conditions for the legitimate exercise of the right to strike. These comments by and large draw upon the conclusions of the Committee on Freedom of Association on a number of issues outlined in paragraphs 45–48 below.
22. Generally speaking, the Committee of Experts’ recommendations in matters related to the exercise of the right to strike meet with the acceptance of the governments concerned, as shown by the steps undertaken by many, which are often acknowledged with satisfaction by the Committee. However, at times, governments express their disagreement with specific findings of the Committee of Experts concerning compliance with Convention No. 87 with respect to the right to strike.
23. Finally, reference should be made to the clarifications provided by the Committee of Experts in its 2011 report (doc. 26, para. 12, p. 9) concerning the methods followed when expressing its views on the meaning of the provisions of Conventions. The Committee indicated, in this respect, that:

it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee has always paid due regard to the textual meaning of the words in light of the Convention’s purpose and object as provided for by Article 31 of the Vienna Convention, giving equal consideration to the two authentic languages of ILO Conventions, namely the English and French versions (Article 33). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization’s practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting.⁷

III.2. Conference Committee on the Application of Standards

24. As an essential component of the ILO supervisory system, the Conference Committee on the Application of Standards complements the work of the Committee of Experts by adding its tripartite and political authority to the independent appraisal undertaken by the Committee of Experts.⁸ Following the technical examination of government reports carried out by the experts, the parliamentary function of the Conference Committee offers the opportunity for a broader exchange on issues related to compliance with international

⁷ For more on the interpretative functions of the ILO supervisory bodies in general, see *Non-paper on interpretation of international labour Conventions*, Feb. 2010, pp. 11–24 (doc. 54). For an overview of the employers’ and workers’ views, see Alfred Wisskirchen: “The standard-setting and monitoring activity of the ILO: Legal questions and practical experience”, in *International Labour Review*, Vol. 144, 2005, pp. 253–289, and International Trade Union Confederation (ITUC): *The right to strike and the ILO: The legal foundations*, Mar. 2014, both available at: <https://www.ilo.org/public/english/bureau/leg/c87interpret.htm>.

⁸ The Conference Committee, set up under article 7 of the Standing Orders of the International Labour Conference, is a standing tripartite body which examines every year the report published by the Committee of Experts. The Conference Committee examines every year 25 individual cases among the most serious cases of failure to implement ratified Conventions and adopts conclusions.

labour standards. The Conference Committee also discusses on an annual basis the general surveys prepared by the Committee of Experts, thus engaging in a multifaceted debate on topical matters of law and policy. The different General Surveys prepared by the experts on Convention No. 87, in particular the views expressed on the right to strike, have progressively given rise to strong arguments that eventually led to the current controversy.

25. In the context of the examination of the 1973 General Survey on Convention No. 87, the Worker members indicated that “while it was often stated that the right to strike was not protected by international labour Conventions, Convention No. 87 did provide for the right of trade unions to organize their activities and formulate their programmes, and thus implicitly guaranteed the right to strike”. For their part, the Government members of Japan and Switzerland, referring specifically to the right to organize of public servants, took the view that the Convention did not cover the right to strike in the public sector (doc. 27, p. 544).
26. At the time of the Conference Committee discussion of the 1983 General Survey on Convention No. 87, the Worker members “welcomed the fact that the Committee of Experts had considered that the right to strike constituted one of the essential means at the disposal of the workers for the defence and promotion of their interests”. The Government member of Tunisia expressed disagreement with the interpretation which the Committee of Experts had given to the concept of essential services and called for a better definition of the difficult concept of the right to strike and the adoption of a specific international Convention on this subject (doc. 28, pp. 31/13–31/14).
27. In 1989, several Employer members, while acknowledging that the Committee of Experts’ report was the very basis of the Conference Committee’s work, indicated that they could not share all the opinions and evaluations of the Committee of Experts, especially as “the jurisprudence of the Committee of Experts was sometimes unstable, evolving and variable”. They noted that “the report of the Committee of Experts unfortunately contained a number of over-interpretations especially regarding basic human rights Conventions and in particular Convention No. 87” and observed in this respect that a Convention had to be interpreted in line with the principles laid down in the Vienna Convention on the Law of Treaties while the role of the International Court of Justice as the ultimate arbiter should always be borne in mind. The Worker members objected to what they considered a dangerous stance, particularly with respect to Convention No. 87. The Worker members also observed that it was only normal that the doctrine of the Committee of Experts had evolved but this did not imply incoherencies (doc. 29, p. 26/6, paras 21–22).
28. At the Conference Committee discussion of 1990, the Employer members recalled that they had a “different interpretation” from the Committee of Experts on the question of the right to strike. They drew attention to the fact that “the Experts had progressively deduced from Convention No. 87 a right to strike which was hardly limited”, which they could not accept “not only because they considered the Experts’ opinion questionable in law but also because the issue touched directly on employers’ interests”. The Employers members referred to the general rules of interpretation under Article 31 of the Vienna Convention on the Law of Treaties (ordinary meaning of the terms used, object and intent of a provision, and subsequent practice by the parties) and noticed that despite the considerably diversity in state practice regarding the regulation of the right to strike, the Committee of Experts “had given a very narrow interpretation of the acceptable legal limits on this right, which had resulted in an enormous gap between the practical application of Convention No. 87 by member States and its interpretation by the Committee of Experts” (doc. 30, p. 27/6, paras 23–24).
29. The same point was raised again in 1992, when the Employer members pointed to the “expansive application of the right to strike [by the Committee of Experts] even though the legislative history of Convention No. 87 did not relate to it”. They stated that “from 1960

through the 1980s the Committee of Experts had concluded that those Conventions [Conventions Nos 87 and 98] contain an ever-widening right to strike, including sympathy, political and solidarity strikes, [while] they applied a narrower and narrower definition of essential services”, which made the Employer members wonder “at what moment evolving Committee of Experts’ interpretations became ‘valid and generally recognised’” (doc. 31, p. 27/5, para. 22). In contrast, the Worker members expressed “their support for the principles applied by the Experts as a whole, including the right to strike” and observed that “a State which does not agree with the Committee of Experts’ views may take the matter to the International Court of Justice but it should not expect the Conference Committee to contradict the Committee of Experts on points of law” (ibid., p. 27/5, paras 23–24).

- 30.** At the Conference Committee discussion of 1993, the Employer members reiterated that Convention No. 87 did not regulate the right to strike since “the text of the Convention did not mention it, and the preparatory work showed the Conference had reached no consensus on the matter” (doc. 32, p. 25/9, para. 58). For the Employer Vice-Chairman of the Conference Committee:

the only measuring rod for the interpretation of Conventions is international customary law as well as international law in the written form set forth in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. ... none of the interpretation methods that are relevant under international law allows for the “creation” of an extremely broad right to strike to be derived from Convention No. 87, such has been gradually developed by the Committee of Experts. Neither the text nor any discernible agreement between the signatory States or their subsequent conduct allow for such an interpretation. On the contrary, in the drafting of Conventions Nos 87 and 98, it was clear that issues of the right to strike were not to be dealt with. ... Implicitly, the right to strike developed by the Committee of Experts is virtually unlimited and the regulatory scope of the member States therefore tends to be non-existent. The formulae developed by the Committee of Experts, which allow almost any type of strike and proscribe almost any restriction as being contrary to international law, cannot be justified on the basis of any interpretation instrument derived from Convention No. 87 (ibid., p. 28/11).

- 31.** For their part, the Worker members “strongly supported the views of the Committee of Experts with regard to the right to strike, which were in accord with the case law of the Committee on Freedom of Association”. Considering the Employers’ criticism as politically rather than legally motivated, they stated that “the right to strike was inseparable from the notion of freedom of association” and recalled that “the Committee of Experts’ interpretation of the right to strike in Convention No. 87 had been accepted over many years” (ibid., p. 25/10, para. 61).
- 32.** This last point was raised again at the plenary discussion of the Conference Committee report, where the Worker members argued that according to Article 31 of the Vienna Convention, “it matters not whether all the contracting parties have explicitly agreed to the interpretation of the Convention concerned. On the contrary, silence can be taken as consent. ... it is necessary to take into account any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. For many years, there has been absolutely no contradiction by the Employers on the Conference Committee as regards the existing case law” (ibid., p. 28/16). Reacting to this argument, the Employer members referred to the momentous change in world relations, particularly the demise of the struggle between east and west, and indicated that “disagreements that the Employers have always had with just a few interpretations by the Experts, particularly concerning the right to strike, were muted in a show of solidarity to preserve the supervisory machinery. ... For the most part the Conference Committee follows the findings and interpretations of the Experts, but this does not mean that the Conference Committee is a rubber stamp for the Experts” (ibid., p. 28/17).

- 33.** In 1994, during the discussion of the Committee of Experts' General Survey on Conventions Nos 87 and 98, several Government members expressed general agreement with the Committee of Experts' position on strikes as an indispensable corollary of freedom of association, and emphasized moreover that the Committee had explained that this was not an absolute right. The Government member of Venezuela, in particular, took the view that the Experts had adopted a more flexible and dynamic interpretation to a literal and dogmatic one, taking into account not only the text, but also its precedents, in the context of its adoption and the changes which had occurred. The Government members of Belarus and of Portugal, however, expressed some doubts about certain principles on the exercise of the right to strike put forward by the Committee of Experts as rules of international law. The Employer members stressed that they absolutely could not accept that the Committee of Experts deduced from the text of the Convention a right so universal, explicit and detailed. Referring to the preparatory work that led to the adoption of Convention No. 87, and rejecting the experts' axiomatic and unconditional acceptance of the right to strike despite the absence of explicit and concrete provisions on the subject, the Employer members considered that "the interpretation of the Committee of Experts was creating and developing law". They added that "they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike". The Employer members recognized that an extensive right to strike did indeed exist in some countries, but this was a matter of national law and not a right established by ILO instruments or derived from them. They also drew attention to the fact that the experts gradually expanded their views on the matter from one paragraph in the General Survey of 1959 to an entire chapter and no less than 44 paragraphs in 1994. In these circumstances, they suggested that it would seem reasonable to submit the question of the right to strike to the legislator of the ILO, that is, the International Labour Conference, with a view to adopting after sufficient preparation specific regulations. The Worker members found that a new discussion at the Conference of an essential aspect of a fundamental Convention dealing with human rights as Convention No. 87 was not a good idea as it might paralyse tripartism and the ILO (doc. 33, paras 85, 115–148).
- 34.** At the Conference Committee discussion of 1997, in response to an observation made by the Worker members that the Employer members have started openly criticizing the tripartite Committee on Freedom of Association for its approach to the right to strike, the Employer members acknowledged that "the principle of industrial action, including the right to strike and lockouts, formed part of the principles of freedom of association as set out in Convention No. 87" but clarified that "their criticisms were aimed at all the detailed jurisprudence developed over the years on the basis of these principles" (doc. 34, p. 19/35, paras 99–100). In 2001, in the context of the Conference Committee examination of an individual case, the Government member of Germany stated that "contrary to the position taken by the Employer members, the right to strike was an essential component of freedom of association, despite the fact that it was not expressly covered under Convention No. 87. Accordingly, it was the right of the Committee of Experts and the Conference Committee to address this issue, and the Committee should urge the Government to conduct a comprehensive review of the national legislation that unacceptably limited trade union activities" (doc. 35, p. 2/23).
- 35.** In 2012, the General Survey on the fundamental Conventions concerning rights at work in light of the 2008 Social Justice Declaration came up for discussion before the Conference Committee on the Application of Standards. The Employer members, while acknowledging that a right to strike existed at the national level in many jurisdictions, "did not at all accept that the comments on the right to strike contained in the General Survey were the politically accepted views of the ILO's tripartite constituents" and "fundamentally objected to the Experts' opinions concerning the right to strike being received or promoted as soft law jurisprudence". They considered that the situation was particularly important since General Surveys were published and distributed worldwide without any prior

approval by the Conference Committee and also because the fundamental Conventions were embedded in many international instruments such as the UN Global Compact and the *OECD Guidelines for Multinational Enterprises* (doc. 36, para. 82). The Employer members recalled that the mandate of the Committee of Experts was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87, and also objected to the use of the Committee on Freedom of Association cases by the Committee of Experts when interpreting the right to strike as this added to the confusion and lack of certainty of the supervisory system (*ibid.*, para. 147).

- 36.** For their part, the Worker members reaffirmed their position that “the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87”. They also recalled that “the Committee of Experts was a technical body which followed the principles of independence, objectivity and impartiality [and] it would be wrong to think that it should modify its case law on the basis of a divergence of opinions among the constituents” (*ibid.*, para. 85). The Worker members indicated that “without that right, workers would not be in a position to exert any influence in collective bargaining” and stressed that “questioning the right to strike as an integral part of freedom of association would mean that other rights and freedoms were meaningless in practice” (*ibid.*, para. 86).
- 37.** With a view to clarifying the mandate of the Committee of Experts with regard to the General Survey, the Employers proposed that the following clarification be inserted in the General Survey before publication: “The General Survey is part of the regular supervisory process and is the result of the Committee of Experts’ analysis. It is not an agreed or determinative text of the ILO tripartite constituents” (*ibid.*, para. 150). The Worker members indicated that they “could not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the Committee of Experts” (*ibid.*, para. 186), and eventually negotiations on this proposal broke down. The two groups being unable to draw up a list of individual cases, the Committee on the Application of Standards failed, for the first time since its creation in 1926, to complete its work with respect to article 22 of the Constitution.
- 38.** During the general discussion of the Conference Committee, the Government member of the United States “expressed appreciation of the Committee of Experts for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike”, while the Government member of Norway stated that Norway “fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87” (*ibid.*, para. 90).
- 39.** In 2013, to prevent any recurrence of the failure of 2012, the Employers’ and Workers’ groups reached a compromise to address their disagreement on the question as to whether the right to strike was included in Convention No. 87 with the inclusion in the conclusions of cases that involved the issue of the right to strike of the following sentence: “The Committee did not address the right to strike in this case, as the employers do not agree that there is a right to strike recognized in Convention No. 87” (doc. 37, para. 232). In their plenary statements, the two groups explained how they interpreted this compromise solution. For the Employers’ group, although this phrase is not perfect, it makes two things transparent: first, there is no agreement in the Committee that Convention No. 87 recognizes a right to strike, and second, in the absence of consensus on this issue, the Committee is not in a position to ask governments to change their internal laws and practices with regard to strike issues (*ibid.*, p. 19/3). For the Workers’ group, the sole objective of this concession was to avoid the failures of 2012 and, in this sense, this approach would not be repeated. They reiterated that:

seeking to have the right to strike legislated for at the national level alone places the government of the member State concerned in an unequal balance of power in which the main

weight falls to its advantage. ... By taking this line, the Employers are simply repudiating texts such as Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights, Article 6.4 of the European Social Charter of 1961 and also the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (ibid., p. 19/6).

40. At the 103rd Session of the International Labour Conference, in June 2014, the Employer members indicated that the divergence in views between the Conference Committee and the Committee of Experts on the question of the interpretation of the right to strike needed to be addressed and proposed “a fresh tripartite examination of this subject in light of the overall current industrial relations in member States”. In the meantime, the Employer members were favourable to the inclusion of the same sentence that had been agreed upon by the social partners the previous year (doc. 38, paras 50–51). The Worker members refused to submit conclusions that became non-consensual as soon as it concerned the interpretation of Convention No. 87, and considered that “accepting once again the reservations put forward by the Employer members on the cases concerning Convention No. 87 would give the impression that a tacit jurisprudence in relation to freedom of association cases was creeping into the Committee” (ibid., para. 209).

III.3. Complaints as to the infringement of freedom of association

III.3.1. Governing Body Committee on Freedom of Association

41. The Governing Body Committee on Freedom of Association has developed over the years a body of detailed principles relating to trade union rights, including the right to strike – a body of principles that have often been reflected in positions taken by the Committee of Experts with respect to the right to strike (doc. 39, pp. 109–136).⁹ As early as the first year of its operation, the Governing Body Committee on Freedom of Association¹⁰ propounded the principle that “the right to strike and that of organising trade union meetings are essential elements of trade union rights” (Case No. 28, United Kingdom–Jamaica, 1952,

⁹ For an overview of the principles regarding the right to strike laid down by the Committee on Freedom of Association, see B. Gernigon, A. Odero and H. Guido: “ILO principles concerning the right to strike”, in *International Labour Review*, Vol. 137, 1998, pp. 441–481; J. Hodges-Aeberhard and A. Odero: “Principles of the Committee on Freedom of Association concerning strikes” in *International Labour Review*, Vol. 126, 1987, pp. 543–563. See also A. Odero and M.M. Travieso: “Le Comité de la liberté syndicale”, in J.-C. Javillier and B. Gernigon (eds): *Les normes internationales du travail: un patrimoine pour l’avenir – Mélanges en l’honneur de Nicolas Valticos*, 2004, pp. 159–216. These articles may be accessed at: <https://www.ilo.org/public/english/bureau/leg/c87interpret.htm>.

¹⁰ The Committee on Freedom of Association was set up in 1951 for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions Nos 87 and 98. Complaints may be brought against a member State by employers’ and workers’ organizations. The Committee on Freedom of Association is composed of an independent chairperson and six representatives each from the Government group, the Employers’ group and the Workers’ group. When the Committee on Freedom of Association decides to receive a case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. The Committee on Freedom of Association often transmits legislative aspects to the Committee of Experts when the relevant Convention has been ratified. In over 60 years of operation, the Committee on Freedom of Association has examined approximately 3,000 cases.

para. 68).¹¹ In 1956, the Committee on Freedom of Association reaffirmed that the right to strike “is generally regarded as an integral part of the general right of workers and their organisations to defend their economic interests” (Case No. 111, USSR, 1956, para. 227), while in the years that followed, the Committee further stressed that freedom of association and the right to strike were linked by arguing that “allegations relating to prohibitions of the right to strike are not outside its competence when the question of freedom of association is involved” (Case No. 163, Myanmar, 1958, para. 51; Case No. 169, Turkey, 1958, para. 297).

42. These early findings of the Committee on Freedom of Association met with the opposition of the representative speaking on behalf of the Employers who felt bound to “oppose any attempt by the Committee to depart from the field of freedom of association proper and encroach on that of the right to strike”. He pointed out that “there were no provisions concerning the right to strike either in the Constitution or in any of the Conventions adopted by the International Labour Conference” and considered it important to “define the position of the Employers in respect of freedom of association because the ILO was opening up a new and particularly delicate branch of its activities in this field and was making an experiment which [had to] be conducted with great caution” (doc. 40, p. 38).
43. Ever since, the Committee has consistently taken the view that the right to strike is “an intrinsic corollary to the right to organize protected by Convention No. 87”, that it constitutes “a fundamental right of workers and of their organizations”, and also that it is “an essential” or “legitimate” means of defending their economic and social interests.¹²
44. Beyond the basic finding that the right to strike derives from the broad provisions on freedom of association set out in Convention No. 87, the Committee on Freedom of Association has developed numerous principles on the scope of the right to strike, the conditions for its exercise and permissible restrictions.
45. Concerning preconditions for the exercise of the right to strike, for instance, the Committee has indicated that compulsory arbitration may be an acceptable alternative to industrial action only with good reason, such as in the public service, essential services or in the event of an acute national crisis (see, for instance, Case No. 2329, Turkey, 2005, para. 1275).
46. As regards the permissible objectives of strike action, the Committee on Freedom of Association has recognized that strikes that are purely political in character do not fall within the scope of freedom of association (see, for instance, Case No. 1067, Argentina, 1982, para. 208), that trade unions should be able to have recourse to protest strikes (see, for instance: Case No. 2094, Slovakia, 2002, para. 135; Case No. 2251, Russian Federation, 2004, para. 985), that a general prohibition of sympathy strikes could lead to abuse (see, for instance, Case No. 2326, Australia, 2005, para. 445), and that strikes with mixed economic and political objectives may under certain circumstances be regarded as legitimate (see, for instance: Case No. 1793, Nigeria, 1994, para. 603; Case No. 1884, Swaziland, 1997, para. 684).

¹¹ In some early cases, the Committee on Freedom of Association concluded, however, that in so far as the right to strike was not specifically dealt with in Convention No. 87, no opinion could be given on the question as to how far the right to strike in general should be regarded as constituting a trade union right; see Case No. 60, Japan, 1954, para. 53; Case No. 102, South Africa, 1955, para. 154.

¹² For recent reaffirmation of those findings in the Committee’s extensive case law, see Case No. 2258, Cuba, 2003, para. 522; Case No. 2305, Canada, 2004, para. 505; Case No. 2340, Nepal, 2005, para. 645; Case No. 2365, Zimbabwe, 2005, para. 1665.

47. With respect to implications of strike action on public welfare, the Committee on Freedom of Association has observed that the right to strike may only be restricted or prohibited in the following narrowly defined and carefully circumscribed situations: in the public service only for public servants exercising authority in the name of the State; in essential services in the strict sense, that is, in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; in the event of an acute national emergency for a limited period of time (see, for instance: Case No. 1581, Thailand, 2002, para. 111; Case No. 2257, Canada, 2004, para. 466; Case No. 2244, Russian Federation, 2005, para. 1268; Case No. 2340, Nepal, 2005, para. 645; Case No. 2383, United Kingdom, 2005, para. 759).
48. In relation to the penalties that may be imposed to workers for participating in a legitimate strike, the Committee on Freedom of Association has found that although pay deductions proportionate to the length of the strike may be acceptable, workers should not suffer dismissal on grounds of their participation or organization of a legitimate strike (see, for instance: Case No. 2141, Chile, 2002, para. 324; Case No. 2281, Mauritius, 2004, para. 633), nor should they be subject to any other discriminatory practices (see, for instance, Case No. 2096, Pakistan, 2001, para. 446). The Committee has also expressed the view that all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence (see, for instance, Case No. 2363, Colombia, 2005, para. 734), while arbitrary arrests, detention, the use of torture and the imposition of compulsory labour are all unacceptable violations of civil liberties (see, for instance: Case No. 2048, Morocco, 2000, para. 392; Case No. 1831, Bolivia, 1995, para. 396).

III.3.2. Fact-Finding and Conciliation Commission on Freedom of Association

49. In 1964, a Fact-Finding and Conciliation Commission on Freedom of Association¹³ was appointed to examine the case concerning persons employed in the public sector in Japan. The Commission “noting that there is no decision of the International Labour Conference defining the extent of the right to strike in public services, endorsed the principles established by the Governing Body Committee on Freedom of Association”, in particular that, with respect to limitations of the right to strike, the relevant legislation should distinguish between publicly owned undertakings that are genuinely essential because their interruption may cause serious public hardship and those which are not, and also that where strikes in essential services are restricted or prohibited, adequate guarantees should be provided to safeguard to the full the interests of the workers thus deprived of an essential means of defending occupational interests (doc. 41, p. 516).
50. Another Fact-Finding and Conciliation Commission on Freedom of Association was appointed in 1991 to examine a complaint of infringements of trade union rights in South Africa. In its report, the Commission described the situation concerning the coverage of the right to strike by international labour standards as follows: “While in international law the right to strike is explicitly recognized in certain texts adopted at the international and regional levels, the ILO instruments do not make such a specific reference. Article 3 of Convention No. 87, providing as it does for the right of workers’ organizations “to organise their administration and activities and to formulate their programmes”, has been the basis on which the supervisory bodies have developed a vast jurisprudence relating to

¹³ The Fact-Finding and Conciliation Commission on Freedom of Association was established in 1950 at the request of the Economic and Social Council of the United Nations. It is a neutral body composed of nine independent persons. Unlike the Committee on Freedom of Association, this mechanism may only be activated with the consent of the government concerned, and therefore has been rarely used in practice. To date, only six complaints have been examined by Fact-Finding and Conciliation Commissions.

industrial action. In particular, they have stated as the basic principle that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. The exercise of this right without hindrance by legislative or other measures has been consistently protected by the ILO principles. At the same time certain restrictions have been seen as acceptable in the circumstances of modern industrial relations” (doc. 42, para. 303). As a result, in formulating its conclusions, the Commission drew on the principles refined by both the Committee of Experts and the Committee on Freedom of Association on a number of issues, including the recourse to protest strikes (ibid., para. 647), the limitations of strikes in essential services in the strict sense (ibid., para. 654), the imposition of criminal sanctions and the dismissal of trade unionists for exercising the right to strike (ibid., paras 667–668), as well as the limits of strike action in the public sector (ibid., para. 730).

III.4. Article 24 representations and article 26 complaints as to the observance of ratified Conventions

51. As indicated above, the Constitution provides for two special supervisory procedures; the representation procedure, set out in articles 24 and 25, grants an industrial association of employers or of workers the right to present to the Governing Body a representation against any member State which, in its view, has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party. In addition, under articles 26–34 of the Constitution, a complaint may be filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, a delegate to the International Labour Conference or the Governing Body in its own capacity.
52. Representations concerning the application of Conventions Nos 87 and 98 are generally referred for examination to the Committee on Freedom of Association. There have been 20 Article 24 representations on Convention No. 87, of which four referred to the right to strike. In adopting its conclusions, the Committee on Freedom of Association has often reaffirmed that “[it] considers the right to strike to be a legitimate means of defending the workers’ interests” (doc. 44, para. 140), and that “it deems strike action to be legitimate only when exercised peacefully and without intimidation or physical constraint” (ibid., para. 141). The Committee has recalled that “the right to strike may be restricted or prohibited: (1) in the public service only or public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)” (doc. 46, para. 55). It has also considered that “nobody should be deprived of his liberty or subjected to penal sanctions for the mere fact of organizing or participating in a peaceful strike” (doc. 43, para. 99), and further specified that sanctions for strike action could only be imposed “solely in cases in which the action is not in conformity with the principles of freedom of association and should not be disproportionate with the severity of the offence involved” (doc. 45, para. 62).
53. Article 26 complaints may give rise to the appointment of a Commission of Inquiry, composed of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken. In a Commission of Inquiry report adopted in 1968, it was stated that while “Convention No. 87 contains no specific guarantee of the right to strike. ... an absolute prohibition of strikes would constitute a serious limitation of the right of organisations to further and defend the interest of their members (Article 10 of the Convention) and could be contrary to Article 8, paragraph 2, of the Convention, under which “the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention”, including the right of unions to

organize their activities in full freedom (Article 3)” (doc. 47, para. 261). In another complaint examined in 1982, the Commission of Inquiry came to the conclusion that even though “Convention No. 87 provides no specific guarantee concerning strikes, the supervisory bodies of the ILO have always taken the view – which is shared by the Commission – that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members” (doc. 48, para. 517). Finally, the Commission of Inquiry appointed in 2010 to examine the observance of Conventions Nos 87 and 98 by another member State confirmed that “the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87” (doc. 50, para. 575). There have been six article 26 complaints, of which five referred to the right to strike.

IV. Rules of international law on treaty interpretation

54. The significance of the information provided in respect of the circumstances of the adoption of Convention No. 87, and of the positions taken by the supervisory system in relation to the right to strike, may be assessed in the light of the principles and rules of international law applicable to treaty interpretation, in particular the 1969 Vienna Convention on the Law of Treaties (doc. 51).
55. The ILO’s supervisory bodies have no authority to interpret authoritatively international labour Conventions – such authority being vested exclusively with the International Court of Justice. At the same time, it is generally acknowledged that, in discharging their responsibilities, supervisory mechanisms may, as a matter of necessity, carry out some degree of functional interpretation. As the scope and limits of such interpretative function are not clearly established, it becomes important to consider the methods of interpretation used by supervisory bodies in the light of the generally applicable international rules on treaty interpretation.
56. According to Article 31 of the Vienna Convention, the principal method of interpretation is to seek to establish in good faith the ordinary meaning of the terms of the treaty in their context and in the light of the object and purpose of the treaty, while taking also into account any subsequent agreement between the parties, any subsequent practice reflecting an agreement on interpretation, and any relevant rules of international law applicable in the relations between the parties. Article 31 seems therefore to give precedence to a *textual approach* (focus on the natural meaning of the words employed), which incorporates however the *principle of effectiveness* (aim towards effective achievement of the declared or apparent object and purpose of the treaty) and also takes into consideration *subsequent practice* (how the treaty is applied or operated by parties and authorized organs).¹⁴ In affirming that the right to strike is an intrinsic corollary of the right to organize, the Committee of Experts has opted for a dynamic, or teleological, interpretation of Articles 3 and 10 of Convention No. 87, which consists in adopting an interpretative approach that effectively responds to the object and purpose of these provisions.

¹⁴ See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary*, 2012, pp. 541–560. The principle of effectiveness brings a teleological element in the general rule of interpretation in that a treaty is to be interpreted in a manner that advances the latter’s aims (*ut res magis valeat quam pereat*), which implies a *contrario* that any interpretation that would render the provisions of a treaty inoperative or diminish their practical effect is to be avoided. As regards subsequent practice, the consistent jurisprudence or practice of organs set up to monitor the application of a treaty carry significant weight in interpreting that treaty. As the International Court of Justice has held in the *Diallo* case, for the sake of clarity, legal security and consistency, great weight should be ascribed to the interpretation adopted by the independent body that was established specifically to supervise the application of the treaty concerned; see *Ahmadou Sadio Diallo (Rep. of Guinea v. Democratic Rep. of the Congo)*, Judgment (2010), para. 66.

57. Article 32 of the Vienna Convention provides that as supplementary means of interpretation, the preparatory work and circumstances of adoption may be used to determine the meaning of the terms of a treaty when the result of an interpretation in accordance with the preceding general rule leaves the meaning ambiguous or obscure, or leads to an absurd or unreasonable result. Being a “supplementary means” of interpretation, recourse to preparatory work may not be used as an autonomous or alternative method of interpretation, distinct from the general rule, and may therefore have only a subsidiary value.¹⁵ These rules are widely recognized today as being part of customary international law.¹⁶
58. However, according to Article 5 of the Vienna Convention, these basic rules of interpretation are without prejudice to any specific rules applicable to treaties adopted within international organizations. Such specific rules may include not only written rules but also unwritten practices and procedures of an organization. The function of Article 5 is that of a general reservation clause, in the sense that the relevant rules of the organization (*lex specialis*) prevail, in cases of conflict, over the general rules set out in the Convention (*lex generalis*).¹⁷ Such specific rules of the organization may, in the case of the ILO, include the principle of the inadmissibility of reservations to international labour Conventions due to the tripartite process of their adoption. It is recalled that Wilfred Jenks – then Principal Deputy Director-General and former Legal Adviser of the ILO – participating as an observer at the Vienna Conference, had asked for “a clear recognition that an international organization might have a *lex specialis* that could be modified by regular procedures, in accordance with established constitutional processes” noting that “the principle that Conventions adopted within an international organization might be subject to a *lex specialis* was of long-term as well as immediate importance” (doc. 52, pp. 36–37).¹⁸ Jenks had also drawn attention to the fact that contrary to the secondary reference to preparatory work under Article 32 of the Vienna Convention, such material

¹⁵ See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary*, 2012, pp. 571–572. Article 32 is activated only where the application of the general rule leads to a manifestly absurd or unreasonable result, which in itself may be a matter of subjective interpretation, especially since the absurdity has to be “manifest”.

¹⁶ As the International Court of Justice stated for the first time in 1991: “Articles 31 and 32 of the Vienna Convention may in many respects be considered as a codification of existing customary international law on the point”; see *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, 1991, para. 48. For subsequent affirmations to the same effect, see: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, para. 94; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment (2007), para. 160; *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment (2009), para. 47; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment (2010), para. 65. Therefore, to the extent that the rules laid down in Articles 31 and 32 of the Vienna Convention are universally binding as customary international law, they apply to all treaties outside the scope of the Convention, namely treaties concluded before the Convention and also treaties between States that are not all parties to the Convention.

¹⁷ See O. Dörr and K. Schmalenbach (eds): *Vienna Convention on the Law of Treaties – A Commentary*, 2012, p. 89. See also O. Corten and P. Klein (eds): *The Vienna Conventions on the Law of Treaties – A Commentary*, 2011, Vol. I, pp. 97–98.

¹⁸ For more on the ILO’s role in shaping Article 5 of the Vienna Convention, see A. Trebilcock: *The International Labour Organization’s approach to modern treaty law*, in M.J. Bowman, and D. Kritsiotis (eds): *Conceptual and contextual perspectives on the modern law of treaties* (forthcoming).

had been a primary source for the “informal opinions” prepared by the Office.¹⁹ In his oral statement to the Vienna Conference, he mentioned that “ILO practice on interpretation had involved greater recourse to preparatory work than that envisaged” in the draft Convention.

59. An illustration of the interpretation of treaties applied to ILO Conventions, including consideration of ILO specificities, is provided by the 1932 advisory opinion of the Permanent Court of International Justice on the interpretation of Article 3 of the Night Work (Women) Convention, 1919 (No. 4), to date the only interpretation of a Convention requested pursuant to article 37 of the ILO Constitution (doc. 53).²⁰

¹⁹ Until 2002, Memoranda of the Office containing informal opinions or clarifications on the meaning of provisions of Conventions were published in the *Official Bulletin*. Informal opinions are provided in response to requests from member States subject to the standard reservation that the ILO Constitution confers no competence to the Office to give an authentic interpretation of the provisions of international labour Conventions adopted by the Conference. It is worth noting, in this respect, that under the 1952 and 1968 Office Instructions on the procedure concerning requests for interpretations of Conventions and Recommendations, the Office should not “give any opinion on requests for the interpretation of Convention No. 87 and Convention No. 98 in view of the special procedure instituted by the Governing Body for dealing with complaints in the matter of freedom of association”. These Instructions have been superseded by a 1987 Circular which no longer makes reference to Conventions Nos 87 and 98, yet the Office still refrains from expressing an opinion on interpretation of freedom of association-related standards.

²⁰ Faced with the question whether the Convention applies to women who hold positions of supervision or management and are not ordinarily engaged in manual work, the Court indicated that the wording of the provision “considered by itself gives rise to no difficulty: it is general in its terms and free from ambiguity or obscurity” and added that “it is necessary to find some valid ground for interpreting the provision otherwise than in accordance with the natural sense of the words”. The Court used, in fact, other means of interpretation, such as the ILO Constitution, its own advisory opinions concerning the interpretation of the ILO Constitution and the preparatory work leading to the adoption of the Convention before concluding that an examination of the preparatory work also confirmed the textual interpretation and therefore “there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words”.

Part II. Modalities and practices of strike action at the national level

60. The following highlights the main elements of the information provided in Appendix I on national law and practice respecting the modalities and practices of strike action.¹ Where reference is made to legislation in this document, the relevant provisions are indicated in Appendix I [in the original or in another official language of the ILO]. Appendix II contains statistical data on strike action and lockouts over certain periods of time, countries and regions for which information was available.

I. Legal and constitutional protection of strike action at the national level

1. *National legal frameworks for strike action: Constitutions, general legislation, specific legislation, common law recognition*

61. *Constitutional framework* – At least 97 ILO member States have an explicit protection of strike action in their national Constitutions, leaving it to the legislator to regulate its exercise in practice.²

¹ This section of the report is mainly based on the information collected by the International Labour Office from its constituents. It also draws on other sources, in particular: R. Blanpain: *Comparative labour law and industrial relations in industrialized market economies*, 2010; B. Waas: *The right to strike: A comparative view* (Wolters Kluwer, 2014); R. Blanpain: *The Laval and Viking cases: Freedom of services and establishment v. industrial conflict in the European Economic Area and Russia* (Wolters Kluwer, 2009); S. Van der Velden et al.: *Strikes around the world 1968–2005: Case-studies of 15 countries* (Amsterdam AKSANT, 2007); E. Tucker: “Can worker voice strike back? Law and the decline and uncertain future of strikes”, in A. Bogg and T. Novitz (eds): *Voices at work: Continuity and change in the common law world* (Oxford University Press, 2014). The Waas book on the right to strike contains contributions from a variety of scholars around the world: Effrosyni Bakirzi, Hadara Bar-Mor, Florian Burger, Tankut Centel, Charles Chapman Lopez, Charles Craver, Darcy du Toit, Flor Espinoza Huacón, Hugo Fernández Brignoni, Piotr Grzebyk, Michael Horowitz, Mijke Houwerzijl, Petr Hürka, Caroline Johansson, Edit Kajtár, Anthony Kerr, Francis Kessler, Polonca Koncar, Attila Kun, Yumiko Kuwamura, Johannes Lamminen, Kwang-Taek Lee, Nikita Lyutov, Jonas Malmber, Emilio Morgado-Valenzuela, Richard Naughton, Magdalena Nogueira Guastavino, Carlos Mariano Núñez, Paolo Pascucci, Daiva Petrylaitė, Marilyn Pittard, Jeremias Prassé, Willemijn Roozendaal, Alejandro Sánchez Sánchez, Sharifah Suhanan Binti Syed Ahmad, Mirna Wilches Navarro. In reply to comments during the Meeting, the Office is also compiling a bibliography of major scholars who have written on the right to strike.

² This is the case in **Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina** (through a reference to the rights protected in the International Covenant on Economic, Social and Cultural Rights), **Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon** (Preamble of the Constitution), **Central African Republic, Chad, Chile** (the Constitution establishes the prohibition of strike action for certain workers of the public sector, thereby indirectly recognizing the right to strike of the other categories of workers), **Colombia, Congo, Czech Republic, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Ethiopia, France** (Preamble to the Constitution), **Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana** (*freedom to strike*), **Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea** (*collective action*), **Kyrgyzstan, Latvia, Lithuania, Luxembourg, Madagascar, Republic of Maldives** (*freedom to strike*), **Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique,**

62. In other countries, the guarantee of a constitutional right to strike has been recognized by the courts based on the rights of organization, association and collective bargaining. This is the case, for instance, in **Finland**,³ **Germany**⁴ and **Japan**.⁵ In both **India** and **Pakistan**,⁶ the supreme courts have ruled that constitutional protection of the freedom to form unions does *not* in itself imply a right to strike that carries the status of constitutional protection. The Indian Supreme Court found that “the right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation”.⁷ In a judgment dated 30 January 2015, the Supreme Court of **Canada** found that the right to strike is protected under section 2(d) of the Charter of Rights and Freedoms by virtue of its unique role in the collective bargaining process.⁸
63. *Legal framework* – In many ILO member States, the regulation of strike action is relatively detailed and specified in statutes. However, in others the legislation is more limited. More than 150 countries have included regulation of the modalities of strike action in their general legislation (e.g. labour laws, industrial relations and employment relations legislation, laws on the public service, criminal codes, etc.). About 50 countries have adopted specific legislative measures on the issue (e.g. “legislation on strikes”, “essential services legislation”, etc.). However, the absence of explicit recognition of strike action in the legislation does not mean that strikes cannot be exercised in practice. *For a list of legislative measures on strike action adopted by each country, see Appendix I.*
64. While most civil law countries provide for a *right* to strike (see Appendix I), common law countries do not generally provide specifically for such a right (exceptions include **Kenya**, **Namibia** and **South Africa**, where the *right* to strike is explicitly guaranteed by the Constitution). However, common law countries do provide for a *freedom* to strike, that is, a freedom to act collectively to pursue common interests, under which strikers are not liable under the common law, notably for breach of contract, and are given immunity from civil law proceedings. In common law countries, participation in collective bargaining is assumed to be the principal means by which workers pursue their interests, and the ability to take strike action is conceived as an essential corollary of collective bargaining. In **Guyana** and the **Republic of Maldives**, the national Constitutions enshrine the *freedom* to strike. In **Australia**, the legal system defines protected industrial action and the corresponding immunities. In the **United States**, the law allows employees to engage in concerted activities, such as strikes and peaceful picketing, in support of lawful bargaining

Namibia, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Somalia, South Africa, Spain, Suriname, Sweden (industrial action), Switzerland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Turkey, Ukraine, Uruguay, Bolivarian Republic of Venezuela, and Zimbabwe.

³ In a 2003 opinion, the Finnish Parliament’s Constitutional Law Committee found that the right to strike falls within the scope of the Constitution’s freedom of association rights (article 13 specifies that a member has the right to “participate in the activities of an association”).

⁴ Based on article 9 of the Basic Law for the Federal Republic.

⁵ Based on article 28 of the Constitution.

⁶ *Civil Aviation Authority, Islamabad v. Union of Civil Aviation Employees* (1997).

⁷ *All India Bank Employees v. National Industrial Tribunal* (1961).

⁸ *Saskatchewan Federation of Labour v. Saskatchewan* (2015), SCC 4, paras 75–77.

objectives or to protest against unfair labour practices.⁹ The situation in **India** tends to be based on the granting of immunity for lawful strike action.

- 65.** *Regulation by the courts in judicial decisions* – In certain countries where the statutory rules on strike action are not detailed, the regulation of industrial conflict is left to the courts. In these countries, legal principles, such as proportionality or *ultima ratio*, play an important role in assessing the lawfulness of strikes.¹⁰ In **Japan**, although the law includes a number of provisions regarding the right to strike, court decisions have largely substantiated the statutory rules.
- 66.** *Regulation by the social partners* – In some countries, the social partners can autonomously regulate strike action to a considerable extent, notably in relation to the provision of minimum services. Various aspects of strike action can be regulated in the by-laws of trade unions. In **Malaysia**, for instance, the law provides that the taking of decisions by secret ballot on all matters relating to strikes or lockouts is among the issues “for which provision must be made in the rules of every registered trade union”. In **Sweden**, the constitutional right to strike can be restricted both by statute and by collective agreement (and thus by the social partners).¹¹
- 67.** Finally, in some countries the statutory protection of strike action remains under debate. In **China**, the standard interpretation of the current legal status of the right to strike (in the national legislation, including the Constitution, the Trade Union Law, the Labour Law and the Labour Contract Law) is that it is “neither denied nor granted”. The amended 2001 Trade Union Law mentions “work stoppage” and includes a reference to the possibility, in such circumstances, for trade unions to hold consultations with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forth proposals for solutions. The Guangdong People’s Congress has recently (December 2014) adopted a provincial regulation on collective bargaining, which touches upon strike action.

2. National definitions of strike action

Main elements of definitions of strike action at the national level

- 68.** *Definitions* – Most countries have included a definition of strike action (or “industrial action”) in national legislative measures.¹² Although the definitions differ slightly, they

⁹ P. Shea, and E. LaRuffa: “United States”, in E.C. Collins (ed): *The Employment Law Review* (Law Business Research Ltd, fifth ed., 2014), p. 818.

¹⁰ This is the case, for instance, in **Belgium, Denmark, France, Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands** and **Colombia** (Constitutional Court, Ruling No. C-201/02 concerning the lawfulness of strike action).

¹¹ J. Malmberg and C. Johansson: “The right to strike: Sweden”, in B. Waas: op. cit., 2014, p. 525.

¹² See, for example, the various definitions of strike in the national legislation of the following countries: **Afghanistan, Antigua and Barbuda, Australia, Bahrain, Barbados, Belize, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Colombia, Comoros, Congo, Côte d’Ivoire, Czech Republic, Djibouti, Dominica, Eritrea, Estonia, Ethiopia, Fiji, Grenada, Guatemala, India, Indonesia, Ireland, Jamaica, Kazakhstan, Kenya, Kiribati, Republic of Korea, Lesotho, Madagascar, Malawi, Malaysia, Mauritania, Mexico, Mongolia, Montenegro, Mozambique, Myanmar, Namibia, New Zealand, Niger, Pakistan, Philippines, Romania, Russian Federation, Rwanda, Saint Lucia, Seychelles, Singapore, Slovakia, Solomon Islands, United Republic of Tanzania, Thailand, Timor-Leste, Togo, Turkey, Tuvalu, Ukraine, Viet Nam and Zimbabwe.**

often comprise a stoppage of work (or other forms of interruption of normal work); a concerted action; and a purpose linked to obtaining satisfaction of workers' demands, such as remedying a grievance or resolving a dispute in respect of a matter of mutual interest. However, in **Canada, India, Pakistan** and **United States**, a strike is defined simply as a cessation (or stoppage, retardation, etc.) of work, without any explicit specification that the definition includes a reason for such cessation connected with the employment of those involved.

69. Definitions are quite convergent in civil law countries. For instance, in **Burkina Faso**, the law defines strike action as a concerted and collective cessation of work to support professional claims and ensure the defence of the material and moral interests of workers. In **Cambodia**, a strike means a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining satisfaction of their demand from the employer. In **Cameroon**, the legislation refers to a collective and concerted refusal by all or part of the workers of an establishment to respect *the normal rules of work*.
70. In common law countries, such as **Nigeria**, the legislation specifies that “cessation” of work includes working at less than the usual speed or with less than usual efficiency. The **South African** definition includes a partial refusal to work or the retardation or obstruction of work. The **United Republic of Tanzania** defines a strike as a total or partial stoppage of work. In the **United States**, the definition includes a stoppage, slowdown or other interruption of work. In **Pakistan**, a “go-slow” is defined separately from strike action and is explicitly excluded from protection.
71. In some countries, in the absence of a legislative definition, the definition of strike action falls to the courts (e.g. **Austria, Finland, Germany, Hungary, Israel, Italy, Spain** and **Uruguay**). In some cases, the courts have referred the matter back to the legislator. For instance, in **Colombia**, the Constitutional Court has repeatedly stressed that only the legislator can limit the right to strike and only if certain requirements are met.¹³
72. *Forms of action* – With regard to types of concerted action, strikes may take various forms. Alongside “traditional” forms of work stoppage, there are other forms of action, such as a refusal to work overtime hours, a slowdown in work (a “go-slow” strike), the strict application of work rules (“work-to-rule”), etc.¹⁴ In some countries, the legislation explicitly prohibits certain of these forms of strike action, or removes the protection afforded to regular strikes. For instance, in **Angola**, any reduction or change in working time or methods decided upon collectively which does not result in a refusal to work is not considered to be a strike and is therefore liable to disciplinary action. Similarly, go-slow strikes are prohibited in **Pakistan** under penalty of dismissal from trade union office and disqualification from trade union functions during the unexpired term of the mandate.¹⁵ In **India**, go-slows are defined as an unfair labour practice, punishable by law. Case law in **Ireland** also seems to establish that the protections extended to strike action do not necessarily cover other forms of industrial action.¹⁶

¹³ B. Waas: op. cit., 2014, p. 6.

¹⁴ ILO: *The right to strike: Document for the use of the Committee on Freedom of Association*, 2006, para. 118.

¹⁵ *ibid.*, para. 120.

¹⁶ *Crowley v. Ireland and others* (1980); *Talbot (Ireland) Ltd v. Merrigan and others* (1981).

73. *Bearers of the right to strike* – In many countries, *individual workers* are seen as the bearers of the right to strike, although this right may only be exercised collectively (e.g. **Colombia, Finland, Ireland, Italy** and **Uruguay**). In **Burundi**, the law provides that the right to strike belongs to all workers, whether or not they are organized. In practice, if the right to strike is an individual right, then “wildcat” strikes are theoretically legal, in contrast with the situation in countries where the right to call a strike is reserved for trade unions.¹⁷
74. In other countries, strike action is a *collective right* which belongs to the unions (or in many Latin American countries, to *gremios*).¹⁸
75. In other member States, the right to strike can be exercised by *both workers and their representative bodies*. This is the case, for instance, in **Argentina, Ecuador, Estonia, Hungary** and **Kazakhstan**. In **Benin**, the law provides that all workers may defend their rights and interests under the conditions provided by law, either individually or collectively or through trade union action. In the **United States**, work stoppages may be initiated by employees who act alone or by a representative labour union.¹⁹ In **Ireland**, non-unionized bodies, as well as workers themselves, may call or launch strikes (though some of the immunities provided by statutory law are only applicable to members and officials of trade unions).²⁰ In **Finland**, strikes can also be organized by a group of workers or a trade union (although workers who strike in response to a call to strike by a trade union enjoy better protection from dismissal).²¹
76. *Rights of federations and confederations* – In many countries, federations and confederations are entitled to take strike action. However in some countries, trade union federations cannot call a strike. This is the case, for instance, in **Honduras, Ecuador** (*implicit ban*) and **Panama**. In **Colombia**, the Constitutional Court has expressly held that the decision to call a strike must be linked to the workers at the given company, because it is only at that level that the economic and legal effects of a strike and its impact on employment contracts can be assessed.²² According to the Government of **Nigeria**, *in practice* trade union federations go on strike or protest against national socio-economic policies without sanctions.²³

Purpose of the strike: Collective bargaining, political strikes, protest action, solidarity and sympathy strikes

77. In some countries with a tradition of little state intervention in industrial conflicts, strike action has almost no limitations and can therefore take various forms (e.g. **Austria** and **Uruguay**). In other countries, strike action is limited to the area of collective bargaining or

¹⁷ ILO: op. cit., 2006, para. 23.

¹⁸ This is the case, for instance, in **Belarus, Croatia, Cyprus, Czech Republic, Denmark, Germany** (only unions that enjoy the “capacity to bargain collectively”), **Iceland, Lithuania, Mauritania, Portugal, Slovakia, Trinidad and Tobago**, and **France** (in relation to public services).

¹⁹ B. Waas: op. cit., 2014, p. 15

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*, p. 16.

²³ CEACR, observation, 2013, Convention No. 87.

to the framework of collective negotiations, and strikes cannot take place during the period of validity of a collective agreement and are generally only possible as a means of pressure for the adoption of a first collective agreement or its renewal. In these countries, the right to strike is provided as a means to induce employers to conclude collective agreements. This system prevails, for instance, in **Australia, Chile, Czech Republic, Germany, Japan, New Zealand, Turkey and United States**. *On the issue of restrictions on strikes during the term of a collective agreement (i.e. the “social peace obligation”), see paragraphs 112–116 below.*

- 78.** Similarly, certain countries distinguish between strike action taken to pursue disputes over rights and that taken in relation to disputes of interest.²⁴ Disputes of rights concern the interpretation or application of existing rights, whether statutory rights or rights arising from collective agreements. Disputes of interest concern the content of collective agreements under negotiation. In **Hungary, South Africa, United Republic of Tanzania Turkey and Viet Nam**, for example, lawful strike action cannot usually be taken in pursuit of disputes over rights.
- 79.** *Political strikes* – In many countries, political strikes, understood as non-work related industrial action, constitute a “grey zone” where a gap exists between law and practice. It is often difficult to distinguish between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers, in particular regarding employment, social protection and standards of living.²⁵
- 80.** **South Africa** and the **United Republic of Tanzania** have similar legislation which *extends the protection* normally afforded to lawful strike action to political or protest strikes. In both cases, this kind of action is defined as strike action taken with the purpose of “promoting or defending the socio-economic interests of workers”. Such strike action (excluding the normal definition of a strike) is legal, provided that it is called by a registered union or union federation which has given appropriate notice to the relevant government agency and explored in good faith the possibilities for alternative means of resolving the issue in question. It is also subject to criteria of reasonableness and proportionality. In **Turkey**, a recently adopted law has eliminated restrictions on politically motivated strikes, solidarity strikes, the occupation of work premises and go-slows to bring the legislation into line with the 2010 constitutional amendments.²⁶
- 81.** *Explicit prohibition* of political strikes is included, for instance, in the national legislations in **Belarus, Congo and Gabon** (with respect to “purely” political strikes).
- 82.** *Inferences relating to the limitation of lawful action* may also be drawn from the legislation of **Paraguay**, which provides that the sole purpose of the strike must be directly and exclusively linked to the workers’ occupational interests. Similarly, the Constitution of **Guatemala** provides that the right to strike can be exercised only for reasons of a socio-economic nature. In **Djibouti**, the law defines restrictively the possible purposes of a strike when defining strike action (i.e. requesting a change in working conditions or in remuneration).

²⁴ B. Waas: *Strike as a fundamental right of the workers and its risks of conflicting with other fundamental rights of the citizens*, General Report III, ISLSSL, XX World Congress, Santiago de Chile, Sept. 2012, p. 20.

²⁵ ILO: op. cit., 2006, para. 102.

²⁶ Law On Trade Unions And Collective Labour Agreements (Law No. 6356, 2012).

83. In other countries, an effective prohibition of political strikes arises from the restriction of lawful strike action to the sphere of collective bargaining. This is the case, for instance, in **Australia, Chile, Germany,**²⁷ **Japan,**²⁸ **Mongolia** and **Panama**. In certain other common law jurisdictions, the possibility of taking lawful or protected strike action is limited to disputes between workers and their employer or other employers, known in law as trade or industrial disputes. Precisely what constitutes a trade dispute is frequently contested in the courts and interpretations vary. In the **United Kingdom**, for example, case law has defined “trade dispute” in such a way as to exclude most political or protest strikes from legal protection. In **Indonesia**, strike action is considered to be a fundamental right of workers only *if it results from failed negotiation*. Interestingly, political strikes are in principle permitted in **Finland** and do not violate the peace obligation that is part of every collective agreement.
84. In other countries, although political strikes would appear to be prohibited, court decisions have introduced some nuances (e.g. **Netherlands** and **Spain**). In **Israel**, the assumption is that a political strike is not protected, since it does not involve improvement of the economic situation of workers: however, recognition has been given to “quasi-political strikes”, which are launched against the sovereign power, but also pertain to the economic conditions of workers who have been harmed by changes in national policy.²⁹
85. *Solidarity/secondary/sympathy strikes* – Solidarity, secondary and sympathy strikes are a form of industrial action in support of a strike initiated by workers in a separate undertaking. Definitions vary slightly. In the **Czech Republic**, the law defines solidarity strikes as strikes in support of the demands of striking employees in a dispute over the conclusion of another collective agreement.
86. A number of countries recognize the lawfulness of solidarity strikes. That is the case, for instance, in **Belgium, Croatia, Ecuador, Finland,**³⁰ **Greece, Hungary, Republic of Moldova, Panama, Poland, Romania** and **Bolivarian Republic of Venezuela**. If the primary strike is lawful, solidarity strikes are also considered legal in **Albania, Benin, Denmark, France** and **Sweden**.³¹ In the **United States**, outside certain limited exceptions, secondary action is not lawful. In **Ireland**, where there is no statutory exclusion of secondary action, this definition has been held by the courts to permit secondary industrial action. In **Finland**, “sympathetic action” is only legal if it does not affect the participants’ own terms of employment and is not directed towards modifying their own collective agreement.³² In **South Africa**, secondary action is lawful on condition that it can be shown that the nature and extent of the action is reasonable and proportionate, taking into account the effect the action will have on the primary employer. Similarly, in the **United Republic of Tanzania**, lawful secondary strike action is possible where a connection can be established between that action and the resolution of a dispute with the primary employer and where the action is “proportional” in light of the effect of the strike on the secondary employer and the likely contribution of the strike to resolving the primary dispute. In **Ghana**, the law protects legal sympathy strikes, subject to certain conditions. In **Croatia**, notice has to be given to the employer and the strike cannot

²⁷ B. Waas: op. cit., 2014, p. 14.

²⁸ Supreme Court Grand Bench Judgment of 25 April 1973.

²⁹ **Israel**: High Court of Justice, H CJ 1181/03, points 78–79.

³⁰ R. Blanpain: op. cit., 2010, p. 676.

³¹ *ibid.*, p. 676.

³² J. Lamminen: “The right to strike: Finland”, in B. Waas: op. cit., 2014, p. 195.

commence before the procedure for the conciliation of the initial strike has been followed, nor within a period of two days of the initial strike.

87. In contrast, in other countries, sympathy strikes that have the objective of putting pressure on a secondary employer are almost always considered unlawful (e.g. **Canada, Lithuania, Romania, Switzerland** and **United Kingdom**).³³ **Kenyan** law expressly defines “sympathetic” strikes as unlawful, where a “sympathetic strike” is any strike against an employer who is not a party to the trade dispute. In **Congo**, solidarity strikes are considered to be illegal if the solidarity strikers are not concerned *at all* by the purpose of the strike. In the **Plurinational State of Bolivia**, the law prohibits solidarity strikes under threat of penal sanctions. In **Viet Nam**, strike action cannot be utilized for the sake of solidarity. In the **Russian Federation**, this form of strike action is unlawful because the underlying demands are not addressed to the actual employer.³⁴ **Burundi** prohibits sympathy strikes by public servants. Moreover, solidarity or sympathy strikes are not permitted in many countries where strike action is limited to the sphere of collective bargaining. In **Japan**, solidarity or sympathy strikes are not forbidden, but the courts have not accepted that these types of strikes are covered by the protection of the right to strike.³⁵
88. In many countries, there are no specific legal provisions on the subject, either authorizing or prohibiting these forms of strikes, and it is left to the courts to decide.³⁶ However, in **Germany**, following a recent change, the courts have approved sympathy strikes on condition that they remain “proportional”.³⁷ In **Italy**, the Constitutional Court has extended the right to strike to include interests that are common to entire categories of workers.³⁸ Similarly in **Colombia**, the Constitutional Court has declared that solidarity strikes shall enjoy constitutional protection.³⁹

II. Scope and restrictions of strike action at the national level

1. Categories of workers excluded

89. In most ILO member States, the right to strike may be restricted in certain circumstances, or even prohibited. These restrictions can relate to the rights and freedoms of others. For instance, both the Constitution of **Mexico** and the law in **Honduras** provide that strikes are legal “provided they have as their purpose the attaining of equilibrium between the various factors of production, by harmonizing the rights of labour with those of capital”. In **Togo**, the law provides that under certain conditions workers can go on strike on condition that they respect the freedom to work of non-strikers and that they abstain from destroying

³³ R. Blanpain: op. cit., 2010, p. 676.

³⁴ B. Waas: op. cit., 2014, p. 49.

³⁵ **Japan**: Supreme Court Grand Bench Judgment, 26 Oct. 1966; Supreme Court 2nd Petty Bench Judgment, 25 Sept. 1992.

³⁶ ILO: op. cit., 2006, para. 107.

³⁷ B. Waas: op. cit., 2014, p. 50.

³⁸ **Italy**: Constitutional Court, Ruling No. 123/1962.

³⁹ **Colombia**: Supreme Court of Justice, Ruling No. C-201/02.

property, committing assault and sequestering the employer, his or her subordinates, or the administrative authority.

90. Moreover, restrictions on strike action also often concern certain categories of public servants (in particular the armed forces and the police), workers in essential services, or certain situations of national crisis. Compensatory guarantees may be provided for workers who are deprived of the right to strike. In some countries, the law provides that strike action can be prohibited on the grounds of its possible economic consequences (e.g. **Algeria, Australia, Benin** and **Chile**). In other countries (**Philippines, Senegal** and **Swaziland**), reference is made to the prejudice caused to public order, the general or national interest, for the prohibition of strikes.⁴⁰ In practice, it is the responsibility of the national authorities (executive, legislative and judicial) to ensure that the conditions established for limiting the right to strike are strictly observed on the ground.

Workers in the public sector

91. In various countries, the right to strike of workers in the public sector is limited, or even prohibited. A number of countries have adopted *specific legislative measures* regarding strike action in the public sector.⁴¹ In others, the regulation of strike action in the public sector is included in the general public service regulations.⁴² Identifying those workers who may face restrictions with respect to strike action is a matter of degree, which is in practice often left to the interpretation of the courts.
92. In some countries, nearly all workers in the public sector enjoy the right to strike, with the only restriction concerning members of the police and the armed forces (e.g. **Congo, Croatia, Ireland** and **Uruguay**). In **Slovenia**, all persons in the public service (including judges) in principle enjoy the right to strike, irrespective of the type and nature of the activity involved.⁴³ In **Sweden**, employees who exercise public authority may only strike, but not engage in other forms of industrial action; sympathy actions are restricted to the benefit of employees in the public sector.⁴⁴
93. The Constitution of **Guatemala** explicitly protects the right to strike of state workers and of workers of decentralized and autonomous entities, provided that essential services are maintained. The national Constitutions of **Côte d'Ivoire** and the **Bolivarian Republic of Venezuela** protect the right to strike of workers in both the public and private sectors, leaving it to the legislator to establish its limits. The Constitutions of **Ethiopia** and the **Republic of Korea** explicitly state that government employees who can enjoy the right to strike shall be determined by law. However, under the laws of the **Republic of Korea**, public officials do not enjoy the right to strike. In **Mexico**, the Constitution refers to the need to give a ten-day notice period before strike action in public services.

⁴⁰ ILO: op. cit., 2006, para. 60.

⁴¹ For example, in **Canada (Quebec), Central African Republic, Chad, Côte d'Ivoire, France, Guatemala, Italy, Mali, Niger** and **Togo**.

⁴² For example, **Algeria, Bulgaria, Central African Republic, Chad, Comoros, Gabon** and **Togo**.

⁴³ B. Waas: op. cit., 2014, p. 42.

⁴⁴ *ibid.*, p. 44.

94. In other countries, there are numerous restrictions on strike action in the public sector.⁴⁵ In **India**, the law provides that no government servant shall resort to any form of strike in connection with any matter pertaining to his or her service or the service of any government servant. In **Denmark**, civil servants employed under the Civil Service Act are denied the right to strike. In **Bulgaria**, the right to strike of public servants is limited to wearing or displaying signs, armbands, badges or protest banners, without any interruption of public duties. In **Hungary**, strikes are prohibited for public servants who fulfil a fundamental function (according to the Government, those exercising managerial functions, that is, with the power to appoint and dismiss staff and initiate disciplinary proceedings).⁴⁶ In **Viet Nam**, state officials and public servants are excluded from the right to strike as they are not technically regarded as employees under the Labour Code; strikes are also prohibited in a number of specified enterprises, while the provincial authorities may also stay or suspend a strike if it poses a danger of serious detriment to the national economy or public interest. Where a strike is alleged to violate any of these restrictions, the employer may request a court to declare the strike unlawful and order compensation. In **Chile** and **El Salvador**, the national Constitutions prohibit strike action for certain workers in the public sector.
95. *Armed forces and the police* – In many countries, strike action is statutorily prohibited for members of the armed forces and the police. In some countries, this prohibition is even included in the national Constitution.⁴⁷
96. *Other restrictions* – In some countries, the national Constitution prohibits (or limits) the right to strike, not only in the armed forces and the police, but also in certain other public services.⁴⁸ In **Greece**, the Constitution extends this limitation to judicial employees. In **Slovakia**, the constitutional prohibition of the right to strike also covers judges, prosecutors, and members and employees of the fire and rescue services. In **Tunisia**, the Constitution extends it to customs officers. Other national Constitutions refer to the possibility of limiting the right to strike for the purpose of ensuring the continuity of certain public services (e.g. **Honduras**, **Madagascar** and **Panama**). In **France**, police and prison officers, judges, military personnel and some categories of employees in air navigation do not enjoy the right to strike.⁴⁹ In **Poland**, the law provides that strikes shall be prohibited at the internal security agency, the intelligence agency, in units of the police, armed forces, prison services, frontier guards, customs services, as well as fire brigades.
97. In some countries, in order to assess who can engage in industrial action, a distinction is made between two categories of workers in the public sector, namely employees and civil servants. For example, in **Germany**, “civil servants” (*Beamte*) are denied the right to strike, while workers in the public sector enjoy the right⁵⁰ (see the 2014 ruling of the

⁴⁵ ILO: op. cit., 2006, para. 48. This is the case, for instance, in **Albania**, **Chile**, **Dominican Republic**, **El Salvador**, **Estonia**, **India**, **Japan**, **Kazakhstan**, **Republic of Korea**, **Lesotho**, **Panama**, **Poland** and **United States** (most public servants).

⁴⁶ *ibid.*, para. 46.

⁴⁷ For example, in **Algeria**, **Azerbaijan**, **Burundi**, **Congo**, **Croatia**, **Cyprus**, **Democratic Republic of the Congo**, **Greece**, **Montenegro**, **Paraguay**, **Slovakia**, **the former Yugoslav Republic of Macedonia** and **Tunisia**.

⁴⁸ For example, in **Algeria**, **Croatia**, **Cyprus**, **Democratic Republic of the Congo**, **Montenegro**, **Paraguay** and **the former Yugoslav Republic of Macedonia**.

⁴⁹ See F. Kessler: “The right to strike: France”, in B. Waas: op. cit., 2014, p. 213.

⁵⁰ B. Waas: op. cit., 2014, p. 44.

Federal Administrative Court on the constitutional strike ban for civil servants)⁵¹. In **Kazakhstan**, the prohibition to strike concerns only “civil servants” and excludes “administrative civil servants” and “public servants” (teachers, doctors, bank employees, etc.).

- 98.** In **Mexico**, the legislation recognizes the right to strike of state employees (including employees in the banking sector and those of many decentralized public bodies, such as the national lottery or the housing institute) only in the event of a *general and systematic violation of their rights*. In **Switzerland**, the situation has changed: although all federal public servants were previously denied the right to strike, since 2002 the prohibition has been limited to public servants *exercising authority in the name of the State*. In some other countries, including **Lithuania** and **Norway**,⁵² the right to strike in the public sector is recognized, except for certain categories of senior civil servants.

Workers in essential services

- 99.** In many countries, in addition to the situation of civil servants *as such*, strike action is also restricted, or prohibited, for workers involved in “essential services”. What is meant by essential services varies from country to country and is often linked to considerations relating to the particular circumstances prevailing in the country. Essential services may refer to services performed either by civil servants only, by workers/employees in the private sector or both. Several countries also define situations where a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope.
- 100.** In certain countries, the national Constitution explicitly refers to limitations on strike action for workers in certain specific services that are considered to be of vital importance.⁵³
- 101.** The situation varies at the statutory level. In some countries, the legislation provides for a definition of essential services, without listing the services. Examples include **Bahrain** (the list is to be issued by order of the Prime Minister), **Egypt** (the list is to be issued by the Prime Minister), **Ghana** (the list is to be issued by the Minister) and **Poland**. In other countries, the legislation includes both a definition of essential services and a list (long or short) of these services. Elsewhere, national legislative measures only provide for the determination of a list (long or short), without defining the services. Specific national legislation on essential services has been adopted, for instance, in **Belize**, **Nigeria** and **Solomon Islands**.

⁵¹ BVerwG 27.2.2014 – 2 C 1/13.

⁵² ILO: *Manual on collective bargaining and dispute resolution in the public service*, 2011, p. 125.

⁵³ This is the case, for instance, in **Albania**, **Algeria**, **Angola**, **Brazil**, **Chile**, **Colombia**, **Croatia**, **Cyprus**, **Czech Republic**, **Democratic Republic of the Congo**, **Dominican Republic**, **Ecuador**, **El Salvador**, **Georgia**, **Greece**, **Guatemala**, **Guinea-Bissau**, **Honduras**, **Madagascar**, **Montenegro**, **Mozambique**, **Panama**, **Paraguay**, **Portugal**, **Romania**, **Spain**, the former **Yugoslav Republic of Macedonia**, **Timor-Leste**, and **Zimbabwe**.

- 102.** *Definition and list of essential services* – Examples of countries where national legislative measures include both a definition and a list of essential services (which is not in all cases exhaustive) include: **Albania** (services of vital importance where the interruption of work would jeopardize the life, personal security, or the health of a part or the entire population), **Algeria** (services the interruption of which may endanger the life, personal safety or health of the citizens, or where strike action is liable to give rise to a serious economic crisis), **Armenia** (services required for meeting the essential (vital) needs of society, the absence of which may endanger human life, health and safety), **Azerbaijan** (certain service sectors that are vital to human health and safety), **Bahamas** (any service declared by the Governor-General by order to be an essential service), **Benin** (establishments where the full cessation of work could bring serious harm to the safety and health of the populations), **Burkina Faso** (services indispensable for the safety of persons and assets, the maintenance of public order, the continuity of the public service or the satisfaction of the basic needs of the community), **Chad** (services the complete interruption of which would endanger the life, safety or health of the whole or part of the population), **Dominican Republic** (services the interruption of which may endanger the life, personal safety or health of the whole or part of the population), **Eritrea** (undertakings that render indispensable services to the public in general), **Ethiopia** (services rendered by undertakings to the general public), **Fiji** (services that are vital to the success of the national economy or gross domestic product, or those in which the Government has a majority and essential interest, and which are declared essential by the minister) and **Indonesia** (enterprises that serve the public interest and/or whose types of activities, when interrupted by a strike, will lead to the endangering of human life). In **Argentina**, the law explicitly refers to the criteria established by the supervisory bodies of the ILO when addressing the issue of the determination of essential services and the establishment of minimum services.
- 103.** *Only a list of essential services* – Examples of countries where national legislative measures set out a list of essential services include: **Antigua and Barbuda, Argentina** (however an activity that is not in the list may exceptionally be deemed an essential service by an independent commission), **Belize, Botswana, Brazil, Brunei Darussalam, Cabo Verde, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Grenada, Guatemala, Kenya and Turkey.**
- 104.** Depending on the country, the (restricted or broad) list of services in which strike action can be limited or prohibited at the national level has included, for instance: air traffic control services; telephone services; services responsible for dealing with the consequences of natural disasters; firefighting services; health and ambulance services; prison services; security forces; water and electricity services; meteorological services; social security services; administration of justice; the banking sector; railways; transport services; air transport services and civil aviation; teachers and the public education service; the agricultural sector; fuel distribution services and the hydrocarbon; natural gas and petrochemical sector; coal production; maintenance of ports and airports; port services; postal services; municipal services; services for the loading and unloading of animals and of perishable foodstuffs; export processing zones; government printing services; road cleaning and refuse collection; radio and television; hotel services and construction.
- 105.** Both **Canada** and the **United States** have separate systems of labour law for government and private sector employees. In **Canada**, the Labour Code and the National Industrial Relations Act apply mainly to private sector workers, with certain exclusions, including agricultural workers in both of the laws. In neither case does the concept of essential services apply to private sector workers. In the **United States**, the concept of essential services does not exist in the public sector either, but employees of the federal Government whose employment is regulated by the Federal Service Labor–Management Relations Statute cannot lawfully take strike action. In **Canada**, in contrast, employees falling under the authority of the Public Service Labour Relations Act (the vast majority of federal government employees) have the right to strike unless their work has been designated an

essential service. The federal Government has broad powers to specify the positions within a public sector bargaining unit that it deems to be essential. Workers who occupy these positions cannot lawfully take strike action.

- 106. Kenya, South Africa and the United Republic of Tanzania** share the basic elements in their approach to essential services. Strikes in essential services are unlawful but, unlike in **Canada**, essential services may be in either the public or private sectors. What counts as an essential service is designated either by a dedicated advisory body (**South Africa and United Republic of Tanzania**) or by the labour ministry in consultation with a general industrial relations advisory body (**Kenya**). Disputes in essential services are ultimately resolved through compulsory arbitration. In **South Africa**, if employers and unions in bargaining units that are deemed to be essential services can agree on the definition of a minimum service, workers who are not involved in providing this service may lawfully take strike action. Elsewhere, practice varies. The concept of essential services does not exist in the labour law of the **United Kingdom**, although the police and the armed forces are not allowed to strike. In **Ireland**, codes of practice on dispute resolution in essential public services (defined as including health, energy supplies, water and sewage services, emergency services and certain transport services) were introduced in 2003, but remain voluntary. The armed forces and the police are not permitted to strike.
- 107.** In **India**, “government servants” are not allowed to strike in accordance with the rules of the Central Civil Service. Workers employed in a “public utility service” can take strike action but must respect a six-week notice requirement. Public utility services are defined broadly as including transport, communications, energy, water and sanitation, but also those parts of any industrial organization concerned with safety and maintenance. The Government also has broad powers to designate new public utility services. In **Nigeria**, strikes in essential services are unlawful, and all public services are defined as falling into this category, together with a long list of industrial sectors and types of activity that can be carried out by private enterprises on behalf of the Government or for the general good of the community.

2. **Determination of essential services at the national level**

- 108. Mechanisms for the determination of essential services** – In some countries, the law leaves discretion to the authorities to declare a service essential (e.g. **Bahamas, Bahrain, Central African Republic, Chile** (each year in July, a joint resolution of various ministers should establish a list of services) and **Zimbabwe**). Ministerial decrees on essential services have also been adopted in **Mali** and **Rwanda**. In the **Bolivarian Republic of Venezuela**, the law provides that, in the event of a collective labour dispute, the Minister of People’s Power, within 120 hours following the admission of petitions, can issue a motivated resolution indicating the areas or activities which cannot be paralysed by the exercise of the right to strike. In **Canada**, the *employer in the public sector* has the exclusive right to determine whether any government service, facility or activity is essential because it is, or will be, necessary for the safety or security of the public or a segment of the public.
- 109.** Elsewhere, this issue is left to the higher judicial authorities. For instance, in **Colombia**, the Supreme Court of Justice has considered that the Constitutional Court will examine in each individual case referred to it, even where there may exist a legislative definition of the classification of a public service as essential, whether or not a particular activity, taking into account its material content, corresponds to an essential service.
- 110. Specialized bodies for the determination of essential services** – In other countries, specialized bodies have been established for the determination of essential services. In **South Africa**, an Essential Services Committee has been created with the function of

investigating whether or not the whole or a part of any service is an essential service, and then deciding whether or not to designate the whole or a part of that service as an essential service. Similarly, in **Namibia**, an Essential Services Committee has been established to recommend to the Labour Advisory Council all or part of a service as an essential service. In the **United Republic of Tanzania**, the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it. In **Argentina**, the law envisages the possibility that, in addition to the essential services listed in the law, another activity may be exceptionally qualified as an essential service by the independent tripartite Guarantees Committee.

- 111.** *Agreement by the social partners* – In other countries, the determination of the services which should be considered as essential can be the outcome of a joint decision by the social partners, who are required to find solutions for the specific needs of essential services. In **Cyprus**, for instance, a tripartite agreement on the procedure for resolving labour disputes in essential services (2004) defines the notion of essential services and provides a list thereof. In **France**, under a recent law relating to the right to strike in passenger air transport, the employer and the representative trade unions are encouraged to hold negotiations with a view to signing a framework agreement that establishes a dispute prevention procedure and promotes the development of social dialogue. Under this agreement, strike action is only possible after negotiations between the employer and the trade unions have been unsuccessful. The framework agreement also lays down rules for determining the structure and operation of negotiations prior to any dispute.

3. Restrictions on strikes during the term of a collective agreement

- 112.** In various countries, collective agreements are viewed as “social peace treaties” for a certain period during which strikes and lock-outs are prohibited, with workers and employers having access in compensation to arbitration machinery. Under these systems, industrial action is illegal during the period of validity of the collective agreement if it is directed against the collective agreement as a whole, or part of it. Strikes are generally only possible as a means of pressure with a view to the adoption of a first collective agreement or its renewal. The obligation of social peace may be set out explicitly in law (e.g. **Egypt**), in a general agreement between confederations of workers and employers at the central level (e.g. **Denmark**), in an explicit clause contained in the collective agreements concluded by the parties or by case law (e.g. **Austria, Germany and Switzerland**).⁵⁴
- 113.** In **Canada** and the **United States**, unless a dispute concerns the immediate safety of workers or certain other unfair labour practices, collective agreements must have expired, or the appropriate notice of intent to open negotiations for the revision of a collective agreement must have been given, before the existence of a dispute can be registered and conciliation procedures embarked upon. Conciliation is compulsory in **Canada**, but voluntary in the **United States**, where most collective agreements contain no-strike clauses.
- 114.** In many other countries, strike action for the purpose of *enforcing* a collective agreement is considered illegal because it is regarded as a violation of the peace obligation (e.g. **Chile, Czech Republic, Finland and Turkey**). In **Germany**, a strike is only lawful if its underlying objective is to *reach* a collective bargaining agreement.⁵⁵ In **Australia**, the law

⁵⁴ ILO: op. cit., 2006, para. 90.

⁵⁵ B. Waas: op. cit., 2014, p. 10.

provides for immunity against tort and other legal actions for workers engaging in industrial action in certain limited circumstances. In particular, the industrial action must only be in relation to the negotiation of a collective agreement at a single enterprise (and not at the industry level); it is unlawful to take industrial action during the period of validity of a collective agreement, unless the expiry date has passed, and the bargaining representatives of the workers must be genuinely trying to reach agreement. In **Sweden**, collective action aimed at the conclusion of a collective agreement is allowed. However, collective action to enforce a collective agreement is prohibited, with the exception of collective action to recover unpaid wages.⁵⁶ In **Israel**, the law defines “unprotected strikes” as strike action by employees in a public service where a collective agreement applies, except a strike unconnected with wages or social conditions and declared or approved by the central national governing body of the authorized employees’ organization.

- 115.** Major differences exist regarding the consequences of violations of the peace obligation. In **Germany**, for instance, as in many countries, a strike that violates the peace obligation is illegal. In **Japan**, on the other hand, it is far from clear whether such a violation impacts on the lawfulness of the strike as such, or whether it should be regarded as a mere breach of contract.⁵⁷
- 116.** In other countries, no peace obligation exists, either relative or absolute. This is the case, for instance, in **Slovenia**, where even if a no-strike clause is agreed by the parties to a collective agreement, such a clause could not prevent workers from striking.⁵⁸

4. Declaring a strike unlawful or postponing strike action

- 117.** In most countries, the decision to declare strikes unlawful is left to the courts or, in some cases, to specialized independent bodies. However, in certain countries this power lies with the administrative authorities, such as in the **Plurinational State of Bolivia** (General Directorate of Labour) and **Fiji** (Minister of Labour).⁵⁹ In various countries, strike action can also be ended through compulsory arbitration, either automatically, at the discretion of the public authorities or at the request of one of the parties (see section V below).
- 118.** Without going as far as a decision to end a strike, the law may provide for the *suspension of strikes* for a certain period. This is the case in **Albania** (in exceptional situations) and **Angola** (in situations affecting public order or in the event of public calamities).⁶⁰ In **Romania**, the employer can request the courts to order the postponement or suspension of a strike for a maximum period of 30 days.⁶¹ In **Finland**, the Ministry of Employment and the Economy can postpone a planned strike for a maximum of two weeks at the request of the conciliator if the strike would have an effect on essential services and would cause unreasonable harm. An additional seven days’ postponement applies in the case of disputes

⁵⁶ J. Malmberg and C. Johansson: op. cit., 2014, p. 528.

⁵⁷ Y. Kuwamura: “The right to strike: Japan”, in B. Waas: op. cit., 2014, pp. 355–356.

⁵⁸ *ibid.*, p. 38.

⁵⁹ ILO: op. cit., 2006, para. 114.

⁶⁰ *ibid.*, para. 116.

⁶¹ *ibid.*, para. 115.

covering public servants. These postponements allow the parties to explore avenues of agreement.⁶²

5. **Compensatory guarantees**

119. When the right to strike is restricted or prohibited in certain enterprises or services that are considered essential, or for certain public servants, some national systems provide for compensatory guarantees for the workers that are deprived of the right to strike. Such compensation may include, for example, impartial conciliation, and possibly arbitration procedures. In **Kenya, Namibia** and **South Africa**, the law provides that any party to a dispute of interest that is prohibited from participating in a strike or a lockout, because that party is engaged in an essential service, may refer the dispute to the Labour Commissioner, who may refer it to an arbitrator.

III. **Modalities of strike action at the national level**

1. **Prerequisites**

120. The requirement of the prior notification of strikes to the administrative authorities or the employer and the obligation to have recourse to conciliation and arbitration procedures in collective disputes before calling a strike exist in a significant number of member States.⁶³ In some countries, the requirement to enter into and to continue negotiations before strike action is relatively weak. In **Japan**, for instance, strikes do not need to be a means of last resort. Once negotiations have started, it is up to the union to decide at what stage it will resort to strike action, even while negotiations are still in progress (yet a principle of fair play applies, resulting from the faithfulness principle in union-management relations).⁶⁴ However, in many other countries, a principle of *ultima ratio* applies to strike action.

Exhaustion of prior procedures (conciliation, mediation and/or voluntary arbitration)

121. Since strike action is, almost by definition, a means employed when negotiations fail, many countries establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called. In many cases, these provisions are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, and therefore as a way of encouraging and promoting the development of voluntary bargaining.

122. In **Argentina**, the Constitution sets out various steps to be followed before strike action, including conciliation and arbitration. In **Switzerland**, the Constitution refers to the need to attempt mediation and conciliation before resorting to strike action. The law in **Poland** explicitly states that “a strike shall be a means of last resort”. The legislation of **El Salvador** is also very clear on the various steps to be undertaken before going on strike.

⁶² ILO: op. cit., 2011, p. 135.

⁶³ ILO: op. cit., 2006., para. 69.

⁶⁴ B. Waas: op. cit., 2014, p. 354.

- 123.** Various other national legislations also provide that strike action must be preceded by serious negotiations, conciliation and mediation attempts.⁶⁵ In **Viet Nam**, under the 2012 Labour Code, a strike can take place only after failure to resolve the dispute through the conciliation and arbitration procedures set forth by law. In **Kenya, Nigeria, Pakistan, South Africa** and **United Republic of Tanzania** official conciliation procedures must have been exhausted without resolution of the dispute for lawful strike action to be possible. However, no such requirement exists in **India, Ireland** or the **United Kingdom**.
- 124.** In many countries, including **Croatia, Djibouti, Jordan** and **Mali**, no worker may go on strike while proceedings concerning a dispute are pending before a conciliation board. In **Togo**, the parties are requested by law to pursue negotiations during the strike. In some cases, such as in the **United Republic of Tanzania**, although the law foresees a number of steps that have to be taken before strike action can be declared, it also specifies that the social partners can decide to agree on their own strike procedure in a collective agreement, in which case the provisions in the law do not apply.
- 125.** *Specialized bodies for the prevention of strike action* – In practice, various countries have adopted institutional arrangements for the prevention of collective disputes, either by creating a dedicated dispute-handling unit within the labour administration, or by establishing independent and autonomous statutory dispute resolution bodies. Their objective is to ensure that, wherever possible, the parties to the dispute resolve it through a consensus-based process, such as conciliation and mediation, before reverting to arbitration and/or adjudication through a tribunal or labour court.⁶⁶

Advance notice and cooling-off periods

- 126.** *Advance notice* – A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer.⁶⁷
- 127.** In **Papua New Guinea**, an employer or an industrial organization that is a party to, or is involved in, an industrial dispute which gives rise, or *seems likely to give rise*, to a strike or lockout must immediately notify the departmental head or an officer of the department. In the **United Kingdom**, notice is required not just of strike action, but of the intention to hold a strike ballot. A minimum of seven days must elapse between the decision to hold a ballot and the ballot, and a further minimum notice period of seven days must be given before strike action can begin after a vote in favour.

⁶⁵ For instance in **Burundi, Cameroon, Chile, Czech Republic, Ethiopia, Honduras, Ghana, Lao People's Democratic Republic, Libya, Lithuania, Kazakhstan, Mali, Mauritania, Namibia, Senegal** and **Turkey**.

⁶⁶ Examples of dispute resolution agencies include: **Cambodia** – Cambodia's Arbitration Council (CAC); **Ireland** – Law Reform Commission (LRC); **Japan** – Central Labour Relations Commission; **Republic of Korea** – National Labour Relations Commission (NLRC); **South Africa** – Commission for Conciliation, Mediation and Arbitration (CCMA); **United Kingdom** – Advisory, Conciliation and Arbitration Service (ACAS); **United States** – Federal Mediation Conciliation and Arbitration Service (FMCA).

⁶⁷ This is the case, for instance, in **Algeria, Armenia, Australia, Bahamas, Benin, Bulgaria, Canada, Chad, Chile, Comoros, Croatia, Czech Republic, Estonia, Ethiopia, Finland, Ghana, Hungary, Indonesia, Ireland, Jordan, Kenya, Latvia, Lithuania, Madagascar, Mauritania, Mauritius, Mexico, Morocco, Pakistan, Poland, Romania, Russian Federation, Senegal, Seychelles, Slovakia, Slovenia, South Africa, Spain, Swaziland, United Republic of Tanzania, Thailand, Togo, Turkey, United States** and **Yemen**; ILO: op. cit., 2006, para. 77.

- 128.** Among the national systems which do not include compulsory cooling-off periods are those in **Belgium, France** (except for the public sector) and **Italy** (where such provisions have been included in collective agreements). In **Germany**, there are no official provisions requiring a cooling-off period, although such requirements have nevertheless been established through case law in accordance with the rule of proportionality between the action taken and the damages incurred. This also applies in the **Netherlands**, where strikes are legal only where all possibilities of negotiation have been exhausted.⁶⁸ In some cases, the cooling-off period can be quite long. This is the case, for instance, in **Seychelles** and the **United Republic of Tanzania** (public sector), where the cooling-off period is 60 days.⁶⁹
- 129.** *Public sector* – Many systems require additional notice to be given in the case of strike action in the public sector. For instance, in **South Africa**, 48-hours notice of industrial action is required for private sector industrial disputes, and seven-days notice where the State is the employer.⁷⁰ Similarly, in **Jordan**, no worker shall go on strike without giving the employer notice thereof at least 14 days before the date set for the strike; where work is related to a public service, the notice period shall be double. In **Italy**, notice should be given only for strikes in essential services (ten-days notice).
- 130.** *Duration of strikes* – In certain cases, the notice has to be accompanied by notification of the length of the strike. This is the case, for instance, in **Benin** (where, according to the Government, strikes may however continue beyond the period notified), **Bulgaria, Burundi** (for civil servants), **Chad, Egypt, Georgia, Mongolia, Tajikistan, Tunisia** and **Yemen**.⁷¹

2. Strike ballot requirements

- 131.** Another type of prerequisite for calling a strike consists of making the exercise of the right to strike conditional upon approval by a certain percentage of the workers. Many national legislative measures provide that to be able to call a strike, it must be so decided by a certain percentage of workers, members or those present and voting, for instance *more than the half* (**Bulgaria, Burundi, Canada, Chile, Costa Rica** (60 per cent), **Dominican Republic, El Salvador, Eritrea, Ethiopia** (quorum of two-thirds and the decision by the majority), **Ireland, Kyrgyzstan** (quorum of two-thirds and the decision by the majority), **Latvia, Lithuania, Mauritius, Nigeria, Peru, United Republic of Tanzania, Trinidad and Tobago, Turkey, United Kingdom** and **Zimbabwe**); or *by two-thirds* (**Angola, Armenia, Guatemala, Honduras, Kiribati, Malaysia, Mexico, Russian Federation, Seychelles** and **Tajikistan**); or *three-quarters* (**Bangladesh** and **Plurinational State of Bolivia**). The legislation in **Chile** specifies the day when the voting should take place.
- 132.** In some countries, account is taken only of the votes cast, while in others this distinction is not applied. For instance, in **Turkey**, if one fourth of the workers employed in a workplace call for a vote on strike action, the strike can take place if the absolute majority of all the workers employed (not only the members of the trade union) vote in favour. In addition, national systems vary with respect to the consequences of the vote (in cases where the required threshold has or has not been reached).

⁶⁸ *ibid.*, para. 76.

⁶⁹ *ibid.*, para. 78.

⁷⁰ ILO: *op. cit.*, 2011, p. 135.

⁷¹ ILO: *op. cit.*, 2006, para. 81.

- 133.** The requirement that strike action must be explicitly authorized by union members via a ballot held before any action is not present in all common law jurisdictions. A ballot is not among the requirements for lawful industrial action in **India** or **Pakistan**. In **South Africa**, although unions are required to provide for the holding of pre-strike ballots in their Constitutions, the absence of a ballot does not in itself make strike action unlawful. In **Kenya**, while there is no explicit provision in the Labour Relations Act that lawful strike action must be authorized in a ballot, it requires unions to include in their Constitutions provision for taking decisions on strike action via secret ballots. In the **United States**, although strike balloting is commonplace, it is not required by law and employers are not allowed to require the presence of pre-strike ballot clauses in collective agreements.⁷²
- 134.** *Ballot modalities* – Another distinction relates to whether the modalities for ballots are established by law, or whether it is left to trade unions to adopt rules. Some countries have established a comprehensive set of rules concerning strike ballots, including requirements for union by-laws (e.g. **Australia**, **Ireland** and **United Kingdom**). In others, such as **Poland**, this issue is essentially considered an internal matter for trade unions. In **Germany**, most trade unions have established guidelines in this respect.⁷³ In practice, most trade union rules require a direct secret vote before starting a strike.
- 135.** In some countries, the national legislation requires the prior approval of the strike by a higher-level trade union organization (e.g. **Egypt**, **Myanmar** and **Tunisia**). Some countries provide for the supervision of the strike ballot by the administrative authority (e.g. **Angola**, **Bahamas**, **Swaziland** and **United Republic of Tanzania**).

3. *Minimum service: Conditions, modalities and mechanisms for determining the minimum service*

- 136.** Many countries provide for the possibility in limited cases of introducing a negotiated minimum service as a possible alternative to a total prohibition of strikes.⁷⁴ The national Constitutions of **Portugal** and **Timor-Leste** explicitly refer to minimum services. Some countries have adopted legislative provisions on the participation of the organizations concerned in the definition of minimum services. Elsewhere, the issue has been resolved by joint decision of the parties.
- 137.** In other countries, the national legislation determines unilaterally the level at which a minimum service is to be provided and specifies a specific percentage. This is the case, for instance, in **Bulgaria** (50 per cent for railways), **Ecuador** (20 per cent) and **Panama** (50 per cent for essential public services). In **Romania**, medical services, social assistance and public transport must operate at least at one third of their normal level and be able to respond to the vital needs of the community.⁷⁵ In **Hungary**, the level of service deemed sufficient and the related requirements may be defined by an act of Parliament; if there is none, they shall be agreed upon by the parties during the pre-strike negotiations; or, failing such agreement, they shall be determined by final decision of the court of public administration and labour.

⁷² *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 US 342, 78 S. Ct. 718 (1958).

⁷³ B.Waas: op.cit., 2014, p. 26.

⁷⁴ For example, in **Albania**, **Armenia**, **Cabo Verde**, **Gabon**, **Italy**, **Mauritius**, **Slovakia**, **Solomon Islands**, **United Republic of Tanzania**, **Tuvalu**, **Vanuatu** and **Bolivarian Republic of Venezuela**; *ibid.*, para. 136.

⁷⁵ ILO: op. cit., 2006, para. 126.

- 138.** Elsewhere, the social partners play an important role in defining minimum services. For instance, in **Cyprus**, the social partners signed an agreement in 2004 on the procedure for resolving labour disputes in essential services, including the provision of negotiated minimum services.⁷⁶ In **Germany**, the guidelines on industrial action of the umbrella trade union organization oblige unions to ensure the establishment of minimum services in case of emergency.⁷⁷ In **Canada**, all employers and trade unions involved in a dispute are obliged to “continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public”. What this minimum service involves in practice must either be defined in a collective agreement or will be determined by the Canada Industrial Relations Board.
- 139.** In many countries, the legislation requires the *parties to the dispute (the employer and workers)* to strive together to find an agreement on the modalities of the minimum services to be provided during a strike. If an agreement cannot be found, depending on the country, either an administrative authority or a specific body can decide on the matter (**Albania** and **Ecuador**). For instance, in **Togo** the parties to the dispute are obliged to meet during the notice period to continue negotiations and organize a minimum service in the company in order to avoid accidents and ensure the protection of facilities and equipment. If an agreement cannot be reached, the labour inspector can determine the minimum service. In **Peru**, in the case of disagreement on the number and occupation of the workers who are to continue working, the labour authority shall designate an independent body for their determination. **Guatemala** introduced the possibility of a minimum service in essential public services that is determined with the participation of the parties and the judicial authorities. **Argentina** has established an independent tripartite Guarantees Committee which is entrusted with advising on minimum services. In **Croatia**, at the proposal of the employer, the trade union and the employer must agree on the provision of those services which must not be interrupted during a strike. If they do not reach agreement, the employer or the trade union may request that these assignments be defined by an arbitration body. This arbitration body consists of one representative of the trade union, one representative of the employer and an independent chairperson.
- 140.** In **South Africa**, the legislation gives the parties concerned space to negotiate “minimum services” agreements in respect of services designated as essential. Where the parties can so agree, and where their agreement has been ratified by the Essential Services Committee: (i) the minimum services then become the only strike-free zone; and (ii) the broader prohibition on strike action in the balance of the services previously designated as essential and the obligatory reference to arbitration of unresolved disputes then fall. The act also provides for services to be declared “maintenance services”, that is, services which, if interrupted, would have “the effect of material physical destruction to any working area, plant or machinery”. Disputes in such services must generally be directed towards arbitration, and industrial action is not permitted in such cases. In the **United Republic of Tanzania**, a person engaged in an essential service may engage in a strike or lockout if there is a collective agreement providing for minimum services during a strike or lockout, and if that agreement has been approved by the Essential Services Committee. In **France**, the legislator entrusts the social partners with signing a “collective agreement of predictability” identifying the functions necessary to ensure the levels of service and work organization in the event of a strike in the area of land transport for passengers.
- 141.** In **Cabo Verde**, the minimum service is determined by the employer after consultation with workers’ representatives with a view to meeting essential social needs. In **Montenegro**, the amended Law on Strikes now provides that, when determining the

⁷⁶ *ibid.*, para. 65.

⁷⁷ B. Waas: *op. cit.*, 2014, p. 14.

minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees. In **Bosnia and Herzegovina** (*Republika Srpska*), the employer is authorized to determine the minimum service to be maintained, taking into consideration the opinion of the trade union. If the employer does not provide such a minimum service, it is for the public authorities to establish the conditions for its effective provision and to engage workers from outside the enterprise if the work cannot be performed otherwise.⁷⁸ In **Chad**, the minister has discretion to determine minimum services and the number of officials and employees who will ensure that such services are maintained in the event of a strike in the essential services enumerated in the law.

IV. The course of the strike

1. *Picketing, occupation of the workplace, access to the enterprise/prohibition of violence and freedom to work of non-striking workers*

- 142.** In some countries, strike action is accompanied by the presence, at the entry to the workplace, of strike pickets aiming to ensure the success of the strike by persuading the workers concerned to stay away from work. The ordinary or specialized courts are generally responsible for resolving problems which may arise in this respect. In practice, while certain countries establish general rules that are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets or the occupation of the workplace during a strike.
- 143.** For instance, in **Malaysia**, the law refers to the concept of intimidation in limiting strike pickets. In **Burkina Faso** and **Senegal**, the law provides that the exercise of the right to strike shall on no account be accompanied by the occupation of the workplace or immediate surroundings, subject to penal sanctions. In **Belarus**, the law on picketing provides that during the course of picketing it is prohibited, inter alia, to impede traffic, pitch tents or other temporary structures, influence in any form employees for the purposes of impeding the fulfilment of the service, use posters and other means containing calls for a change of the constitutional order by force, or flags not registered in the established order. In **Panama**, the law provides that the owners, directors, managing director and staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence production activities. It should be noted that the free access of non-striking workers is not provided for in the event of a strike.
- 144.** In common law jurisdictions, there is a general presumption that if an act would be unlawful or illegal when carried out by an individual, it is not protected by industrial relations law. This includes violence and the sequestration of any individual. Sometimes provisions to this effect are included explicitly in the law (for example in **Nigeria**). Practices such as *gherao*, an **Indian** form of “bossnapping” in which managers are barred by workers from leaving the workplace, are almost always unlawful, whether or not they involve violence. Peaceful picketing, on the other hand, is generally protected either specifically in the legislation or through constitutional protections of freedom of assembly and/or expression. One exception is the **United Republic of Tanzania**, where picketing is expressly forbidden by law. In **Australia**, the definition of industrial action does not include picketing, which is therefore unlawful if it is obstructive.

⁷⁸ ILO: op. cit., 2006, para. 127.

145. In **Ireland**, picketing is expressly permitted in circumstances in which strike action is lawful. In **Nigeria**, picketing, whether of a primary or secondary employer, is legal provided that it is in contemplation or furtherance of a trade dispute. In **South Africa**, if strike action would qualify as protected, then picketing is permitted in pursuit of the resolution of the dispute. In the **United Kingdom**, picketing is permitted if carried out in contemplation or furtherance of a trade dispute, but is governed by a detailed code of practice which, among other provisions, specifies that the maximum number of people allowed to picket any one workplace is six. Secondary picketing is not allowed. Pickets are not allowed to block access to the workplace or to obstruct roads nearby. In the **United States**, picketing is allowed under certain circumstances. The most notable exclusions are secondary and mass picketing, and picketing in connection with a recognition dispute. In **Namibia**, peaceful picketing is authorized at or near the workplace to inform and persuade other workers not to work.⁷⁹ In **Botswana**, a code of good practice on picketing was adopted in 2002 which provides practical guidance on picketing in support of a protected strike. It seeks to guide the exercise of this right and to assist employers, employees and their organizations to agree picketing rules and to assist mediators in determining them.
146. While in some countries strike pickets are merely a means of information, ruling out any possibility of preventing non-strikers from entering the workplace, in other countries they may be regarded as a form of the right to strike, and the occupation of the workplace as their natural extension, and are rarely questioned in practice, except in extreme cases of violence against persons or damage to property. In **Japan**, the Supreme Court has considered that picketing is lawful, on condition that it remains within the confines of peaceful verbal persuasion.⁸⁰

2. ***Requisitioning of strikers and hiring of external replacement workers***

147. In many countries, the replacement of striking workers is prohibited or, in any event, restricted. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike, other countries limit powers of requisitioning to cases in which the right to strike may be limited or prohibited. In **Cambodia**, for instance, the law provides that during a strike the employer is prohibited from recruiting new workers to replace strikers, except to maintain a minimum service; any violation of this rule places the employer under the obligation to pay the salaries of the striking workers for the duration of the strike. In the **United Republic of Tanzania**, there is a general prohibition on hiring replacement workers during lawful strikes. In **Canada**, employers are permitted to hire replacement workers during a lawful strike, but they cannot be used “for the demonstrated purpose of undermining a trade union’s representational capacity rather than the pursuit of legitimate bargaining objectives”.⁸¹ In **South Africa**, the hiring of replacement workers is in general legal, but is excluded when the service in question has been designated a maintenance service.
148. Examples of national legislation which prohibit employers from hiring external workers to ensure continued production or services include **Botswana** (except in the absence of agreement on a minimum service, in which case replacement is possible after 14 days of strike), **Chile** (except under certain limited conditions), **Greece**, **Republic of Korea**, **Madagascar** (except in cases of problems of public order and in which the life, personal

⁷⁹ ILO: op. cit., 2006, para. 133.

⁸⁰ **Japan**: Supreme Court 2nd Petty Bench Judgment; 2 Oct. 1992; Supreme Court (Grand Bench), *Asahi Shinbunsha* case of 22 Oct. 1952; Y. Kuwamura: op. cit., 2014, p. 358.

⁸¹ Canada Labour Code, 94.2.1.

safety or health of the whole or part of the population is endangered), **Montenegro** (except to ensure the safety of persons or property), **Namibia** (except where the work is necessary to prevent danger to the life, personal safety or health of any individual) and **Turkey**. In **Slovenia**, any enterprise or association which, during a strike, hires new employees to replace striking workers is liable to a fine. An employer cannot hire other employees to replace strikers under the law in **Argentina**, **Czech Republic**, **Greece**, **Hungary** and **Lithuania** (except in certain cases linked to vital public needs).⁸²

- 149.** The national legislation in other countries, such as **Djibouti**, **Mali** and **Togo**, prohibits recourse to private employment agencies to replace striking workers. In the **United Kingdom**, employers are not allowed to take on temporary agency workers to replace strikers.
- 150.** In contrast, in other countries, such as **India**, **Ireland**, **Kenya**, **Nigeria**, **Pakistan** and **United States**, there are no restrictions on taking on replacement workers during lawful strikes. In the **Russian Federation**, striking workers can be replaced and temporary agency workers may also be used.⁸³
- 151.** The law also allows the requisitioning of striking workers in certain circumstances in **Angola**, **Central African Republic** (where so required by the general interest), **Ghana** (minimum maintenance services), **Madagascar** (in the event of a state of national necessity or a threat to a sector of national life or a part of the population), **Sao Tome and Principe** (essential services)⁸⁴ and **Senegal** (for workers in the public and private sectors engaged in jobs considered to be essential for the safety of persons and property, the maintenance of public order, the continuation of the public service and the satisfaction of the essential needs of the country). In **France**, striking workers may only be requisitioned in an emergency, when required by a real or foreseeable breach of the peace, public health, public order and public safety and when the means at the prefect's disposal no longer allow the latter to pursue the objectives for which he or she has powers of enforcement.
- 152.** In **Benin**, **Djibouti** and **Niger**, the possibility of requisitioning is restricted to public servants. The same applies in **Mexico** in certain public services when the national economy could be affected.⁸⁵ In **Burkina Faso**, a specific decree regulates the modalities for the requisitioning of workers.

V. Compulsory arbitration

Conditions, mechanisms and requirements
for compulsory binding arbitration

- 153.** In some countries, binding compulsory arbitration is provided for in order to bring an end to strike action. In such cases, collective labour disputes and strikes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued.

⁸² B. Waas: op. cit., 2014, p. 61.

⁸³ B. Waas: op. cit., 2014, p. 61.

⁸⁴ ILO: op. cit., 2006, para. 138.

⁸⁵ ILO: op. cit., 2006, para. 139.

- 154.** Some countries authorize recourse to compulsory arbitration, either automatically, at the discretion of the public authorities,⁸⁶ or at the request of one of the parties.
- 155.** In some cases, compulsory arbitration can take place only in *essential services* (e.g. **Côte d’Ivoire** (in essential services or cases of acute national crisis), **Dominica, Ghana, Grenada, Guyana** (in some public services) and **Mozambique**), or in situations of acute national crisis. In **Australia**, compulsory arbitration was formerly widely available, but now only occurs when the Fair Work Commission or the Minister of Labour issues an order prohibiting strike action (e.g. because of a risk to public safety or significant economic harm to the employer, the employees, the Australian economy or a third party). In that case, the Commission can arbitrate the claims and make a “workplace determination”, which has essentially the same effect as a collective agreement. In **Singapore**, an issue can be referred by either the employer or the union to compulsory arbitration by the Industrial Arbitration Court, which renders continuation of a strike unlawful.
- 156.** Some countries authorize recourse to compulsory arbitration in situations that are not limited to essential services or situations of acute national crisis, or in cases in which disputes continue for more than a certain period. This is the case in **Ghana, Nicaragua, Peru** and **Spain** (exceptionally after a certain duration of the strike). In certain instances, compulsory arbitration is also used, particularly through the adoption of return to work laws by Parliament to bring an end to collective disputes in the public service. Examples include **Canada** and **Norway**.⁸⁷

VI. Consequences of strike action at the national level

1. Breach or suspension of contract

- 157.** The provision of the right to strike in law means that there is no breach of contract on the part of a worker who participates in a lawful strike. In most civil law systems, the employment relationship is maintained during strike action; the contract is suspended, and modalities vary with respect to the payment of wages.⁸⁸
- 158.** In **Denmark**, there is a long-standing customary rule (the so-called “no detriment rule”) which ensures that the broken employment relationship is re-established after an industrial dispute, and that all striking workers are therefore reinstated at the end of a strike.⁸⁹ In **Mauritius**, the suspension of the contract applies to all lawful strikes, but it is also extended if the worker participates *for the first time* in a strike that is unlawful.
- 159.** There are a number of common law countries in which taking lawful strike action does not amount to breach of contract. In the **United Republic of Tanzania**, for example, the law provides that “notwithstanding the provisions of any law, including the common law, a

⁸⁶ This is the case, for example, in **Denmark** (at the request of the Public Mediator), **Guatemala, Kenya** (public sector), **Madagascar, Mauritania** and **Panama** (private transport enterprises).

⁸⁷ ILO: op. cit., 2006, para. 51.

⁸⁸ For example, in **Albania, Argentina, Bahrain, Burundi, Cambodia, Chad, Chile, Colombia, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Guatemala, Honduras, Madagascar, Mali, Panama, Poland, Senegal, Togo, Turkey, Uruguay, Viet Nam** and **Yemen**.

⁸⁹ Conclusions of the European Committee of Social Rights, Conclusions XIX-3 (2010).

lawful strike or lawful lock-out” shall not be a breach of contract, a tort or a criminal offence. The situation is similar in **Kenya, Namibia** and **South Africa**: by taking part in a lawful strike, a person does not commit a delict or a breach of contract. In **Grenada**, any period during which an employee is absent from work because of participation in a strike shall not interrupt the continuity of employment, but nor shall it count for the purposes of calculating the length of continuous employment. In **Canada**, employers are obliged to reinstate workers who have taken lawful strike action.

- 160.** In some other common law countries, a lawful strike action is regarded as a breach of the employment contract and in certain circumstances can give rise to dismissal. In **Ireland**, the fact that a strike is lawful does not affect the employers’ right to dismiss strikers, but they cannot be dismissed selectively. Either or all strikers are dismissed, or none. In the **United Kingdom**, workers taking lawful strike action are protected from dismissal, but only for a period of 12 weeks. Where industrial action lasts longer than this, and where an employer has made good faith efforts to settle the dispute, workers may be dismissed, on condition that all those taking action are dismissed.
- 161.** In the **United States**, an employer that has hired permanent replacement workers is not obliged to rehire former strikers in the case of economic strikes, but has to give preference to these workers in any subsequent hiring process. In case of strikes called in response to unfair labour practices, the employer is obliged to rehire former strikers.⁹⁰

2. **Wage deductions**

- 162.** National legislation that addresses the question of wage deductions for strike days normally provides that the employer is not under the obligation to pay wages during a strike. Some countries ban the payment of wages during the strike period.⁹¹ Non-payment of wages corresponding to the strike period is considered in most cases as a mere consequence of the absence from work, and not a sanction. For instance, in **Albania, Botswana, Cambodia, Jordan, Latvia, Madagascar, Mauritius, Namibia, Togo** and **Trinidad and Tobago** an employer is not obliged to remunerate an employee for services that the employee does not render during a strike. In **Viet Nam**, the payment of wages depends on whether or not the strike is lawful and on the responsibility of the employer. Where the strike is lawful and the employer is at fault, wages are to be paid in full. Where the employer is not at fault, payment can be negotiated. In the event of an unlawful strike, in a situation in which the employer is at fault, the wages are to be paid in a proportion of between 50 and 70 per cent. Wages are not paid in the event of an unlawful strike where the employer is not at fault.⁹² In **Ecuador**, the law provides that workers are entitled to their remuneration during strike days, except in three cases: when the court so decides unanimously; when the ruling rejects all the claims; and where the strike was called outside the cases indicated in section 497 of the Code, or was maintained after the ruling. In these cases, strikers do not benefit from the related guarantees.
- 163.** In practice, in many countries, the issue of wage deductions is a matter that is often resolved by the parties themselves in the context of the agreement signed at the end of the strike. Moreover, many trade unions have strike funds to support striking workers whose salaries have been suspended. In **South Africa** and the **United Republic of Tanzania**, employers are obliged to carry on with any agreed payments in kind (for example food) and are not allowed to evict strikers from company lodgings. Equivalent costs may be

⁹⁰ *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).

⁹¹ For example, Australia.

⁹² ILO: op. cit., 2006, para. 145.

recovered once the strike is over. However, in the **United Republic of Tanzania**, the law adds that nothing shall prevent a trade union or employer or employers' association from concluding a collective agreement that regulates such matters differently. Conversely, in **Turkey**, the law provides that the employer shall not pay any wages or social benefits to workers whose contracts of employment are suspended for the period of a strike, and that this period shall not be taken into account for the calculation of severance pay. The law adds that collective labour agreements or contracts of employment *may not* include any clause contrary to these provisions.

- 164.** With respect to other social security entitlements, in **Latvia**, employees taking part in a strike do not receive a salary and employers are not required to make social security payments for such employees, unless the parties to the labour dispute have agreed upon a different arrangement. In **Turkey**, during strikes and lockouts workers benefit from insurance benefits in accordance with the relevant provisions. In **Albania**, while the right to remuneration is suspended during strike action, this suspension does not affect the rights defined by law concerning social security, accidents at work or occupational diseases, and does not affect seniority and its related effects. In the **Netherlands**, workers who participate in a lawful strike lose their right to wages and have no right to social security benefits.⁹³ In **Colombia**, strike action also represents a suspension of the employment contract. During the strike, the employer is not obliged to make contributions to occupational accident insurance.⁹⁴

3. Sanctions for unlawful strikes

- 165.** *Dismissals* – Many countries afford protection against dismissal to strikers by guaranteeing that recourse to strike action does not suspend or constitute a breach of the contract of employment (see above on the *suspension of contract*). The protection may even cover unlawful strikes. For example, in **Malta**, where the period of the strike does not constitute an interruption of service, protection against dismissal is valid even in cases where the strike has been called when the dispute has been submitted to compulsory arbitration.⁹⁵ In other cases, such as **India**, **Kazakhstan** and the **Philippines**, participation in an unlawful strike results in dismissal. In **Egypt**, failure to comply with the legislation respecting strikes is considered to be a serious fault and therefore results in liability to dismissal. The same applies in **Mauritania**, where the worker is not entitled to any compensation for dismissal. In **Indonesia**, it is considered as absence from work and as resignation if the worker does not return to work after being called upon to do so twice within a period of seven days. In the event of failure to comply with the annulment of a strike ordered by the courts, the legislation in **Pakistan** explicitly refers to the dismissal of strikers as a penalty. In **Cambodia**, the law provides that workers who are required to provide a minimum service and who do not appear for such work are considered guilty of serious misconduct and thus liable for termination of employment.
- 166.** *Civil liabilities* – In common law countries, the principal consequence of unlawful strike action is that the legal immunities that would otherwise protect strikers and unions do not apply. Striking is thereby treated as an actionable repudiation or material breach of the employment contract. In these circumstances, it is open to employers to discipline or dismiss the workers concerned. (In **Pakistan**, uniquely, the dismissal of unlawful strikers requires an order of the National Industrial Relations Commission.) Those who organize unlawful strike action, most usually trade unions, may be guilty of one or more economic

⁹³ B. Waas: op.cit., 2014, p. 57.

⁹⁴ *ibid.*, p. 58.

⁹⁵ ILO: op. cit., 2006, para. 152.

torts, such as conspiracy or inducement to breach of contract, and may therefore be liable for damages. In the **United Kingdom** and **Ireland**, but also in other jurisdictions, such as **Canada, India, South Africa** and the **United Republic of Tanzania**, the possibility that strike action may be unlawful can be used as a basis for seeking injunctions against unions to prevent strikes from beginning or continuing until the question of lawfulness has been finally settled by the appropriate court or tribunal. Breaking such injunctions may lead to the award of damages or proceedings for contempt of court.

- 167.** *Penal sanctions (including imprisonment)* – Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions, including penal sanctions. Specific penalties for strike action are included in the criminal codes of at least 30 countries. Specific penalties of *imprisonment* can apply under certain conditions against striking workers or against the organizers of unlawful strike action.⁹⁶ In **Cambodia**, the law provides that a strike must be peaceful. Committing violent acts during a strike is considered to be serious misconduct that could be punished, including by work suspension or disciplinary lay-off.
- 168.** In some cases, penalties of imprisonment may also be applied to the employer or any other responsible person who lays off employees on the grounds of taking part in a lawful strike (**Montenegro**). In the **Philippines**, the law provides that penalties of imprisonment may be imposed “upon any person who, for the purpose of organizing, maintaining or preventing coalitions or capital or labor, strike of labourers or lock-out of employees, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work”. In **Romania**, the law establishes that a person who, by threats or violence, *impedes or obliges* a worker or a group of workers to participate in a lawful strike or to work during the strike can be sentenced to imprisonment.
- 169.** In some cases, strikers are convicted under the terms of more general provisions of the penal legislation, such as in the **Republic of Korea**, where the offence of impeding the activity of an enterprise is severely sanctioned (up to five years imprisonment). In **China**, workers have been convicted under provisions relating to offences against public order and impeding transport.⁹⁷ Finally, certain countries provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute (e.g. **Bangladesh**), or provide for penal sanctions in the case of a work slowdown (e.g. **Pakistan**).

VII. Statistics of strike action over time and countries

- 170.** Appendix II contains statistical data on strike action and lockouts extracted from the ILO Statistical database. In figure 1, the information shows that in the 56 countries for which data was available, fewer days were not worked due to strikes and lockouts in the period 2008–13 as compared to the period 2000–07. Figure 2 provides information for the same periods relating to average number of workers involved in strikes and lockouts with respect to 53 countries (31 developed and 22 developing countries). Based on the data, six out of the 22 developing countries and eight out of 31 developed countries reflected an increase in the number of workers involved in strikes and lockouts. Figure 3, covering the same

⁹⁶ For example, **Albania, Angola, Armenia, Bahamas, Bangladesh, Democratic Republic of the Congo, Ecuador, Ethiopia** (public servants), **Fiji, Guyana, India, Libya, Madagascar, Malaysia, Montenegro, Nigeria, Pakistan** (essential services), **Romania, Rwanda** (members of the armed forces), **Senegal** (in the area of education), **Singapore, Tajikistan, Trinidad and Tobago** (essential services) and **Tunisia** (seafarers).

⁹⁷ ILO: op.cit., 2006, para. 167.

periods, show data on working days lost in Europe due to strikes and lockouts with nine out of 29 European countries reflecting an increase. Figure 4 shows data for 1998 and 2008 concerning strikes and lockouts from a selected number of countries by region (Africa, Americas, Asia and the Pacific, and Europe and central Asia).

Appendix I

Modalities and practices of strike action at the national level

Constitutional and legal framework for strike action at the national level

Note: The table hereunder provides examples of legislative measures on strike action. It is not meant to be exhaustive and focuses on most recently adopted or amended provisions in this area. It is possible, especially in the case of legislation not subject to review by the regular supervisory machinery, that some references may be out of date or incomplete. In this case, governments are encouraged to provide the latest information to libsynd@ilo.org, which will be incorporated in the final version of the document to be made available a few days before the meeting.

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
1. Afghanistan		<p>Law on Gatherings, Strikes, and Demonstrations, 2003</p> <p>Article 3 – Definition of strike</p> <p>Articles 6–7 – Prerequisites</p> <p>Article 8 – Other types of restrictions</p> <p>Articles 12–14 – The course of action</p> <p>Article 15 – Political strikes</p> <p>Articles 19 and 24 – Prohibition of violence and freedom of non-striking workers</p> <p>Article 21 – Restriction on strikes during state of emergency</p> <p>Article 26 – Prohibition of participation by military staff of the armed forces</p>
2. Albania	<p>Constitution</p> <p>Article 51</p> <p>1. The <u>right of an employee to strike</u> in connection with work relations is guaranteed.</p> <p>2. Limitations on particular categories of employees may be established by law to assure essential social services.</p>	<p>1995 Labour Code – Law No. 7961 of 12 July 1995</p> <p>The right to strike – Articles 197–197.10</p> <p>The entity entitled to go to strike</p> <p>The protection of the right to work and of the right to strike</p> <p>Lawfulness of strike</p> <p>Special cases</p> <p>Services of vital importance (essential services)</p> <p>Minimum services</p> <p>Solidarity strike</p> <p>The effects of the lawful strike</p> <p>The effects of the unlawful strike</p> <p>Termination of strike</p> <p>Criminal Code</p> <p>Article 264 – Forcing to attend or not a strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
3. Algeria	<p>Constitution Article 57 Le <u>droit de grève</u> est reconnu. Il s'exerce dans le cadre de la loi. Celle-ci peut en interdire ou en limiter l'exercice dans les domaines de défense nationale et de sécurité, ou pour tous services ou activités publics d'intérêt vital pour la communauté.</p>	<p>Loi n° 90-11 du 21 avril 1990 modifiée portant sur les relations de travail Article 5 – Les travailleurs jouissent des droits fondamentaux suivants: ... recours à la grève.</p> <p>Loi n° 90-14 du 2 juin 1990 modifiée portant sur les modalités d'exercice du droit syndical Article 38 – Possibilité des syndicats de participer aux grèves</p> <p>Ordonnance n° 06-03 du 19 Jomada Ethania 1427 correspondant au 15 juillet 2006 portant statut général de la fonction publique Article 36 – Reconnaissance du droit de grève aux fonctionnaires</p> <p>Loi n° 90-02 du 6 février 1990 relative à la prévention et au règlement des conflits collectifs de travail et à l'exercice du droit de grève Article 43 – Services essentiels</p> <p>Loi n° 91-27 du 21 décembre 1991 modifiant et complétant la loi n° 90-02 du 6 février 1990 relative à la prévention et au règlement des conflits collectifs de travail et à l'exercice du droit de grève</p>
4. Angola	<p>Constitution Article 51 <i>(Right to strike and prohibition of lockouts)</i></p> <ol style="list-style-type: none"> 1. Workers shall have the <u>right to strike</u>. 2. ... 3. The law shall regulate the exercise of the <u>right to strike</u> and shall establish limitations on the services and activities considered essential and urgent in terms of meeting vital social needs. 	<p>Collective Bargaining Act No. 20-A/92</p> <p>Strikes Act/Ley núm. 23/91 sobre la huelga Section 10 – Decision of strike Section 20(3) – Satisfaction of basic needs Section 27 – Penalties</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
5.	Antigua and Barbuda	<p>Industrial Court Act, 1976 Part III – Lockouts and strikes 20. Strikes and lockouts prohibited during hearings, etc. 21. Stop order in the national interest 22. Offence for persons to contribute financial assistance to promote or support strike or lockout 23. Continuing offences</p> <p>Labour Code (No. 14 of 1975) Part III – Industrial action K19 Right to industrial action Limitation Application of limitations Penalties and sanctions Special provisions certain services</p> <p>The Essential Services Act, 2008 Schedule Section 2 – Essential services</p>
6.	Argentina Constitución Artículo 14 bis [...] Queda garantizado a los gremios: concertar convenios colectivos de trabajo; recurrir a la conciliación y al arbitraje; el <u>derecho de huelga</u> . Los representantes gremiales gozarán de las garantías necesarias para el cumplimiento de su gestión sindical y las relacionadas con la estabilidad de su empleo. [...]	<p>Ley núm. 25877, Régimen Laboral de 2004 Capítulo III – Conflictos colectivos de trabajo Artículo 24 – Servicios esenciales</p> <p>Ley núm. 14786, Conciliación Obligatoria, 22 de diciembre de 1958</p> <p>Decreto núm. 272/2006 – Reglamentación a la que quedan sujetos los conflictos colectivos de trabajo que dieren lugar a la interrupción total o parcial de servicios esenciales o calificados como tales en los términos del artículo 24 de la ley núm. 25877. Facultades de la Comisión de Garantías prevista en el tercer párrafo del mencionado artículo.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
7. Armenia	<p>Constitution Article 32 Employees shall have the <u>right to strike</u> for the protection of their economic, social and employment interests, the procedure for and limitations thereon shall be prescribed by law.</p>	<p>2004 Labour Code Article 73 – Strike Article 74 – Declaration of a strike Article 75 – Restriction of strikes Article 76 – The body leading a strike Article 77 – Course of a strike Article 78 – Dispute about lawfulness of a strike; essential services Article 79 – Legal status and guarantees of strikes Article 80 – Actions prohibited to the employer upon declaration of and during the strike Article 81 – Termination of a strike Article 82 – Liability in case of illegal strike</p> <p>Act of 5 November 2000 on Trade Unions Article 20 – Right of trade unions to strike and other mass actions</p> <p>2009 Law No. H-130-N to amend the Labour Code of the Republic of Armenia – Amends some provisions of the Labour Code concerning strike</p> <p>Criminal Code Article 155 – Forcing to refuse from participation in a strike or forcing to participate in a strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
8. Australia		<p>Fair Work Act, 2009 Chapter 1 – Introduction Part 1-2 – Definitions Division 4 – Other definitions Section 19 – Meaning of industrial action Chapter 2 – Terms and conditions of employment Part 2-5 – Workplace determinations Chapter 3 – Rights and responsibilities of employees, employers, organizations, etc. Division 4 – Industrial activities Articles 346–350 Part 3-3 – Industrial action Division 2 – Protected industrial action Subdivision A – What is protected industrial action Articles 408–412 Subdivision B – Common requirements for industrial action to be protected industrial action Articles 413–414 Subdivision C – Significance of industrial action being protected industrial action Articles 415–416A Division 3 – No industrial action before nominal expiry date of enterprise agreement, etc. Division 4 – FWC orders stopping, etc., industrial action Articles 418–421 Division 5 – Injunction against industrial action if pattern bargaining is being engaged in Article 422 Division 6 – Suspension or termination of protected industrial action by the FWC; Essential services Articles 423–430 Division 7 – Ministerial declarations Articles 431–434 Division 8 – Protected action ballots Articles 435–469 Division 9 – Payments relating to periods of industrial action Articles 470–476</p>
9. Austria		

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
10. Azerbaijan	<p>Constitution Article 36. Right for strikes</p> <p>I. Everyone has the <u>right to be on strike</u>, both individually and together with others.</p> <p>II. <u>Right for strike</u> for those working based on labour agreements might be restricted only in cases envisaged by the law. Soldiers and civilians employed in the army and other military formations of the Azerbaijan Republic have no right to go on strike.</p> <p>III. Individual and collective labour disputes are settled in line with legislation.</p>	<p>Labour Code of 1 February 1999</p> <p>Chapter 43 – Right to strike in order to resolve collective labour disputes</p> <p>Article 270 – Legal basis of strikes</p> <p>Article 271 – Making a decision to go on strike</p> <p>Article 272 – Informing the employer of the decision to strike</p> <p>Article 273 – Warning strike</p> <p>Article 274 – Group leading the strike</p> <p>Article 275 – Duties of the parties and relevant authorities during a strike</p> <p>Article 276 – Guarantees to individuals who refuse to participate in a strike</p> <p>Article 277 – Right of strikers to freely assemble</p> <p>Article 278 – Strike funds</p> <p>Article 279 – Ending or suspending a strike</p> <p>Article 280 – Situations in which the right to strike is limited or prohibited</p> <p>Article 281 – Sectors where strikes are forbidden; essential services</p> <p>Article 282 – Illegal strikes</p> <p>Article 283 – Compensation of employees who participate in a strike</p> <p>Article 286 – Liability for violation of the rules hereof for resolving collective labour disputes</p>
11. Bahamas		<p>Industrial Relations Act (Act No. 14 of 1970) as amended 2001</p> <p>Part VI – Trade Dispute Procedure</p> <p>72. Essential services</p> <p>74. Strikes and lockouts</p> <p>75. Illegal strikes and lockouts</p> <p>76. Power of Minister to refer legal strike or lockout to Tribunal</p> <p>77. Strikes and lockouts prohibited during hearings</p> <p>80. Breach of contract involving danger to life or property</p> <p>82. Prevention of intimidation or annoyance by violence or otherwise</p>
12. Bahrain		<p>Law No. 36 of 2012 – The promulgation of the labour law in the private sector</p> <p>Article 8 – Right to strike</p> <p>Law No. 49 of 2006 amending some provisions of the Workers Trade Union Law promulgated by Legislative Decree No. 33 of 2002</p> <p>Section 21 – Strikes</p> <p>Workers’ Trade Union Law</p> <p>Section 21 – Strikes</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
13. Bangladesh		<p>Labour Act, 2006 (XLII of 2006) 196. Unfair labour practices on the parts of workers 210. Settlement of industrial disputes 211. Strike and lockout 225. Prohibition on serving notice of strike or lockouts while proceeding pending 226. Power of labour court and tribunal to prohibit strike, etc. 227. Illegal strikes and lockouts 291. Penalty for unfair labour practices 294. Penalty for illegal strike or lockout 295. Penalty for instigating illegal strike or lockout 296. Penalty for taking part in or instigating go-slow 301. Penalty for non-compliance with the provisions of section 210(7)</p> <p>Export Processing Zones (EPZ) Workers Welfare Association and Industrial Relations Act of 2010 (Act No. 43 of 2010)</p>
14. Barbados		<p>2012 Employment Rights Act Article 2 – Definition of strike Part VIII – Voluntary dispute settlement procedure</p>
15. Belarus	<p>Constitution Article 41 ... Citizens shall have the right to protection of their economic and social interests, including the right to form trade unions and conclude collective contracts (agreements), and the <u>right to strike</u>.</p> <p>Article 84. The President of the Republic of Belarus shall: ... (23) have the right, in instances specified in the law, to defer a <u>strike</u> or suspend it for a period not exceeding three months.</p>	<p>Labour Code of 26 July 1999 (text No. 432) Part IV – General rules for the regulation of collective labour relations Sections 388–399</p> <p>Law No. 1605-XII of 22 April 1992 on Trade Unions Article 22 – Right of trade unions to declare strikes</p> <p>Law No. 204-Z of 14 June 2003 on Public Service in the Republic of Belarus (text No. 2/953)</p> <p>Act No. 416 of 23 November 1993 on the fundamental principles of employment in the public service – Public service employees may not take part in strikes</p> <p>Presidential Decree No. 24 concerning the use of foreign gratuitous aid</p> <p>Act of 30 December 1997 on gatherings, meetings, street processions, demonstrations and picketing Article 11 – Picketing</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
16. Belgium		<p>Code pénal social, 2010 Section 8 – Les prestations d'intérêt public, article 207</p> <p>Loi du 11 juillet 1990 portant approbation de la Charte sociale européenne et de l'annexe, faites à Turin le 18 octobre 1961</p> <p>Code pénal Article 141^{ter} – Aucune disposition du présent titre ne peut être interprétée comme visant à réduire ou entraver des droits ou libertés fondamentales tels que le droit de grève (...)</p>
17. Belize		<p>Labour (Amendment) Act, 2005 Part I – Preliminary Section 2 – Interpretation of strike</p> <p>Settlement Of Disputes In Essential Services Act, Chapter 298 (revised edition 2003) – Essential services</p> <p>Settlement of Disputes in Essential Services (Amendment) Act, 1996 (No. 17 of 1996)</p> <p>Settlement of Disputes (Essential Services) Order, 1977</p> <p>Settlement Of Disputes In Essential Services Act, 1953 Section 2 – Application of the Act to persons employed by or under the Government Section 3 – Meaning of strike Section 15 – Prohibition of lockouts and strikes</p>
18. Benin	<p>Constitution Article 31 L'Etat reconnaît et garantit le <u>droit de grève</u>. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et ses intérêts soit individuellement, soit collectivement ou par l'action syndicale. Le <u>droit de grève</u> s'exerce dans les conditions définies par la loi.</p> <p>Article 98 Sont du domaine de la loi les règles concernant: [...] – du droit du travail, de la sécurité sociale, du droit syndical et du <u>droit de grève</u>;</p>	<p>Loi n° 2001-09 du 21 juin 2002 portant exercice du droit de grève Titre IV – De la réquisition Articles 13-20 – Services essentiels</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
19. Bolivia, Estado Plurinacional de	<p>Constitución Artículo 53 Se garantiza el derecho a la huelga como el ejercicio de la facultad legal de las trabajadoras y los trabajadores de suspender labores para la defensa de sus derechos, de acuerdo con la ley.</p>	<p>Ley General del Trabajo / Decreto supremo de 24 de mayo de 1939, por el que se dicta la Ley General del Trabajo, elevado a ley el 8 de diciembre de 1942 Título X – De los conflictos Capítulo II – De la huelga y el <i>lock-out</i></p> <p>Código Penal / Decreto supremo núm. 0667 por el que se aprueba el Texto Ordenado del Código Penal Artículo 234 – <i>Lock-out</i>, huelgas y paros ilegales Artículo 306 – Violencias o amenazas, por obreros y empleados</p> <p>Ley núm. 316, de 11 de diciembre de 2012, que despenaliza el derecho a la huelga y la protección del fuero sindical en materia penal</p>
20. Bosnia and Herzegovina	<p>Constitution Article 4 – Non-discrimination The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p> <p>Annex I includes, inter alia, ICESCR Article 8(d) of the ICESCR provides: “The <u>right to strike</u>, provided that it is exercised in conformity with the laws of the particular country.”</p>	<p>Act of 14 December 2005 on strike (<i>Zakon o strajku</i>)</p> <p>Act of 7 April 2000 on strike (text No. 90) Provides for general strike organization. Workers shall be free to participate or not in a strike. Strikes shall be organized by trade unions for the protection of economic and social rights of their members.</p> <p>Act on Strike, 1998</p>
21. Botswana		<p>Trade Disputes Act, 2003 (Act No. 15 of 2004) (Cap. 48:02) Part VI – Unlawful industrial action and enforcement of collective labour agreements and decisions of the Industrial Court 39. Right to strike and lockout 40. Regulation of strikes and lockouts 41. Strikes and lockouts in compliance with this Part 42. Prohibition of certain strikes and lockouts Part VII – Protection of essential services, life and property Schedule – Essential services</p> <p>National industrial relations code of good practice, 2002 Part D – Collective bargaining Section 18 – Strikes and lockouts</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
22. Brazil	<p>Constitution Article 9 The <u>right to strike</u> is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defend thereby.</p> <p>Paragraph 1. The law shall define the essential services or activities and shall provide with respect to the satisfaction of the community's undelayable needs. Paragraph 2. The abuses committed shall subject those responsible to penalties of the law.</p>	<p>Decreto-ley núm. 5452, de 1.º de mayo de 1943, por el que se aprueba la codificación de las leyes del trabajo Chapter VII – DAS PENALIDADES Section 1 Do “Lockout” E Da Greve / Article 722</p> <p>Ley núm. 7783 sobre el Ejercicio del Derecho de Huelga, definición de las actividades esenciales, regulación de las necesidades perentorias de la comunidad, y por la que se provee a otros fines de 28 de junio de 1989</p>
23. Brunei Darussalam		<p>Trade Disputes Act, 1961 Part II – Trade disputes Article 7(7) – Essential services Article 9 – Illegal strikes and lockouts Article 10 – Penalty for illegal strikes and lockouts Article 11 – Penalty for giving financial aid to illegal strikes and lockouts Article 12 – Prosecutions Article 13 – Protection of persons refusing to take part in illegal strikes or lockouts Article 14 – Peaceful picketing and prevention of intimidation</p>
24. Bulgaria	<p>Constitution Article 50 Workers and employees shall have the <u>right to strike</u> in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law.</p>	<p>Regulations of 2003 on the organization and activities of the National Institute for Conciliation and Arbitration</p> <p>Railway Transport Act, 2000 Section 51 – Satisfactory transport services to be ensured to the public in case of strike</p> <p>Law for the Civil Servant, 1999 Article 47 – Right to strike</p> <p>Act of 6 March 1990 on the settlement of collective labour disputes Section 11(2) – Majority needed to call a strike</p> <p>State Gazette No. 87/27.10.2006 amending the Settlement of Collective Labour Disputes Act.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
25. Burkina Faso	<p>Constitution Article 22 Le <u>droit de grève</u> est garanti. Il s'exerce conformément aux lois en vigueur.</p>	<p>Loi n° 028-2008/AN portant Code du travail au Burkina Faso Section 3 – Grève et lock-out Articles 382 et suivants Article 384 – Services minimums Article 386 – Occupation des lieux de travail</p> <p>Arrêté n° 2009-022/MTSS/SG/DGT/DER du 18 décembre 2009 déterminant les emplois réquisitionnés et les conditions et modalités de réquisition en cas de grève Articles 2 et 3 – Services essentiels</p>
26. Burundi	<p>Constitution Article 37 Le droit de fonder des syndicats et de s'y affilier ainsi que le <u>droit de grève</u> sont reconnus. La loi peut réglementer l'exercice de ces droits et interdire à certaines catégories de personnes de se mettre en <u>grève</u>. Dans tous les cas, ces droits sont interdits aux membres des corps de défense et de sécurité.</p>	<p>Décret-loi n° 1-037 du 07 juillet 1993 portant Code du travail Article 41 – Suspension du contrat de travail en cas de grève légale Articles 191-210 – Des différends collectifs Article 217 – Services minimums</p> <p>Chapitre 3 – Droit de grève (Articles 211-223) Section 1 – Disposition générale Section 2 – Restrictions à l'exercice du droit de grève Section 3 – Les effets de la grève</p> <p>Loi n° 1/015 du 29 novembre 2002 portant réglementation de l'exercice du droit syndical et du droit de grève dans la fonction publique</p>
27. Cambodia	<p>Constitution Article 37 Les <u>droits de grève</u> et de manifestations pacifiques doivent s'exercer dans le cadre de la loi.</p>	<p>1997 Labour Law – Kram dated 13 March 1997 on the Labour Law Chapter XIII – Strikes and lockouts (Articles 318–337) General provisions Procedures prior to the strike Effects of a strike Illegal strikes</p> <p>2000 Circular/Pakras on the Right to Strike – No. 005 MoSALVY</p>
28. Cameroon	<p>Préambule de la Constitution: – La liberté d'association, la liberté syndicale et le <u>droit de grève</u> sont garantis dans les conditions fixées par la loi.</p>	<p>Loi n° 92-007 du 14 août 1992 portant Code du travail Titre 9 – Des différends du travail Chapitre 2 – Du différend collectif Article 157 – Définitions et conditions de légitimité des grèves Article 165 – Sanctions</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
29. Canada	<p data-bbox="580 252 1323 339"><i>In a judgment dated 30 January 2015, the Supreme Court of Canada found that the right to strike is protected under section 2(d) of the Charter of Rights and Freedoms by virtue of its unique role in the collective bargaining process.</i></p> <p data-bbox="580 371 1061 399">Section 2 of the Charter of Rights and Freedoms</p> <p data-bbox="580 400 1050 427">Everyone has the following fundamental freedoms:</p> <p data-bbox="580 448 607 464">...</p> <p data-bbox="580 475 831 502">(d) freedom of association.</p>	<p data-bbox="1370 252 1933 279">Trade Unions Act of Canada (in force since 1 June 2001)</p> <p data-bbox="1370 312 1644 339">Canada Labour Code, 1985</p> <p data-bbox="1370 341 1637 368">Article 3 – Definition of strike</p> <p data-bbox="1370 370 2069 427">Article 87.3.1 – Strike ballot within the previous 60 days secret ballot simple majority of those voting</p> <p data-bbox="1370 429 2018 456">Article 87.2.1 – Imposes minimum 72 hours' notice of strike or lockout</p> <p data-bbox="1370 458 1731 485">Article 87.4 – Maintenance of activities</p> <p data-bbox="1370 486 1727 513">Article 87.4.8 – Compulsory arbitration</p> <p data-bbox="1370 515 1637 542">Article 87.6 – Reinstatement</p> <p data-bbox="1370 544 2018 601">Article 87.7.1 – Specific minimum service provisions exist for the grain shipping industry</p> <p data-bbox="1370 635 1800 662">Division VI – Prohibitions and enforcement</p> <p data-bbox="1370 663 1581 691">Strikes and lockouts</p> <p data-bbox="1370 692 1581 719">Article 88 – Definitions</p> <p data-bbox="1370 721 1845 748">Article 89 – Certain requirements for calling a strike</p> <p data-bbox="1370 750 1767 777">Article 90 – Limitations to the right to strike</p> <p data-bbox="1370 778 1812 805">Article 94.2.1 – Prohibition of replacement hires</p> <p data-bbox="1370 807 1733 834">Article 94.3 – Rights of striking workers</p> <p data-bbox="1370 868 1789 895">Public Service Labour Relations Act, 2003</p> <p data-bbox="1370 896 1650 924">Section 4 – Essential services</p> <p data-bbox="1370 925 1655 952">Division 8 – Essential services</p> <p data-bbox="1370 954 1700 981">Section 119(1) – Essential services</p> <p data-bbox="1370 983 1771 1010">Division 14 – Prohibitions and enforcement</p> <p data-bbox="1370 1011 1827 1038">Article 194 – Declaration or authorization of strike</p> <p data-bbox="1370 1072 2076 1129">Québec / Décret n° 754-2007 du 28 août 2007 concernant le maintien des services essentiels en cas de grève dans certains services publics</p> <p data-bbox="1370 1163 2076 1220">Québec / Décret n° 1227-2005 du 7 décembre 2005 relatif au maintien des services essentiels en cas de grève dans certains services publics</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
30. Cabo Verde	<p>Constitution Article 64 – The right to strike and prohibition of lockout</p> <p>(1) The <u>right to strike</u> shall be guaranteed; workers have the right to decide on the occasions to strike and the interests which the strike is intended to defend.</p> <p>(2) The law shall regulate the exercise of the <u>right to strike</u>.</p> <p>(3) ...</p>	<p>2007 Labour Code / Decreto-Legislativo nº 5/2007 Section 2 – Right to strike</p> <p>112. Notion of strike 113. Illegal strikes 114. Decision to go on strike 115. Advance notice 116. Representatives of striking workers 117. Strike pickets 118. Conciliation and mediation 119. Freedom to join a strike 120. Prohibition of replacing striking workers 121. Effects of strike 122. Obligations during strike 123. Determination of minimum services 124. Provision of minimum services 125. End of strike 126. Effects of illicit strikes 127. Remission</p>
31. Central African Republic	<p>Constitution Article 10 (...) Le <u>droit de grève</u> est garanti et s'exerce dans le cadre des lois qui le régissent et ne peut, en aucun cas, porter atteinte ni à la liberté de travail ni au libre exercice du droit de propriété.</p>	<p>Loi nº 09-004 du 29 janvier 2009 portant Code du travail Section III – De la grève et du lock-out Articles 377-386 Article 381 – Services minimums</p> <p>Loi nº 09-14 du 10 août 2009 portant statut général de la fonction publique Article 23 – Reconnaissance du droit de grève aux fonctionnaires</p> <p>Ordonnance nº 81/028 portant réglementation du droit de grève dans les services publics</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
32. Chad	<p>Constitution Article 29 Le <u>droit de grève</u> est reconnu. Il s'exerce dans le cadre des lois qui le réglementent.</p>	<p>Loi n° 38/PR/96 du 11 décembre 1996 portant Code du travail Article 133 – Suspension du contrat de travail en cas de grève légale Articles 455 et suivants – De la grève et du lock-out Articles 456-461 – L'exercice du droit de grève</p> <p>Loi n° 017-PR-2001 portant statut général de la fonction publique Article 9 – Reconnaissance du droit de grève aux fonctionnaires Loi n° 008/PR/2007 du 9 mai 2007 portant réglementation de l'exercice du droit de grève dans les services publics Articles 18-21 – Services essentiels</p>
33. Chile	<p>Constitución Artículo 19, 16° [...] <u>No podrán declararse en huelga</u> los funcionarios del Estado ni de las municipalidades. Tampoco podrán hacerlo las personas que trabajen en corporaciones o empresas, cualquiera que sea su naturaleza, finalidad o función, que atiendan servicios de utilidad pública o cuya paralización cause grave daño a la salud, a la economía del país, al abastecimiento de la población o a la seguridad nacional. La ley establecerá los procedimientos para determinar las corporaciones o empresas cuyos trabajadores estarán sometidos a la prohibición que establece este inciso;</p>	<p>Código del Trabajo, 2011 (versión refundida) Artículos 303-414</p> <p>Título VI – De la huelga y del cierre temporal de la empresa Artículos 369-385 Artículo 384 – Servicios esenciales</p> <p>Ley núm. 12927, Seguridad Interior del Estado Artículo 11 – El paro o huelga en ciertos servicios puede sancionarse con presidio o relegación.</p>
34. China		<p>Trade Union Law of the People's Republic of China (amended 2001) Article 27 – Consultations to be held with the trade union in case of work stoppage or slowdown strike.</p>
35. Colombia	<p>Constitución Artículo 56 Se garantiza el <u>derecho de huelga</u>, salvo en los servicios públicos esenciales definidos por el legislador. La ley reglamentará este derecho. Una comisión permanente integrada por el Gobierno, por representantes de los empleadores y de los trabajadores, fomentará las buenas relaciones laborales, contribuirá a la solución de los conflictos colectivos de trabajo y concertará las políticas salariales y laborales. La ley reglamentará su composición y funcionamiento.</p>	<p>Ley núm. 50, de 28 de diciembre de 1990, por la que se introducen reformas al Código Sustantivo del Trabajo y se dictan otras disposiciones Artículo 51 – Suspensión del contrato de trabajo por huelga Artículo 429 – Definición Artículo 444 – Decisión de los trabajadores Artículo 445 – Desarrollo de la huelga Artículo 448 – Funciones de las autoridades Artículo 449 – Efectos jurídicos de la huelga Artículo 450 – Casos de ilegalidad y sanciones</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
36. Comoros		<p>Code du travail de 2012 Titre IX – Des différends du travail Chapitre II – Du différend collectif Article 247 – Droit de grève</p> <p>Loi du 28 juin 2012 abrogeant, modifiant et complétant certaines dispositions de la loi n° 84-108/PR portant Code du travail Article 68 – Suspension du contrat de travail pendant la grève Articles 247-249 – Droit de grève; services essentiels</p> <p>Loi n° 04-006 du 10 novembre 2004 portant statut général des fonctionnaires Article 9 – Reconnaissance du droit de grève aux fonctionnaires</p> <p>Code Pénal Article 391</p>
37. Congo	<p>Constitution Article 25 A l'exception des agents de la force publique, les citoyens congolais jouissent des libertés syndicales et du <u>droit de grève</u> dans les conditions fixées par la loi.</p>	<p>Loi n° 45-75 instituant un Code du travail de la République populaire du Congo Titre 2 – Du contrat de travail Chapitre 2 – Du contrat de travail individuel Article 47 – De la suspension du contrat de travail Titre 8 – Du règlement des différends de travail Chapitre 2 – Du différend collectif (articles 242-249.4) Article 248-2 – Définition de la grève Article 248-3 – Grèves licites Article 248-4 – Grèves illicites ou abusives Articles 248.5-249.4 – Autres modalités Article 248-15 – Services minimums</p>
38. Costa Rica	<p>Constitución Artículo 61 Se reconoce el <u>derecho de los patronos al paro y el de los trabajadores a la huelga</u>, salvo en los servicios públicos, de acuerdo con la determinación que de éstos haga la ley y conforme a las regulaciones que la misma establezca, las cuales deberán desautorizar todo acto de coacción o de violencia.</p>	<p>Código del Trabajo (refundido en 2014) Artículos 371-378 – De las huelgas legales e ilegales</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
39.	Côte d'Ivoire	<p>Constitution Article 18 Le droit syndical et le <u>droit de grève</u> sont reconnus aux travailleurs des secteurs public et privé qui les exercent dans les limites déterminées par la loi.</p>	<p>Loi n° 95/15 du 12 janvier 1995 portant Code du travail Chapitre 2 – Différends collectifs Articles 82.1-82.5 sur la définition et les modalités de la grève Section 5, article 82.11 – Arbitrage obligatoire</p> <p>Loi n° 92-570 du 11 septembre 1992 portant statut général de la fonction publique</p> <p>Décret n° 95-690 du 6 septembre 1995 portant modalités particulières d'exécution du service minimum en cas de grève dans les services publics</p> <p>Décret n° 94-92 du 2 mars 1994 portant modalités du service minimum en cas de grève dans un établissement public sanitaire et social</p> <p>Loi n° 92-571 du 11 septembre 1992 relative aux modalités de la grève dans les services publics</p>
40.	Croatia	<p>Constitution Article 60 The <u>right to strike</u> shall be guaranteed.</p> <p>The <u>right to strike</u> may be restricted in the armed forces, the police, the civil service and public services as specified by law.</p>	<p>Labour Act of 4 December 2009 (text No. 3635) Part XX – Strike and collective labour dispute resolution Article 269 – Strike and solidarity strike Article 270 – Disputes in which mediation is mandatory Article 274 – Resolution of disputes by arbitration Article 278 – Rules applicable to work assignments which must not be interrupted Article 279 – Effects of organization of a strike or participation in a strike Article 280 – Proportional reduction of salary and salary supplements Article 281 – Judicial prohibition of an illegal strike and compensation for damages Article 283 – Judicial jurisdiction to prohibit a strike or a lockout Article 284 – Strikes in the armed forces, police, state administration and public services</p> <p>Criminal Code Article 111 – Violation of the right to strike</p>
41.	Cuba		

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
42. Cyprus	<p>Constitution Article 27</p> <p>1. The <u>right to strike</u> is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.</p> <p>2. The members of the armed forces, of the police and of the gendarmerie shall not have the <u>right to strike</u>. A law may extend such prohibition to the members of the public service.</p>	<p>Industrial Relations Code, 1977 (the Industrial Relations Code is a gentleman's agreement signed by the Social Partners in 1977)</p> <p>Part II – Procedural provisions</p> <p>B. Procedure for the settlement of grievances</p> <p>1. Direct negotiations</p> <p>(d) Violations of collective agreements – Resort to strike</p>
43. Czech Republic	<p>Constitution Article 44</p> <p>...</p> <p>A law may place restrictions upon the exercise of the <u>right to strike</u> by persons who engage in professions essential for the protection of human life and health.</p>	<p>Act No. 2/1991 on collective bargaining</p> <p>Section 16 – Grounds for strike</p> <p>Section 17 – Conditions</p> <p>Section 18 – Participation</p> <p>Section 19 – Cooperation</p> <p>Section 20 – Unlawful strike</p>
44. Democratic Republic of the Congo	<p>Constitution Article 39</p> <p>Le <u>droit de grève</u> est reconnu et garanti.</p> <p>Il s'exerce dans les conditions fixées par la loi qui peut en interdire ou en limiter l'exercice dans les domaines de la défense nationale et de la sécurité ou pour toute activité ou tout service public d'intérêt vital pour la nation.</p>	<p>Loi n° 015/2002 du 16 octobre 2002 portant Code du travail</p> <p>Section 1 – La conciliation préalable des conflits collectifs de travail</p> <p>Article 57 – Suspension du contrat de travail</p> <p>Article 305 – Demande devant le Tribunal de travail en cas de conflit collectif non résolu</p> <p>Article 315 – Cessation collective du travail</p> <p>Article 326 – Peine en cas de cessation collective du travail</p> <p>Loi n° 016/2002 portant création, organisation et fonctionnement des tribunaux du travail</p> <p>Article 28 – Application de l'article 305 du Code du travail</p> <p>Note circulaire n° 12/CAB.MIN/ETPS/05/09 du 14 août 2009 relative aux instructions procédurales pour l'usage du droit de grève en République démocratique du Congo aux organisations professionnelles des employeurs et des travailleurs, entreprises et établissements de toute nature</p> <p>Article 10 – Services essentiels</p> <p>Annexe</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
45. Denmark		<p>Labour Court and Industrial Arbitration Act, 2008 Part 1 – The Labour Court Section 9, subsection 2 – Work stoppage Section 12 – Illegal work stoppage</p> <p>Consolidation Act on Conciliation in Industrial Disputes, 2002 Part 1 – Conciliators Section 2(4) – Notices of work stoppage Section 4(4) – Work stoppage following failure of negotiations</p>
46. Djibouti	<p>Constitution Article 15 (...) Le <u>droit de grève</u> est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail.</p>	<p>Loi n° 133/AN/05/5ème L du 28 janvier 2006 portant Code du travail Articles 36, 41, 188, 189, 190</p> <p>Décret n° 83-099/PR/FP du 10 septembre 1983 fixant les conditions d'exercice du droit syndical et du droit de grève Article 23 – Services essentiels</p> <p>Décret n° 95-0091/PRE du 5 septembre 1995 portant réquisition du personnel de certains services publics Article premier – Services essentiels</p>
47. Dominica		<p>Industrial Relations Act (Act No. 18 of 1986) Part VIII – Settlement of trade disputes and managerial trade disputes Article 2 – Definition of essential services Schedule – Essential services Article 59 – Essential services Article 61 – When strike or lockout may occur Article 64 – When employee may participate in a strike Article 71 – No right to pay during strike</p>
48. República Dominicana	<p>Constitución Artículo 62, 6 Para resolver conflictos laborales y pacíficos se reconoce el <u>derecho de trabajadores a la huelga</u> y de empleadores al paro de las empresas privadas, siempre que se ejerzan con arreglo a la ley, la cual dispondrá las medidas para garantizar el mantenimiento de los servicios públicos o los de utilidad pública;</p>	<p>Ley núm. 16-92 que aprueba el Código del Trabajo Libro 6 – De los conflictos económicos, de las huelgas y de los paros Título I – De los conflictos económicos (Artículos 395-400) Título II – De las huelgas (Artículos 401-412)</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
49. Ecuador	<p>Constitución Artículo 326 Párrafo 10 – Se adoptará el diálogo social para la solución de conflictos de trabajo y formulación de acuerdos.</p> <p>Párrafo 12 – Los conflictos colectivos de trabajo, en todas sus instancias, serán sometidos a tribunales de conciliación y arbitraje.</p> <p>Párrafo 14 – Se reconocerá el derecho de las personas trabajadoras y sus organizaciones sindicales a la huelga. Los representantes gremiales gozarán de las garantías necesarias en estos casos. Las personas empleadoras tendrán derecho al paro de acuerdo con la ley.</p> <p>Párrafo 15 – Se prohíbe la paralización de los servicios públicos de salud y saneamiento ambiental, educación, justicia, bomberos, seguridad social, energía eléctrica, agua potable y alcantarillado, producción hidrocarburífera, procesamiento, transporte y distribución de combustibles, transportación pública, correos y telecomunicaciones. La ley establecerá límites que aseguren el funcionamiento de dichos servicios.</p>	<p>Codificación del Código del Trabajo, 1997 (enmendado en 2012) Artículo 235 – Declaratoria de huelga Artículo 330 – Normas en caso de huelga Artículo 467 – Derecho de huelga Artículo 468 – Pliego de peticiones Artículo 469 – Término del conflicto Artículo 470 – Mediación obligatoria Artículo 471 – Prohibición de declaratoria de huelga Artículo 474 – Integración del Tribunal de Conciliación y Arbitraje Artículo 485 – Apelación de los huelguistas Artículo 497 – Casos en que puede declararse la huelga Artículo 498 – Declaratoria de huelga Artículo 499 – Providencias de seguridad Artículo 501 – Prohibición de emplear trabajadores sustitutos Artículo 502 – Terminación de la huelga Artículo 504 – Remuneración durante los días de huelga Artículos 505-508 – Huelga solidaria Artículo 511 – Suspensión del contrato de trabajo Artículo 514 – Declaración de huelga en las instituciones y empresas que prestan servicios de interés social o público Artículos 515 y 522 – Servicios mínimos Artículo 521 – Servicios esenciales</p> <p>Ley Orgánica de Empresas Públicas (LOEP) Artículo 24</p> <p>Ley general de Instituciones del Sistema Financiero Artículo 56</p> <p>Código Penal Artículo 241 – Impedimento o limitación del derecho a huelga Artículo 346 – Paralización de un servicio público</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
50.	Egypt		<p>Labour Code (No. 12 of 2003) Book 4 – Collective labour relationships Part IV – Collective labour litigations Articles 192–201 on strike action</p> <p>Trade Union Act No. 35 of 1976 (as amended by Act No. 12 of 1995) Section 14</p> <p>Decree No. 1185 of 2003 determining the vital or strategic establishments where strike is forbidden</p>
51.	El Salvador	<p>Constitución Artículo 48 Se reconoce el derecho de los patronos al paro y el de los trabajadores a la <u>huelga</u>, salvo en los servicios públicos esenciales determinados por la ley. Para el ejercicio de estos derechos no será necesaria la calificación previa, después de haberse procurado la solución del conflicto que los genera mediante las etapas de solución pacífica establecidas por la ley. Los efectos de la huelga o el paro se retrotraerán al momento en que éstos se inicien. La ley regulará estos derechos en cuanto a sus condiciones y ejercicio.</p> <p>Artículo 221 Se <u>prohíbe la huelga</u> de los trabajadores públicos y municipales, lo mismo que el abandono colectivo de sus cargos.</p>	<p>Código del Trabajo, decreto núm. 15, de 23 de junio de 1972 Capítulo III – Del procedimiento en los conflictos colectivos económicos o de intereses Sección 7 – De la huelga (Artículos 527-538) Sección 9 – De la calificación de la huelga y el paro (Artículos 546-565) Sección 10 – De la terminación de la huelga y el paro (Artículo 566)</p>
52.	Guinea Ecuatorial	<p>Constitución Artículo 10 El <u>derecho a la huelga</u> es reconocido y se ejerce en las condiciones previstas por la ley.</p>	<p>Ley núm. 12/1992, de fecha 1.º de octubre, de Sindicatos y Relaciones Colectivas de Trabajo Título segundo – Relaciones colectivas de trabajo Capítulo I – Negociación colectiva Capítulo II – Huelga Capítulo III – Cierre patronal Capítulo IV – Procedimientos para la solución de los conflictos de trabajo Capítulo V – Sanciones</p>
53.	Eritrea		<p>Labour Proclamation (No. 118/2001) Title IX – Strike and lockout and unfair labour practices Article 115 – Strike and lockout Article 116 – Legality of a strike Article 117 – Labour dispute resolution in undertakings which supply essential services</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
54. Estonia	<p>Constitution Article 29 ... Everyone may freely belong to unions and federations of employees and employers. Unions and federations of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law. The conditions and procedure for the exercise of the <u>right to strike</u> shall be provided by law.</p>	<p>Trade Unions Act of 14 June 2000 (as amended 2010) Section 18 – Rights of trade unions (1) In order to exercise their competence, trade unions have the right to: ... (6) in order to achieve their objectives, organise meetings, political meetings, street parades, pickets and strikes pursuant to the procedure prescribed by law; ...</p> <p>Civil Service Act of 13 June 2012 Article 59 – Strike ban on official</p> <p>2000 Imprisonment Act Article 135 – A prison officer is prohibited to participate in strikes, pickets and other service-related pressure activities</p> <p>Act on resolution of collective labour disputes of 5 May 1993 (consolidation) Article 13 – Creation of right to strike or lockout Chapter III – Strikes and lockouts Article 14 – Decision-making Article 15 – Advance notice of strike or lockout Article 16 – Direction of strike Article 18 – Warning and support strike Article 19 – Postponement or suspension of strike or lockout Article 20 – Freedom to participate in strike Article 21 – Restrictions on right to strike Article 22 – Unlawful strikes and lockouts Article 23 – Declaration of strikes or lockouts as unlawful Article 24 – Rights and liability of participants in strikes or lockouts Article 25 – Remuneration during strike or lockout Article 26 – Liability in case of strike or lockout declared unlawful Article 28 – Making up for time lost by reason of strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
55. Ethiopia	<p>Constitution Article 42 1. (a) Factory and service workers, farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests. (b) Categories of persons referred to in paragraph (a) of this sub-article have the right to express grievances, including the <u>right to strike</u>. (c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub-article shall be determined by law. ...</p>	<p>Labour Proclamation No. 377/2003 Part 9 – Labour dispute Article 136 – Definition of strike Chapter 5 – Strike and lockout General Conditions to be fulfilled Procedure for notice Prohibited actions (Articles 157–160)</p> <p>Criminal Code/Proclamation No. 414/2004 Article 420 – Penalties Article 421 – Unlawful striking</p>
56. Fiji		<p>Employment Relations Promulgation, 2007 Part 18 – Strikes and lockouts 175. Secret ballot a prerequisite to strike 177. Unlawful strikes or lockouts 178. Lawful strikes or lockouts on grounds of safety or health 179. Effect of lawful strikes or lockouts 180. Power of the Minister to declare strike or lockout unlawful 181. Court may order discontinuance of strike or lockout 182. Employers not liable for wages 183. Record of strikes and lockouts 184. Prohibition of expulsion of members Part 19 – Protection of essential services, life and property 185. Object of this Part 186. Strikes in essential services Part 21 – Offences 250. Offences where strikes or lockouts are unlawful 256. Penalties</p> <p>Essential National Industries (Employment) Decree, 2011 27. Job actions, strikes, sick outs, slowdowns, and lockouts</p> <p>Public Service (Collective Bargaining) Act, 1973 (No. 123)</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
57. Finland	<p>Constitution Section 13(2) – Freedom of assembly and freedom of association Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The freedom to form trade unions and to organize in order to look after other interests is likewise guaranteed.</p>	<p>Act on Mediation in Labour Disputes, 1962 Chapter 2 – Arrangement of stoppages of work Section 7 – Notice of stoppage of work Section 8 – Deferment of stoppage of work</p> <p>Employment Contracts Act (55/2001, amendments up to 398/2013 included) Chapter 7 – Grounds for termination of the employment contract by means of notice Section 2.2 – Termination grounds related to the employee’s person</p> <p>Collective Agreements Act, 1946</p>
58. France	<p>Constitution Préambule Le <u>droit de grève</u> s'exerce dans le cadre des lois qui le réglementent.</p>	<p>Décret n° 2008-1246 du 1^{er} décembre 2008 relatif aux règles d'organisation et de déroulement de la négociation préalable au dépôt d'un préavis de grève prévue aux articles L. 133-2 et L. 133-11 du Code de l'éducation</p> <p>Circulaire du 30 juillet 2003 relative à la mise en œuvre des retenues sur la rémunération des agents publics de l'Etat en cas de grève</p> <p>Loi n° 2007-1224 sur le dialogue social et la continuité du service public dans les transports terrestres réguliers de voyageurs</p> <p>Loi n° 2012-375 du 19 mars 2012 relative à l'organisation du service et à l'information des passagers dans les entreprises de transport aérien de passagers et à diverses dispositions dans le domaine des transports</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
59.	Gabon		<p>Loi n° 3/94 du 21 novembre 1994 portant Code du travail Chapitre II – Des conflits collectifs du travail Section 1 – De la grève Articles 342-352 Sous-section 2 – Des dispositions particulières concernant la grève dans les services publics Articles 353-355</p> <p>Loi n° 1/2005 du 4 février 2005 portant statut général de la fonction publique Article 68 et 69 – Exercice du droit de grève par les agents publics; préavis et service minimum</p>
60.	Gambia		<p>Labour Act, 2007 – Act No. 5 of 2007 Article 137 – Picketing Article 138 – Secondary action Article 139 – Political action and action in breach of procedure Article 140 – Emergency provisions – Essential services</p>
61.	Georgia	<p>Constitution Article 33 The <u>right to strike</u> shall be recognized. Procedure of exercising this right shall be determined by law. The law shall also establish the guarantees for the functioning of services of vital importance.</p>	<p>Law on Trade Unions, 1997 Article 13 – Right to participate in settling collective labour disputes</p> <p>Criminal Code Article 165 – Encroachment upon right to strike</p>
62.	Germany	<p><i>The constitutional guarantee of the right to strike has been established by the courts on the basis of article 9(3) of the Basic Law (Grundgesetz).</i></p> <p>Basic Law Article 9(3) The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful. Measures taken pursuant to article 12a, to paragraphs (2) and (3) of article 35, to paragraph (4) of article 87a, or to article 91 may not be directed against industrial disputes engaged in by associations within the meaning of the first sentence of this paragraph in order to safeguard and improve working and economic conditions.</p>	

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
63.	Ghana		Labour Act, 2003 – Act No. 651 Part XIX – Strikes 159. Notice of intention to resort to strike or lockout 160. Strike and lockout 161. Cooling-off period 162. Essential services 163. Prohibition of strike or lockout in respect of essential services 164. Compulsory reference to arbitration 168. Illegal strike and lockout 169. Legal effect of lawful strike and lockout 170. Temporary replacement of labour 171. Picketing 175. Definitions of essential services and strike
64.	Greece	Constitution Article 23 1. The State shall adopt due measures safeguarding the freedom to unionize and the unhindered exercise of related rights against any infringement thereon within the limits of the law. 2. <u>Strike constitutes a right</u> to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labour interests of working people. <u>Strikes</u> of any nature whatsoever are prohibited in the case of judicial functionaries and those serving in the security corps. The <u>right to strike</u> shall be subject to the specific limitations of the law regulating this right in the case of public servants and employees of local government agencies and of public law legal persons as well as in the case of the employees of all types of enterprises of a public nature or of public benefit, the operation of which is of vital importance in serving the basic needs of the society as a whole. These limitations may not be carried to the point of abolishing the <u>right to strike</u> or hindering the lawful exercise thereof.	Act No. 1264, respecting the democratization of the trade union movement and the protection of workers' trade union freedoms, 1982 Article 19 – Right to strike

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
65.	Grenada		<p>Labour Relations Act (Act No. 15 of 1999) 45. Reporting of trade disputes 46. Power to refer dispute to Arbitration Tribunal Part IX – Employees’ ancillary rights, etc. 64. Peaceful picketing and prevention of intimidation 65. Refusal to do strikers’ work 66. Right to return to work after strike action 67. Negation of conspiracy re trade disputes 68. Negation of liability re interfering with another’s business 69. Intimidation and annoyance</p> <p>Employment Act (Act No. 14 of 1999) 44. Continuity of employment pursuant to participation in strike</p>
66.	Guatemala	<p>Constitución Artículo 116 Se reconoce el <u>derecho de huelga</u> de los trabajadores del Estado y sus entidades descentralizadas y autónomas. Este derecho únicamente podrá ejercitarse en la forma que preceptúe la ley de la materia y en ningún caso deberá afectar la tensión de los servicios públicos esenciales.</p>	<p>Código del Trabajo (2001) Título 7 – Conflictos colectivos de carácter económico Capítulo 1 – Huelgas (Artículos 239-244) Capítulo 3 – Disposiciones comunes a la huelga y al paro (Artículos 253-256)</p> <p>Decreto núm. 18-2001, por el que se enmienda el Código del Trabajo <i>(en particular, la lista de trabajadores que no pueden ejercer el derecho de huelga)</i></p> <p>Ley de Sindicalización y Regulación de la Huelga de los Trabajadores del Estado, decreto núm. 71-86, del Congreso de la República <i>(enmendado por decreto núm. 35-96, de 28 de mayo de 1996)</i> Sección 4 – Arbitraje obligatorio en caso de servicios no esenciales.</p>
67.	Guinea	<p>Constitution Article 20 [...] Le <u>droit de grève</u> est reconnu. Il s’exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail. La loi fixe les conditions d’assistance et de protection auxquelles ont droit les travailleurs.</p>	<p>Code du travail de 2014 Titre III – Conflits collectifs Chapitre 1 – La grève (Articles 431.1-431.10) Chapitre 3 – L’arbitrage Chapitre 4 – Exécution des accords de conciliation et des sentences arbitrales</p> <p>Arrêté n° 680/MTASE/DNTLS/95 du 24 octobre 1995 portant définition et détermination des services essentiels dans le cadre de l’exercice du droit de grève</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
68. Guinea-Bissau	<p>Constitution Article 47</p> <p>1. It is recognized a workers' <u>right to strike</u> under the law which is responsible for defining the scope of professional interests to defend through the strike, and its limitations in essential services and activities in the interest of the pressing needs of society.</p> <p>2. ...</p>	<p>Ley núm. 9/91, sobre la Huelga</p> <p>Se reconoce el derecho de huelga a los trabajadores en defensa de sus intereses socioprofesionales dentro de los límites de los demás derechos reconocidos a los ciudadanos. Se prohíbe la huelga en las fuerzas armadas y en la policía. Se prohíbe la discriminación de los trabajadores con motivo de su adhesión o no a una huelga. Se determinan los casos en que la huelga es ilegal y las prácticas ilícitas. Se garantiza la libertad de trabajo de los no adherentes y se prohíbe la sustitución de los trabajadores huelguistas. Se determinan los órganos competentes para declarar la huelga. Otras disposiciones de la ley se refieren a los piquetes de huelga, a la intervención conciliatoria, a los servicios mínimos, a la huelga con motivo de la aplicación de una norma legal o convencional, a la huelga en empresas o servicios de interés público esencial, a la finalización de la huelga, a la prohibición del cierre de talleres, a las sanciones, etc. (NATLEX)</p>
69. Guyana	<p>Constitution Article 147(2)</p> <p>Except with his or her consent no person shall be hindered in the enjoyment of his or her <u>freedom to strike</u>.</p> <p>Judicial Service Commission Rules (included in the Constitution) Article 20 – Special provisions for officers of the judicial service commission concerning <u>strike action</u>.</p>	<p>Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01), as amended up to 2012</p> <p>Section 12 – Prohibition of lockouts and strikes Section 19 – Penalty for participation in illegal strike</p> <p>Public Utility Undertakings and Public Health Services Arbitration (Amendment) Act, 2009</p> <p>Article 6 – Schedule defining essential services</p> <p>Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01)</p> <p>Article 19 – Compulsory arbitration and the sanction (fine or imprisonment, as amended by the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Act, 2009) imposed on workers who take part in an illegal strike.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
70. Haiti	Constitution Article 35.5 Le <u>droit de grève</u> est reconnu dans les limites déterminées par la loi.	Code du travail, 1984 Titre III – Des conflits du travail Chapitre VI – De la grève Article 204 – Conditions Article 205 – Formes de grève Article 206 – Légalité de la grève Article 207 – Suspension du contrat de travail Article 208 – Contenu de la grève Article 209 – Interdiction de la grève dans les services essentiels Article 210 – Grève illégale
71. Honduras	Constitución Artículo 128, 13) Se reconoce el <u>derecho de huelga</u> y de paro. La ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que determine;	Decreto núm. 189, que promulga el Código del Trabajo Artículo 495 – Atribución exclusiva de la Asamblea Artículo 550 – Definición de huelga Artículo 551 – Objeto de la huelga Artículos 552-553 – Efectos jurídicos de las huelgas Artículos 555-557 – Restricciones al derecho de huelga en los servicios públicos Capítulo II – Declaración y desarrollo de la huelga (Artículos 562-568) Capítulo IV – Terminación de la huelga (Artículos 572-573) Capítulo VI – Disposiciones comunes a la huelga y al paro (Artículos 585-590)
72. Hungary	2011 Fundamental Law Article XVII (2) Employees, employers and their representative bodies shall have a <u>statutory right to bargain</u> and conclude collective agreements, and to take any joint action or <u>hold strikes</u> in defence of their interests.	Act I of 2012 on the Labour Code Sections 216 and 266 2010 Amendment of Act VII of 1989 on Strikes
73. Iceland		Act on Trade Unions and Industrial Disputes, No. 80/1938 (as amended 2011) Section II – Respecting strikes and lockouts Articles 14–19

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
74. India	<p>Freedom of association subject to constitutional protection Article 19.1.c “All citizens shall have the right to ... form associations and unions”, but no mention of the right to strike.</p> <p>Main case law on constitutional protections is <i>All India Bank Employees v. National Industrial Tribunal</i> (1961) in which it is stated: “we have reached the conclusion that even a very liberal interpretation of sub-cl. (c) of cl. (1) of Art. 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to <u>strike</u>, either as part of collective bargaining or otherwise. The <u>right to strike</u> or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation”.</p> <p>The same judgment goes on to say “the right guaranteed by sub-cl.(c) of cl.(1) of Art. 19 does not carry with it a concomitant right that the unions formed for protecting the interests of labour shall achieve the purpose for which they were brought into existence, such that any interference, to such achievement by the law of the land would be unconstitutional unless the same could be justified as in the interests of public order or morality”.</p>	<p>Industrial Disputes Act, 1947 Article 2.q – Definition of strike Article 2.n – Definition of public services Article 10.3 – Power of referral</p> <p>Chapter V – Strikes and lockouts Sections 22–25 Chapter Vc – Unfair labour practices Section 25.u – Penalties Schedule 5, sections 4, 5, 6, 7, 8, 12, 15, Part II</p> <p>Trade Unions Act, 1926 Sections 17 and 18</p> <p>The Central Civil Services (Conduct) Rules, 1964 Rule 7 – Demonstration and strikes</p>
75. Indonesia		<p>Act No. 13 of 2003 concerning manpower Part 8 – Institutes/agencies for the settlement of industrial relations disputes Articles 137–145 – Strikes</p> <p>Act No. 2 of 2004 on Industrial Relations Disputes Settlement Kapolri Regulation No. 1/2005 (Guidelines on the conduct of the Indonesian police to ensure law enforcement and order in industrial disputes)</p>
76. Iran, Islamic Republic of		<p>Labour Code of 20 November 1990 Section 142 refers to “stoppage of work” and “deliberate reduction of production by the workers”.</p>
77. Iraq		<p>Act No. 71 of 1987 promulgating the Labour Code Part VIII – Dispute resolution (Labour Code) Chapter I – Labour disputes Section 136</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
78. Ireland	Case law suggests that it is likely a <u>right to strike</u> can be derived from article 40.3 of the Constitution, which protects the “personal rights” of citizens, but this protection does not necessarily extend to other forms of industrial action, for example <i>Crowley v. Ireland and Others</i> (1980) and <i>Talbot (Ireland) v. Merrigan and Others</i> (1981).	<p>Industrial Relations Act, 1990 Part II – Trade Union Law Section 8 – Definitions Section 10 – Acts in contemplation or furtherance of trade dispute Section 11 – Peaceful picketing Section 12 – Removal of liability for certain acts Section 13 – Restriction of actions of tort against trade unions Section 14 – Secret ballots Section 15 – Power to alter rules of trade unions Section 16 – Enforcement of rule for secret ballot Section 17 – Actions contrary to outcome of secret ballot Section 18 – Non-application of sections 14–17 to employers’ unions Section 19 – Restriction of right to injunction</p> <p>Unfair Dismissals Act, 1977 Article 5 – Strike dismissal</p>
79. Israel		<p>Settlement of Labour Disputes Law, 5717-1957 Part Two – Conciliation Article 5A – Duty to give notice of strike or lockout Part Four – Collective agreements in public service Article 37A – Definitions Unprotected strike or lockout Part Four – Collective agreements in public service Article 37A – Definitions Unprotected strike – A strike of employees in a public service where a collective agreement applies, except a strike unconnected with wages or social conditions and declared or approved by the central national governing body of the authorized employees’ organization.</p>
80. Italy	<p>Constitution Article 40 Le <u>droit de grève</u> doit s’exercer dans le respect de la loi.</p>	<p>Loi n° 83 du 11 avril 2000 portant modifications et compléments à la loi n° 146 du 12 juin 1990 réglementant le droit de grève dans les services publics essentiels ainsi que les droits de la personne prévus par la Constitution</p> <p>Loi n° 146/1990 portant dispositions relatives à l’exercice du droit de grève dans les services publics essentiels et à la sauvegarde des droits de la personne protégés par la Constitution et instituant une commission de garantie de l’application de la loi</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
81.	Jamaica	<p>Labour Relations and Industrial Disputes Act, 1975 Section 2 – Definitions Section 9 – Industrial disputes in undertakings providing essential services Section 10 – Ministry may act in public interest to settle dispute Section 11 – Reference of disputes to the tribunal at the request of the parties Part III – Establishment and functions of the industrial disputes tribunal Section 13 – Unlawful industrial action Section 31 – Prohibition of industrial action while appeals from the tribunal are pending in court Section 32 – Prohibition of industrial action prejudicial to the national interests</p>
82.	<p>Japan</p> <p><i>According to the courts, dispute acts, including strikes, are protected by article 28 of the Constitution.</i></p> <p>Constitution Article 28 The right of workers to organize and to bargain and act collectively is guaranteed.</p>	<p>Labour Union Act (Act No. 174 of 1 June 1949) Article 5(2) – The constitution of a labour union shall include the provisions listed in any of the following items: ... (viii) that no strike shall be started without a majority decision made by direct secret vote either of the union members or of delegates elected by direct secret vote of the union members.</p> <p>Article 8 – An employer may not make a claim for damages against a labour union or a union member for damages received through a strike or other acts of dispute which are justifiable acts.</p> <p>Labour Relations Adjustment Law (Law No. 25 of 27 September 1946 as amended through Law No. 82 of 14 June 1988) Provides for conciliation, mediation, arbitration, and emergency arbitration.</p>
83.	Jordan	<p>Labour Law and its Amendments No. 8 of the Year 1996 Articles 134–136 – Strike action</p> <p>Regulation No. (8) of the Year 1998 – The regulation of the conditions and procedures of strike and lockout</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
84. Kazakhstan	<p>Constitution Article 24 Paragraph 3 – The right to individual and collective labour disputes with the use of methods for resolving them, stipulated by law including <u>the right to strike</u>, shall be recognized.</p>	<p>Labour Code of the Republic of Kazakhstan No. 251 of 15 May 2007 Article 296 – Guarantees in connection with settlement of a collective labour dispute Article 297 – Obligations of the parties and mediation bodies in settling collective labour disputes Article 298 – The right to strike Article 299 – Announcement of a strike Article 300 – Powers of the body heading the strike Article 301 – Obligations of the parties to the collective labour dispute during a strike Article 302 – Guarantees to employees in connection with a strike being called Article 303 – Illegal strikes Article 304 – Consequences of a strike being declared illegal</p> <p>Criminal Code Article 335 – Directing of a prohibited strike, and impeding the work of an enterprise or an organization under the conditions of an emergency situation.</p>
85. Kenya	<p>Constitution Article 41 (1) Every person has the right to fair labour practices. (2) Every worker has the <u>right</u>: (c) to form, join or participate in the activities and programmes of a trade union; and (d) <u>to go on strike</u>.</p>	<p>Employment Act, 2007 Part I – Preliminary Section 2 – Interpretation – definition</p> <p>Labour Relations Act, 2007 Part X – Strikes and lockouts Section 76 – Protected strikes and lockouts Section 77 – Powers of industrial court Section 78 – Prohibited strikes or lockouts Section 79 – Strike or lockout in compliance with this Act Section 80 – Strike or lockout not in compliance with this Act</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
86. Kiribati		<p>Industrial Relations Code (Amendment) Act, 2008</p> <p>Industrial Relations Code, 1998 Article 27 – Strike, lockout or boycott unlawful where procedures are not exhausted Article 28 – Strike, lockout or boycott where award or agreement still in force Article 30 – Offences where strike, lockout or boycott unlawful Part VI – Protection of essential services, life and property Article 37 – Protection of life and property Article 39 – Strike ballots (<i>see amendments 2008</i>)</p> <p>Extradition Act, 2003 <i>Terrorist offence</i> – However, an act is <u>not</u> a terrorist act if it is committed as part of ... <i>industrial action</i> and is not intended to result in any harm ...</p>
87. Korea, Republic of	<p>Constitution Article 33</p> <p>(1) To enhance working conditions, workers shall have the right to independent association, collective bargaining, and <u>collective action</u>.</p> <p>(2) Only those public officials, who are designated by Act, shall have the right to association, collective bargaining, and <u>collective action</u>.</p> <p>(3) The right to <u>collective action</u> of workers employed by important defence industries may be either restricted or denied under the conditions as prescribed by Act.</p>	<p>Trade Union and Labour Relations Adjustment Act, 1997 (Law No. 5310) (as amended 2010) Chapter IV – Industrial action Article 37 (Basic principles of industrial action) Article 38 (Guidance and responsibility of trade union) Article 39 (Restriction on detention of workers) Article 40 (Support for labour relations) Article 41 (Restriction on and prohibition of industrial action) Article 42 (Prohibition of acts of violence) Article 43 (Restriction on hiring by employer) Article 44 (Prohibition of demands for wage payment during the period of industrial action) Article 45 (Adjustment precedent to industrial action)</p> <p>Act on the Establishment, Operation, etc. of Public Officials' Trade Unions, 2005 Article 1 (Prohibition of industrial action) – A trade union and its members shall not take any action, including strikes</p>
88. Kuwait		<p>Law No. 6/2010 concerning Labour in the Private Sector Chapter V – Collective Labour Relations/Section 3 – Collective labour disputes</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
89. Kyrgyzstan	Constitution Article 43 Everyone shall have the <u>right to strike</u> .	Labour Code of 4 August 2004 (text No. 106) Article 436 – Right to the strike Article 437 – Announcement of the strike Article 438 – The organ heading the strike Article 439 – Obligations of the parties of the collective employment dispute during the strike Article 440 – Illegal strikes Article 441 – Guarantees and the legal status of workers in connection with carrying out the strike Article 443 – Responsibility for evasion from participation in conciliatory procedures and failure to carry out of the agreement reached as a result of conciliatory procedure Article 444 – Responsibility of workers for illegal strikes Article 445 – Maintaining documentation in case of permission of the collective employment dispute
90. Lao People's Democratic Republic		Labour Law, 2013 Article 154 – Prohibition of work stoppage during disputes

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
91. Latvia	<p>Constitution Article 108 Employed persons have the right to a collective labour agreement, and the <u>right to strike</u>. The State shall protect the freedom of trade unions.</p>	<p>Law on Trade Unions of 1990 (as amended 2005) Section 20 – Right of trade unions to declare strikes Trade unions have the right to declare strikes in accordance with the procedures specified by law.</p> <p>1998 Act on Strikes (amended in 2002 and 2005) Part I – General conditions Sections 1–7 Part II – Pre-strike negotiations Sections 8–10 Part III – Declaration of strikes Sections 11–15 Part IV – Limits of the right to strike Sections 16–18 Part V – Supervision of the strike procedure Sections 19–22 Part VI – Illegality of the strike or the strike declaration Sections 23–25 Part VII – The rights and obligations of employees during the strike Sections 26–33 Part VIII – Responsibility for contravention of this Act Section 34</p>
92. Lebanon		<p>Penal Code – Legislative Decree No. 340 of 1943 Article 342 – Sanction for suspension of inter-urban or international transport, postal, telegraphic or telephone communications or public water or electricity distribution service. Article 343 – Sanctions for anyone who has led or maintained a concerted work stoppage by means of a gathering on public roads or places or by occupying workplaces.</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
93.	Lesotho		<p>1992 Labour Code Part XIX – Strikes, lockouts and essential services 3. Definition 229. Notice of strikes and lockouts 230. When strike lockout lawful 231. Offences in connection with strikes and lockout declared unlawful 232. Threat to essential services Part XX – Picketing, intimidation and other matters related to trade disputes 233. Peaceful picketing and prevention of intimidation 234. Intimidation 235. Conspiracy in trade disputes</p> <p>Public Services Act (2005) Article 19 – Prohibition for public officers</p>
94.	Liberia		<p>Labour Practices Law, 1956 Title 18A – Labour Practices Law Part VI – Labour organizations Chapter 44 – Unlawful picketing, strikes and boycotts Section 4403 – Essential services Section 4503 – Notice and secret ballot for strike Section 4506 – Unlawful strikes against Government</p>
95.	Libya		<p>1970 Labour Code Part IV – Trade unions Part V – Labour disputes, section 150 – Requirements for prior conciliation and arbitration Part VI – Penalties, section 176 – Liability for contravention of section 150</p> <p>Law No. 12 of 1378 (2010) on Labour Relations Chapter 4 – Labour disputes, conciliation and arbitration, sections 101–109</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
96. Lithuania	<p>Constitution Article 51 While defending their economic and social interests, employees shall have <u>the right to strike</u>. The limitations of this right and the conditions and procedure for its implementation shall be established by law.</p>	<p>Labour Code, 2002 Part I Chapter III – Representation of labour law subjects Article 22(3) – Right of employees to organize and manage strikes Chapter X – Regulation of collective labour disputes Article 76 – Definition of strike Article 77 – Declaration of a strike Article 78 – Restrictions on strikes Article 79 – Body leading a strike Article 80 – Course of a strike Article 81 – Lawfulness of a strike Article 81(4) – Essential services Article 82 – Legal status and guarantees of the employees on strike</p> <p>Law on Works Councils, 2004 Chapter V – Rights and duties of the Works Council Article 19 – Rights of the Works Council Article 19(10) – Decision to call a strike</p> <p>Law On Public Service, 1999 Chapter IV – Duties and rights of civil servants Article 21.1(10) – Right of civil servants to strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
97. Luxembourg	<p>Constitution Article 11</p> <p>4) La loi garantit le droit au travail et l'Etat veille à assurer à chaque citoyen l'exercice de ce droit. La loi garantit les libertés syndicales et organise le <u>droit de grève</u>.</p>	<p>Code du travail</p> <p>Article L162-11 – Obligation de trêve sociale durant la période de validité de la convention collective Article L.163-2, paragraphe 1) – Avant toute grève ou lock-out, les litiges collectifs visés aux points 1 et 2 de l'article L163-1, paragraphe 2), sont portés obligatoirement devant l'Office national de conciliation. Article L163-2, paragraphe 5) – Jusqu'à la constatation de la non-conciliation par l'Office national de conciliation les parties s'abstiendront [...] ainsi que de toute grève ou mesure de lock-out.</p> <p>Loi du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat Chapitre 11 – Droit d'association, représentation du personnel Article 36, paragraphe 1) – Les fonctionnaires jouissent de la liberté d'association et de la liberté syndicale. Toutefois, ils ne peuvent recourir à la grève que dans les limites et sous les conditions de la loi qui en réglemente l'exercice.</p> <p>Arrêt du 24 juillet 1952 de la Cour de cassation luxembourgeoise «La participation à une grève professionnelle, légitime et licite, constitue pour le travailleur un droit proclamé implicitement par l'article 11, alinéa 5, de la Constitution.» Confirmé par arrêt du 15 décembre 1959.</p>
98. Madagascar	<p>Constitution Article 33</p> <p>Le <u>droit de grève</u> est reconnu sans qu'il puisse être porté préjudice à la continuité du service public ni aux intérêts fondamentaux de la nation. Les autres conditions d'exercice de ce droit sont fixées par la loi.</p>	<p>Loi n° 2003-044 portant Code du travail Titre VII – Du différent de travail Chapitre II – Du règlement des différends collectifs de travail Section 2 – La grève Articles 13 et 229 – Suspension du contrat de travail pendant certaines actions de grève Articles 220-227 – De l'arbitrage Article 228 – Réquisition de travailleurs Article 258 – Pénalités</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
99. Malawi		<p>Labour Relations Act, 1996 Article 2 – Definition Part V – Dispute settlement 46. Strike or lockout procedures 47. Strike or lockout in essential services 48. Status of collective agreement and employment contract 49. Civil immunity 50. Right to return to employment 51. Temporary replacement labour 52. Refusal to do strikes’ work 53. Peaceful picketing 54. Injunction in respect of strike or lockout</p>
100. Malaysia		<p>Industrial Relations Act, 1967 Article 2 – Definition Part IX – Trade disputes, strikes and lockouts and matters arising therefrom Article 43 – Restrictions on strikes and lockouts in essential services Article 44 – Prohibition of strikes and lockouts Article 45 – Illegal strikes and lockouts Article 46 – Penalty for illegal strikes and lockouts</p> <p>Trade Unions Act, 1959 Article 2 – Definition 25A. Strikes and lockouts 40. Secret ballot First schedule – Section 38</p>
101. Maldives, Republic of	<p>Constitution Article 31 Every person employed in the Maldives and all other workers have the <u>freedom</u> to stop work and <u>to strike</u> in order to protest.</p>	<p><i>New Labour Relations Act under discussion, which will address the right to strike.</i></p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
102. Mali	<p>Constitution de 1992 Article 21 Le <u>droit de grève</u> est garanti. Il s'exerce dans le cadre des lois et règlements en vigueur.</p> <p>[Constitution de 2012 – article 32 L'Etat reconnaît et garantit le <u>droit de grève</u>. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et ses intérêts soit individuellement, soit collectivement par l'action syndicale. Le <u>droit de grève</u> s'exerce dans les conditions définies par la loi.]</p>	<p>Loi n° 92-020/AN-RM du 23 septembre 1992 portant Code du travail Article L.34 (7) – Suspension du contrat de travail pendant la grève Article L.231 – Grève illicite pendant la procédure de conciliation et ses effets Article L.311 – Interruption immédiate des opérations de placement pendant la grève</p> <p>Code pénal de 2001 Chapitre VII – Coalition de fonctionnaires Article 82 – Les dispositions qui précèdent ne portent en rien préjudice au droit de grève et à la liberté de se regrouper au sein d'organisations de coopération ou d'organisations syndicales de leur choix pour la défense de leurs intérêts professionnels.</p> <p>Loi n° 87-47/AN-RM du 4 juillet 1987 relative à l'exercice du droit de grève dans les services publics</p> <p>Décret n° 90-562/PRM du 22 décembre 1990 fixant la liste des services et emplois et les catégories de personnel indispensable à l'exécution du service minimal en cas de cessation concertée du travail dans les services publics de l'Etat et des collectivités territoriales et des organismes personnalisés chargés de la gestion d'un service public</p>
103. Malta		<p>Employment and Industrial Relations Act, Chapter 425 (Act XXII of 2002) Article 63 – Immunity of trade unions and employers' associations to actions in tort Article 64 – Acts in contemplation or furtherance of trade disputes – Exclusion of persons employed in essential services Article 65 – Peaceful picketing Article 73 et seq. – Industrial tribunal</p>
104. Marshall Islands		

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
105. Mauritania	Constitution Article 14 Le <u>droit de grève</u> est reconnu. Il s'exerce dans le cadre des lois qui le réglementent.	Loi n° 2004-017 portant Code du travail Titre II – Règlement des différends collectifs Chapitre IV – Arbitrage (Articles 350-356) Article 350 – Décision ministérielle de recourir à l'arbitrage Chapitre V – Grève et lock-out (Articles 357-366) Article 357 – Définition Article 358 – Préavis de grève Article 359 – Obligations des grévistes Article 360 – Réquisition Article 361 – Effets de la grève licite Article 362 – Grève illicite Article 363 – Effets de la grève illicite
106. Mauritius		Employment Relations Act, 2008 (Act No. 32 of 2008), as amended by the Employment Rights (Amendment) Act, 2013 (No. 6 of 2013) Part VII – Strikes and lockouts 76. Right to strike and recourse to lockout 77. Limitation on right to strike or recourse to lockout 78. Strike ballot 79. Notice of strike or lockout 80. Picketing 81. Minimum service 82. Acute national crisis 83. Legal effect of strike on contract of employment 84. Civil and criminal immunity Employment Rights Act, 2008 (Act No. 33 of 2008) 9. Continuous employment

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
107. Mexico	<p>Constitution Title VI – Labour and social security Article 123. (50) The Congress of the Union, without contravening the following basic principles, shall formulate labour laws which shall apply to: 19. Workers, day labourers, domestic servants, artisans (<i>obreros, jornaleros, empleados domésticos, artesanos</i>) and in a general way to all labour contracts: ... q. The laws shall recognize strikes and lockouts as rights of workmen and employers. r. <u>Strikes</u> shall be legal when they have as their purpose the attaining of equilibrium among the various factors of production, by harmonizing the rights of labour with those of capital. In public services it shall be obligatory for workers to give notice ten days in advance to the Board of Conciliation and Arbitration as to the date agreed upon for the suspension of work. <u>Strikes</u> shall be considered illegal only when the majority of strikers engage in acts of violence against persons or property, or in the event of war, when the workers belong to establishments or services of the Government. ... v. (54) An employer who dismisses a worker without justifiable cause or because he has entered an association or union, or for having taken part in a lawful <u>strike</u>, shall be required, at the election of the worker, either to fulfil the contract or to indemnify him to the amount of three months' wages. The law shall specify those cases in which the employer may be exempted from the obligation of fulfilling the contract by payment of an indemnity. He shall also have the obligation to indemnify a worker to the amount of three months' wages, if the worker leaves his employment due to lack of honesty on the part of the employer or because of ill-treatment from him, either to himself or to his wife, parents, children, or brothers and sisters. An employer may not relieve himself of this responsibility when the ill-treatment is attributable to his subordinates or members of his family acting with his consent or tolerance.</p>	<p>Federal Labour Law, 1970 Title VIII – Strikes Chapter I – General provisions Article 440 – Definition of strike Article 441 – Illegal strikes Chapter II – Objectives and procedures Article 450 – Objectives Article 451 – Requirements Article 469 – End of strike Article 925 – Public services</p> <p>Federal Act on State Employees Section 94, Title 4 – Right to strike in limited circumstances for state employees Section 99(II) – Requirements for support of strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
	<p>The branches of the union, the governments of the federal district and of the federal territories and their workers:</p> <p>...</p> <p>j. Workers shall have the right to associate together for the protection of their common interests. They may also make use of the <u>right to strike</u> after first complying with requirements prescribed by law, with respect to one or more offices of the public powers, whenever the rights affirmed by this article are generally and systematically violated.</p>	
<p>108. Moldova, Republic of</p>	<p>Constitution Article 45 – Right to strike (1) The <u>right to strike</u> shall be acknowledged. Strikes may be unleashed only with the view of protection the employees’ professional interests of economic and social nature. (2) The law shall set forth conditions governing the exercise of the <u>right to strike</u>, as well as the responsibility for illegal unleash of the strikes.</p>	<p>2003 Labour Code Part XII – Chapter III Settlement of collective labour conflicts Chapter IV The strike Article 362 – Strike announcement Article 363 – Strike organization at the enterprise Article 364 – Strike organization at the territorial level Article 365 – Strike organization at the branch level Article 366 – Strike organization at the national level Article 367 – Place of holding the strike Article 368 – Strike suspension Article 369 – Restriction of participation to strikes Article 370 – Responsibility for illegal organization of strikes</p> <p>Law No. 1129 of 7 July 2000 on trade unions Article 22 – The right to organize and conduct meetings</p> <p>Criminal Code Article 357 – Organizing or leading an illegal strike and hindering the activity of an enterprise, institution, or organization in conditions of emergency, siege, or a military situation.</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
109.	Mongolia		<p>Labour Law of Mongolia of 14 May 1999 Chapter 10 – Settlement of collective labour disputes Article 119 – Exercise of the right to strike Article 120 – Announcing a strike; temporary denial of access to the workplace Article 121 – Parties which may organize a strike; suspension and termination of a strike Article 122 – Prohibition, postponement, or temporary suspension of a strike Article 123 – Deeming a strike or denial of access to the workplace unlawful Article 124 – Guarantees of the rights of employees related to the settlement of a collective labour dispute</p>
110.	Montenegro	<p>Constitution Article 66 – Strike The employed shall have <u>the right to strike</u>. The <u>right to strike</u> may be limited to the employed in the army, police, state bodies and public service with the aim to protect public interest, in accordance with the law.</p>	<p>2003 Act on Strikes The concept of strike and decision-making freedom Types of strike Making a decision on strike Elements of the decision to go on strike Announcement of strike Initiating the procedure of conciliation, mediation and arbitration Obligations of a strike committee and strike participants Termination of strike Strike in specific activities Minimum work process Strike announcement Initiating the procedure of conciliation, mediation and arbitration Cooperation with the employer and execution of its instructions Protection of employees' rights Obligations of the employer Termination of employment Picket duty Authorizations of the state body Inspection supervision Penalties for offences</p> <p>Criminal Code Articles 227 and 228</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
111. Morocco	Constitution Article 29 Sont garanties les libertés de réunion, de rassemblement, de manifestation pacifique, d'association et d'appartenance syndicale et politique. La loi fixe les conditions d'exercice de ces libertés. Le <u>droit de grève</u> est garanti. Une loi organique fixe les conditions et les modalités de son exercice.	Code Pénal Chapitre IV – Des crimes et délits commis par des particuliers contre l'ordre public Section VI – Des infractions relatives à l'industrie, au commerce et aux enchères publiques Article 288 – Pénalités

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
112. Mozambique	<p>Constitution Article 87 1. Workers shall have the <u>right to strike</u>, and the law shall regulate the exercise of this right. 2. The law shall restrict the exercise of the <u>right to strike</u> in essential services and activities, in the interest of the pressing needs of society and of national security. 3. ...</p>	<p>Labour Law, 2007 Chapter V – Collective rights and collective employment relations Section VI – Rules on collective bargaining Subsection V – Arbitration of labour pursuits Article 189 – Compulsory arbitration Article 191 – Arbitration process</p> <p>Section VII – Right to strike Subsection I – General provisions on strikes Article 194 – Right to strike Article 195 – Concept of strike Article 196 – Limits on the right to strike</p> <p>Subsection II – General principles Article 197 – Resort to strike Article 198 – Democratic rules Article 199 – Freedom to work Article 200 (Prohibition against discrimination) Article 201 (Representation of employees on strike) Article 202 (Duties of the parties during a strike)</p> <p>Subsection III – Special strike regimes Article 205 – Strike in essential services and activities</p> <p>Subsection IV – Procedures, effects and effective implementation of the strike Article 207 – Prior notice Article 208 – Conciliatory action Article 209 – Putting the strike into effect Article 210 – Effects of the strike Article 211 – Effects of an unlawful strike Article 212 – Termination of the strike Article 213 – Exceptional measures by Government Article 214 – Content of civil requisition Article 215 – Objective of civil requisition</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
113. Myanmar		<p>Labour Organization Law (No. 7 of 2011) Chapter XI – Lockout and strike Article 38 – Strike in a public utility service Article 39 – Strike in a non-public utility service Article 41 – Illegal strikes Chapter XII – Prohibitions Articles 43–47 – Prohibitions in respect of strikes</p> <p>The Settlement of Labour Dispute Law, 2012 Chapter VI – Settlement of dispute Article 28(b) – Exercising the right to strike Chapter VIII – Prohibitions Article 42 – Prerequisites for strike</p>
114. Namibia		<p>Labour Act, 2007 (Act No. 11 of 2007) Chapter 7 – Strikes and lockouts Sections 74–79 Chapter 8 – Prevention and resolution of disputes Sections 80–91</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
115. Nepal		<p>Labour Act, 1992 of 15 May 1992 Article 76 – Notice of strike Article 78 – Prohibition of strikes Article 80 – Power to issue order to stop strikes Article 83 – Special arrangements for the settlement of disputes Article 51(f) and (g) – Misconduct: participation in a strike that has been declared irregular or illegal or without fulfilling the legal requirements</p> <p>Essential Services Operation Act, 2014 (1957) – Act No. 15 of 2014 Article 2 – Definitions of essential service and strike Article 3 – Right of the Government of Nepal to restrict strike Article 4 – Punishment to a person committing a restricted strike or participating or continuing to participate in the same Article 5 – Punishment to an encourager Article 6 – Punishment to a person contributing in cash to a restricted strike</p> <p>Trade Union Act, 1992 Article 30 – Special powers of the Government in the event that the activities of a trade union are considered to be likely to create an extraordinary situation and thus disturb the law and order situation within the country or to adversely affect the economic interests of the country.</p>
116. Netherlands		

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
117. New Zealand		<p>Employment Relations Act, 2000 Part 8 – Strikes and lockouts 81. Meaning of strike 82. Meaning of lockout Lawfulness of strikes and lockout 82A. Requirement for union to hold secret ballot before strike 82B. Terms of question for secret ballot 82C. When requirement for secret ballot does not apply 83. Lawful strikes and lockouts related to collective bargaining 84. Lawful strikes and lockouts on grounds of safety or health 85. Effect of lawful strike or lockout 86. Unlawful strikes or lockouts Suspension of employees during strikes 87. Suspension of striking employees 88. Suspension of non-striking employees where work not available during strike 89. Basis of suspension 90. Strikes in essential services 92. Chief executive to ensure mediation services provided Procedure to provide public with notice before strike or lockout in certain passenger transport services 93. Procedure to provide public with notice before strike in certain passenger transport services 95. Penalty for breach of section 93 or section 94 Performance of duties of striking or locked out employees 97. Performance of duties of striking or locked out employees Record of strikes and lockouts 98. Record of strikes and lockouts Jurisdiction of Employment Court 99. Jurisdiction of court in relation to torts 100. Jurisdiction of court in relation to injunctions Crimes Act, 1961 (No. 43 of 1961) 79. Sabotage: (2) No person shall be convicted of an offence against this section by reason only of the fact that he or she takes part in any strike or lockout.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
118. Nicaragua	Constitución Artículo 83 Se reconoce el <u>derecho a la huelga</u>	<p>307A. Threats of harm to people or property: (4) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that a person has committed an offence against subsection (1).</p> <p>Ley núm. 185, Código del Trabajo Capítulo III – De los conflictos colectivos Sección I – De la huelga (Artículos 244-249) Sección II – Del paro (Artículos 250-251) Sección III – Disposición común a la huelga y al paro (Artículo 252) Artículos 389-390 – Arbitraje obligatorio</p> <p>Ley núm. 641 que dicta el Código Penal Artículo 435 – Abandono de funciones públicas (...) Se exceptúa de esta disposición el ejercicio del derecho a huelga de conformidad con la ley.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
119.	<p>Niger</p> <p>Constitution Article 34 L'Etat reconnaît et garantit le droit syndical et le <u>droit de grève</u> qui s'exercent dans les conditions prévues par les lois et règlements en vigueur.</p>	<p>Loi n° 2012-45 du 25 septembre 2012 portant Code du travail Articles 320-326</p> <p>Ordonnance n° 96-039 du 29 juin 1996 portant Code du travail Chapitre II – Différends collectifs Section I – Conditions de recours à la grève (articles 311-315) Section II – Procédure d'arbitrage</p> <p>Code Pénal (2003) tel qu'amendé par la loi n° 2008-18 Section III – Coalition de fonctionnaires Article 120 – Droit de grève des fonctionnaires</p> <p>Arrêté n° 0825 du 2 juin 2003 portant création d'un comité national tripartite chargé de la mise en œuvre des recommandations des journées de réflexion sur le droit de grève et la représentativité des organisations professionnelles</p> <p>Décret n° 96-092/PCSN/MFPT/T du 16 avril 1996 portant modalités d'application de l'ordonnance n° 96-09 du 21 mars 1996, fixant les conditions d'exercice du droit de grève des agents de l'Etat et des collectivités territoriales</p> <p>Ordonnance n° 96-009 du 21 mars 1996 fixant les conditions d'exercice du droit de grève des agents de l'Etat et des collectivités territoriales</p> <p>Ordonnance n° 96-010 du 21 mars 1996 déterminant la liste des services essentiels et/ou stratégiques de l'Etat</p> <p>Loi n° 2007-26 du 23 juillet 2007 portant statut général de la fonction publique de l'Etat <i>(Reconnait le droit de grève pour la défense des intérêts professionnels collectifs des fonctionnaires et précise que ce droit s'exerce dans le cadre défini par la loi.)</i></p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
120. Nigeria		<p data-bbox="1375 253 1744 280">Trade Unions (Amendment) Act, 2005 Amends section 30 (strikes and lockouts; essential services) and section 42 (restrictions).</p> <p data-bbox="1375 373 2078 512">1973 Trade Unions Act (Chapter 437) Section 54 – Matters to be provided for in rules of trade unions 14. A provision that no member of the union shall take part in a strike unless a majority of the members have in a secret ballot voted in favour of the strike.</p> <p data-bbox="1375 549 2078 660">Trade Disputes Act (Chapter 432) (No. 7 of 1976) (as amended through 1989) Article 17 – Prerequisites; National Industrial Court; dispute settlement Article 47 – Definition of strike</p> <p data-bbox="1375 697 1928 748">Trade Disputes (Essential Services) Act (No. 23 of 1976) Article 9.1 – Essential services; strike prohibition</p> <p data-bbox="1375 785 2078 869">Nigerian Export Processing Zones Act, 1992 Article 18(5) – Prohibition of strikes for ten years after commencement of a zone; mandatory dispute settlement.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
121.	Norway	<p>General Civil Penal Code Section 86(7) – Punishment for any person who in time of war or for the purpose of war encourages, incites, is a party to deciding or takes part in any lockout, strike or boycott which is illegal and weakens Norway’s ability to resist.</p> <p>Labour Disputes Act of 5 May 1927 (as amended on 5 June 1981) Article 1(5) – Definition of strike Article 1(7) – Definition of “notice to cease work” Article 4 – Responsibility in respect of breach of collective agreement and illegal stoppage of work Article 5 – Stipulation of compensation for breach of collective agreement and illegal stoppage of work Article 6 – Obligation to observe peace Chapter III – Conciliation Article 28 – Notice to the mediators (in the event of a notice to cease work being given) Article 29 – Rules respecting stoppages of work Article 31 – Preliminaries to mediation Article 35 – Mediation proceedings and mediation proposals Article 36 – Termination of mediation proceedings ...</p> <p>Public Service Labour Disputes Act of 18 July 1958 (as amended) Chapter V – Breach of agreement. Stoppage of work. Article 20 – Rules of industrial peace Article 21 – Definition of stoppage of work (strike) Article 22 – Possible dismissal in the event of notification of work stoppage being given Article 23 – Liability for unlawful stoppage of work</p>
122.	Oman	<p>Labour Law, 2003 Part VIII – Labour disputes Article 107(bis) – Peaceful strikes</p> <p>Ministerial Decision No. 294 of 2006 on regulation of collective bargaining, peaceful strikes and lockouts</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
123. Pakistan	<p>Constitution Article 17: “every citizen shall have the right to form associations or unions”</p> <p>According to the Supreme Court in Siddique et al. 2006 p. 992, Civil Aviation Authority, <i>Islamabad v. Union of Civil Aviation Employees</i> (1997), this constitutional provision means that the <u>right to strike</u> cannot be derived from the constitutional protection of freedom of association – unlike bargaining itself.</p>	<p>Industrial Relations Act, 2012 (Act No. X of 2012) Article 2 – Definition of strike Article 20 – Functions of the collective bargaining agent Article 31 – Unfair labour practices on the part of employers Article 32 – Unfair labour practices on the part of a workmen Article 37 – Conciliation after notice of strike or lockout Article 39 – Commencement and conclusion of proceedings Chapter VII – Strikes and lockout Article 41 – Notice of strike or lockout Article 42 – Strike and lockout Article 43 – Illegal strikes and lockout Article 44 – Procedure in cases of illegal strikes or lockout Article 45 – Strike or lockout in public utility services Article 47 – Removal of fixed assets Article 48 – Protection of certain persons Article 61 – Powers of the Commission to prohibit strike, etc. Article 67 – Unfair labour practices</p> <p>Essential Services (Maintenance) Act, 1952 Article 5 – Definition of essential services; prohibition of strike action</p>
124. Palau		Division of Labour Rules and Regulations, 2002

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
125. Panamá	<p>Constitución Artículo 69 Se reconoce el <u>derecho de huelga</u>. La Ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que ella determine.</p>	<p>Código del Trabajo, 1972 / Decreto del Gabinete núm. 252, por el cual se aprueba el Código del Trabajo (enmendado en 1995) Artículos 448-451 – Declaración previa de legalidad de la huelga Artículo 452 – Arbitraje Título IV – De la huelga Artículos 475-519 Huelga por solidaridad Huelga en los servicios públicos Declaratoria y actuación de la huelga Efectos de la huelga Huelga ilegal Huelga imputable al empleador Normas especiales y sanciones</p> <p>Ley núm. 68, de 26 de octubre de 2010, que modifica los artículos del Código del Trabajo Modifica algunas disposiciones del Código del Trabajo sobre el derecho de huelga Artículo 3, 2) – modifica el artículo 493 del Código del Trabajo de 1972 Decreto ejecutivo núm. 26, de 5 de junio de 2009, por el cual se establecen los parámetros a tomar en consideración en relación con el porcentaje de trabajadores que laborarán en los turnos de los servicios públicos durante la huelga en éstos, de acuerdo con lo establecido en el artículo 487 del Código del Trabajo.</p>
126. Papua New Guinea		<p>Industrial Relations Act, 1962 Part III – Settlement of industrial disputes Section 25 – Report of industrial disputes</p>
127. Paraguay	<p>Constitución Artículo 98 – Del derecho de huelga y de paro Todos los trabajadores de los sectores públicos y privados tienen <u>el derecho a recurrir a la huelga</u> en caso de conflicto de intereses. Los empleadores gozan del derecho de paro en las mismas condiciones.</p> <p>Los <u>derechos de huelga</u> y de paro no alcanzan a los miembros de las Fuerzas Armadas de la Nación, ni a los de las policiales.</p> <p>La ley regulará el ejercicio de estos derechos, de tal manera que no afecten servicios públicos imprescindibles para la comunidad.</p>	<p>Ley núm. 213 que establece el Código del Trabajo, 1993 Título IV – De las huelgas y los paros Artículos 352-378 – De las huelgas</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
128. Perú	<p>Constitución Artículo 28 El Estado reconoce los <u>derechos de sindicación, negociación colectiva y huelga</u>. Cautela su ejercicio democrático: 1. Garantiza la libertad sindical. 2. Fomenta la negociación colectiva y promueve formas de solución pacífica de los conflictos laborales. La convención colectiva tiene fuerza vinculante en el ámbito de lo concertado.</p>	<p>Decreto supremo núm. 010-2003-TR por el que se aprueba el Texto Único Ordenado de la Ley de Relaciones Colectivas de Trabajo Título III – De la negociación colectiva (Artículo 68) Título IV – De la huelga (Artículos 72-86)</p> <p>Decreto supremo núm. 024-2007-TR por el que se sustituye el artículo 62 del Reglamento de la Ley de Relaciones Colectivas de Trabajo (se refiere a la decisión de declaración de huelga)</p>
129. Philippines	<p>Constitution Section 3 ... It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the <u>right to strike</u> in accordance with law.</p>	<p>Labor Code (Presidential Decree No. 442 of 1974) (as amended 2002) Title VIII – Strikes and lockouts and foreign involvement in trade union activities Article 212 (o, r, s) – Definition of strike, strike-breaker and strike areas Chapter I – Strikes and lockouts Article 263 – Strikes, picketing and lockouts Article 264 – Prohibited activities Article 265 – Improved offer balloting Article 266 – Requirement for arrest and detention</p> <p>Penal Code (Act No. 3815) Article 289</p>
130. Poland	<p>Constitution Article 59 ... (3) Trade unions shall <u>have the right to organize workers' strikes</u> or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of <u>strikes</u> by specified categories of employees or in specific fields.</p>	<p>Act of 21 November 2008 on the Civil Service (text No. 1505) Article 78 (<i>no right to strike for civil service corps members if interference with regular functioning of an office</i>)</p> <p>Act of 23 May 1991 on solving collective labour disputes</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
131. Portugal	<p>Constitution Article 57 Right to strike and prohibition of lockouts</p> <ol style="list-style-type: none"> 1. The <u>right to strike</u> shall be guaranteed. 2. Workers shall be responsible for defining the scope of the interests that are to be defended by a <u>strike</u> and the law shall not limit that scope. 3. The law shall define the conditions under which such services as are needed to ensure the safety and maintenance of equipment and facilities and such minimum services as are indispensable to the fulfilment of essential social needs are provided during <u>strikes</u>. 4. ... 	<p>2009 Labour Code (revised) / Lei n.º 7/2009 de 12 de Fevereiro Aprova a revisão do Código do Trabalho Strikes – Articles 530–545</p> <p>Decreto-ley núm. 259/2009 que reglamenta el arbitraje obligatorio, el arbitraje necesario y el arbitraje sobre servicios mínimos durante la huelga.</p>
132. Qatar		<p>Qatar Labour Law, 2004 Part XII – Workers’ organizations Article 120 – Strike requirements</p>
133. Romania	<p>Constitution Article 43</p> <ol style="list-style-type: none"> (1) The employees have the <u>right to strike</u> in the defence of their professional, economic and social interests. (2) The law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the essential services for the society. 	<p>Act No. 62 of 10 May 2011 concerning social dialogue (Legea dialogului social) Sections 181–207 – Strike Sections 217–218 – Sanctions</p> <p>Law No. 54 of 24 January 2003 on trade unions Article 27 With a view to achieving the purpose for which they have been set up, the trade union organizations shall have, inter alia, the right strike, according to their own statutes and according to the conditions provided by the law.</p> <p>Law No. 188/1999 regarding the regulations of civil servants Article 28 – Civil servants may have the right to strike by the stipulations of the law.</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
134. Russian Federation	<p>Constitution Article 37 Paragraph 4 – The right of individual and collective labour disputes with the use of the methods for their resolution, which are provided for by federal law, including the <u>right to strike</u>, shall be recognized.</p>	<p>2001 Labour Code Article 409 – Strike right Article 410 – Calling a strike Article 411 – Head striking unit Article 412 – Parties liabilities in the course of a strike Article 413 – Unlawful strikes Article 414 – Guarantees and legal conditions of employees in connection with the conduct of a strike Article 416 – Responsibility for conciliatory procedures evasion and non-performance of agreement reached as outcome of a conciliatory procedure Article 417 – Responsibility of employees for unlawful strikes Article 418 – Keeping documentation during settlement of a collective industrial dispute</p> <p>Federal Law No. 10-FZ on Trade Unions and their Rights and Guarantees for their Activities (1996, amended 2005) Article 14 – The right of the trade unions to take part in regulating collective labour disputes – recognizes the right to strike</p> <p>2004 Law on State Civil Service</p> <p>1994 Federal Postal Service Act Section 9</p> <p>1998 Federal Municipal Services Act Section 11(1)(10)</p> <p>2003 Federal Rail Transport Act Section 26</p> <p>Decree No. 524 on means of organization and realization of meetings, demonstrations, processions and strike pickets Meetings, demonstrations, processions and strike pickets must not violate rights and liberties of others, neither commend hatred or violence.</p> <p>Act No. 54-FZ of 19 June 2004 on gatherings, meetings, demonstrations, processions and strike-pickets (text No. 2485)</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
		<p>Law No. 334 of 22 November 2011 to Amend the Labour Code Regarding Improvements on the Procedure for the Consideration and Resolution of Collective Labour Disputes</p> <ul style="list-style-type: none"> – article 410 is amended concerning announcement of strikes – article 411 is amended concerning the head of strikes <p>Federal Law No. 175-FZ of 23 November 1995 on the Procedure for Resolving Collective Labour Disputes</p>
135.	<p>Rwanda</p> <p>Constitution Article 39 Le <u>droit de grève</u> des travailleurs est reconnu et s'exerce dans les conditions définies par la loi, mais l'exercice de ce droit ne peut porter atteinte à la liberté du travail reconnue à chacun.</p>	<p>Loi n° 13/2009 du 27 mai 2009 portant réglementation du travail / Law regulating labour in Rwanda</p> <ul style="list-style-type: none"> Section 3 – Right to strike and lock out Article 151 – Exercise of rights to strike and lock out Article 152 – Decision on illegal strike or lock out Article 153 – Consequences of illegal strike Article 154 – Consequences of illegal lock out Article 155 – Exercising the right to strike in indispensable services <p>Arrêté ministériel n° 04 du 13 juillet 2010 déterminant les services indispensables et les modalités d'exercice du droit de grève dans ces services</p> <p>Criminal Code Article 727 (penalties for soldiers on strike)</p>
136.	<p>Saint Kitts and Nevis</p>	<p><i>Draft bill in progress</i></p>
137.	<p>Saint Lucia</p>	<p>Labour Code, 2006</p> <ul style="list-style-type: none"> Part VIII – Principles and procedures in industrial relations and industrial disputes Division 1 – Settlement of trade disputes 383. Freedom to engage in industrial action (including strike) 385. Effect of strike on contract of employment 392. Prohibition of lockouts, strikes and industrial action

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
138. Saint Vincent and the Grenadines		<p>Trade Unions Act Article 5 – Excludes minors under the age of 16 years from participating in unions Article 7 – Secret ballot for strike action Article 31 – Peaceful picketing and prevention of intimidation (which includes peacefully persuading any person to work or abstain from working)</p> <p>Public Order Act Articles 6 and 8 – Prohibitions and restrictions on public meetings</p> <p>Police Act, Cap. 280 Article 72 – Excludes policemen from organizing</p>
139. Samoa		<p>Crimes Act, 2013 (2013, No. 10) Article 190(4) – Strike action is not, by itself, a threat of harm to people or property</p> <p>Prisons and Corrections Act, 2013 (2013, No. 11) Article 55(i) – Prohibition of a sworn member or a non-sworn member of the prisons and correction service from participating in a strike that affects the proper management of a prison</p>
140. San Marino	<p>Constitution (Declaration of citizens' rights and of the fundamental principles of the San Marinese legal order, 1974)</p> <p>Article 9 Each citizen shall have the right and the duty to work. The law shall guarantee workers fair remuneration, leave, weekly rest and the <u>right to strike</u>.</p>	<p>Act for the Protection of Work and Workers (Act of 17 February 1961, No. 7) Section 27 – Right to strike</p> <p>Decree of 2 August 2012, No. 110, on renewal of employment contract in public employment for 2011–12 Section 8 – Right to strike, period of notice, notification, minimum services</p>
141. Sao Tome and Principe	<p>Constitution Article 42 All the workers have <u>rights</u>:</p> <p>(f) <u>To strike</u>, under terms to be regulated by law, taking into account the interests of the workers and of the national economy.</p>	<p>Ley núm. 4/2002 de requerimiento civil</p> <p>Ley núm. 4/92, sobre la huelga/Law on Strikes</p>
142. Saudi Arabia		<p>Labour Law (Royal Decree No. M/51), 2006 Articles 201–228 – Procedure for and effects of decisions on labour disputes</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
143. Senegal	<p>Constitution Article 25 [...] Le droit de grève est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas ni porter atteinte à la liberté de travail ni mettre l'entreprise en péril.</p>	<p>Loi n° 97-17 du 1^{er} décembre 1997 portant Code du travail Article L70 – Suspension du contrat de travail pendant la grève Articles L.225, L.273, L.274, L.275 et L.276 sur la grève</p> <p>Code pénal de 1965 Article 392 – Pénalités</p>
144. Serbia	<p>Constitution Article 61 The employed shall have the <u>right to strike</u> in accordance with the law and collective agreement. The <u>right to strike</u> may be restricted only by the law in accordance with nature or type of business activity.</p>	<p>Criminal Code Section 166 – Violation of the right to strike Section 167 – Abuse of the right to strike</p> <p>Act of 15 November 2004 on peaceful settlement of labour disputes</p>
145. Seychelles	<p>Constitution Article 35 – Right to work The State recognizes the right of every citizen to work and to just and favourable conditions of work and with a view to ensuring the effective exercise of these rights the State undertakes – ... (g) Subject to such restrictions as are necessary in a democratic society, and necessary for safeguarding public order, for the protection of health or morals and the rights and freedoms of others, to ensure the right of workers to organize trade unions and to guarantee the <u>right to strike</u>.</p>	<p>Industrial Relations Act, 1993 (Act No. 7 of 1993) Section 37 – Protection against victimization by trade union Section 50 – Compulsory award Section 52 – Strike or lockout Section 53 – Picketing Section 56 – Offences relating to strike or lockout Section 57 – No pay while on strike</p>
146. Sierra Leone		<p>Regulation of Wages and Industrial Relations Act, 1971, No. 18 Article 1 – Exclusions of members of the armed forces of police force officers Article 2 – Definition of strike Article 17(1) – Requirement for conciliation Article 17(2) – Exclusion for essential workers, advance notice for strikes and prohibition of sympathy strikes Article 17(3) – Definition of essential trade groups Article 17(4) – Binding nature of award</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
147. Singapore		<p>Trade Unions Act, 1941 Part IV – Rights and liabilities of trade unions Section 27 – Strike or industrial action</p> <p>Trade Disputes Act, 1941 Sections 3 and 4 – Illegal industrial action and lockout Sections 5–8 – Penalties in relation to illegal industrial action and lockout</p> <p>Industrial Relations Act (Cap. 136) Part 5 – Arbitration Articles 31–36</p> <p>Criminal Law (Temporary Provisions) Act Section 5 – Definition Section 6 – Restrictions on strikes and lockouts (essential services) Section 7 – Illegal strikes and lockouts Section 8 – Lockout or strike consequent on illegal strike or lockout Section 9 – Penalty for illegal strikes and lockouts Section 10 – Penalty for instigation Section 11 – Penalty for giving financial aid to illegal strikes or lockouts Section 12 – Protection of persons refusing to take part in illegal strikes or lockouts</p>
148. Slovakia	<p>Constitution Article 37 ... (4) The <u>right to strike</u> is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.</p>	<p>Labour Code, 2001 Fundamental Principles Article 10 – Employees’ right to strike</p> <p>Act No. 2/1991 on Collective Bargaining Article 16(2) – Definition Article 16(1) – Right to strike Article 17 – Requirements to declare a strike Article 17(9) – Essential services Articles 18 and 22 – Participation Article 19 – Collaboration during strike Articles 20 and 21 – Illegal strike Article 23 – Liabilities Article 26 – Termination of a strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
149. Slovenia	<p>Constitution Article 77 (right to strike) Employees have the <u>right to strike</u>. Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of activity involved.</p>	<p>The Employment Relationships Act (Ur. I. RS, No. 42/2002, Ur. I. RS, No. 103/2007) Article 89 – Unfounded reasons for termination – i.e. participation in a lawful strike</p> <p>The Strike Act (OJ SFRY, No. 23/1991) Article 1 – Definition Article 2 – Decision to initiate a strike Article 3 – Announcement by the strike committee ... Article 4 – End of strike Articles 7–9 – Right to strike of those working in activities of special social importance Article 11 – Right to strike for workers in communal bodies Article 12 – Right to strike for workers in national defence or interior bodies Article 13 – Protection against disciplinary actions ... Articles 17–19 – Sanctions</p> <p>Civil Servants Act, 2002 Chapter III – Other common issues of the civil servants system Article 19 – Civil servants shall have the right to strike</p>
150. Solomon Islands		<p>Trade Unions Act, 1966 Part I – Preliminary Section 2 – Interpretation</p> <p>Trade Disputes Act, 1981 Schedule Section 1 – Glossary Definition of strike Article 10 – Restriction on strike</p> <p>Essential Services Act (Cap. 12)</p> <p>Essential Services (Amendment) Act, 2001 (No. 1 of 2001)</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
151. Somalia	<p>Constitution Article 27 – Right to strike The <u>right to strike</u> is recognized and may be exercised within the limits prescribed by law. Any act tending to discriminate against, or to restrict, the free exercise of trade union rights shall be prohibited.</p>	
152. South Africa	<p>Constitution Article 23 Labour relations 1. Everyone has the right to fair labour practices 2. Every worker has <u>the right</u> ... c. <u>to strike</u></p>	<p>Act No. 6, 2014: Labour Relations Amendment Act, 2014 Amends the Labour Relations Act, 1995, so as to facilitate the granting of organizational rights to trade unions that are sufficiently representative; to strengthen the status of picketing rules and agreements; to amend the operation, functions and composition of the essential services committee and to provide for minimum service determinations.</p> <p>Labour Relations Act (No. 66 of 1995) Chapter 4 – Strikes and lockouts 64. Right to strike and recourse to lockout 65. Limitations on right to strike or recourse to lockout 66. Secondary strikes 67. Strike or lockout in compliance with this Act 68. Strike or lockout not in compliance with this Act 69. Picketing 70. Essential services committee 71. Designating a service as an essential service 72. Minimum services 73. Disputes about whether a service is an essential service 74. Disputes in essential services 75. Maintenance services 76. Replacement labour 77. Protest action to promote or defend socio-economic interests of workers 95. Right to refrain from striking Chapter 7 – Dispute resolution 116. Governing body of Commission</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
		<p>Public Service Labour Relations Act, 1993 (No. 102 of 1993) Provides for conciliation boards to resolve disputes with the employer regarding the rights of individual employees, and grants the right to strike to all employees other than those engaged in essential services.</p> <p>Regulations for the South African Police Service, 1995 (No. R. 1489) Section 12 forbids strikes by employees and lockouts by employers.</p> <p>Regulations Regarding the Role of Managers Prior to Strike Action, 2000 (No. 327 of 2000)</p>
153. South Sudan		2012 Labour Bill, which addresses the right to strike, in the process of adoption.
154. España	<p>Constitución Artículo 28 2. Se reconoce el derecho a la huelga de los trabajadores para la defensa de sus intereses. La ley que regule el ejercicio de este derecho establecerá las garantías precisas para asegurar el mantenimiento de los servicios esenciales de la comunidad.</p> <p>Tribunal Constitucional, sentencia núm. 36/1993, de 8 de febrero de 1993: Las huelgas políticas están prohibidas por ley, aunque la Corte Constitucional ha limitado la prohibición a las huelgas que trascienden completamente los intereses profesionales de los trabajadores</p>	<p>Ley orgánica núm. 11/1985, de 2 de agosto, de Libertad Sindical Artículo 2 2. Las organizaciones sindicales en el ejercicio de la libertad sindical, tienen derecho a: [...] d) el ejercicio de la actividad sindical en la empresa o fuera de ella, que comprenderá, en todo caso, el derecho a la negociación colectiva, al ejercicio del derecho de huelga, al planteamiento de conflictos individuales y colectivos y a la presentación de candidaturas para la elección de comités de empresa y delegados de personal, y de los correspondientes órganos de las administraciones públicas, en los términos previstos en las normas correspondientes. [...]</p> <p>Real decreto núm. 524/2002, de 14 de junio, por el que se garantiza la prestación de servicios esenciales en el ámbito de la seguridad privada en situaciones de huelga</p> <p>Real decreto-ley núm. 17/1977, de 4 de marzo, sobre relaciones de trabajo Título primero – El derecho de huelga Capítulo primero – La huelga (Artículos 1-10)</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
155.	Sri Lanka		<p>Industrial Disputes Act (No. 43 of 1950) (Cap. 131) (as amended 2008) Article 32 – Essential industries Article 33 – General</p> <p>Industrial Disputes (Amendment) Act, No. 39 of 2011</p>
156.	Sudan		<p>1997 Labour Code Article 106 – Voluntary conciliation Articles 102–120 – Mandatory arbitration and binding decisions Article 124 – Prohibition against work stoppage for workers or officials</p> <p>Trade Union Act of 2010 Article 6(1) – Legitimacy of strike action</p>
157.	Suriname	<p>Constitution Article 33 The <u>right to strike</u> is recognized subject to the limitations which stem from the law</p>	<p>Legal status of Military Personnel Act Articles 51–55 – Prohibitions and limitations on the exercise of the rights to strike and protest</p> <p>Code Civil Article 1 1614, b) – “No work no pay” principle</p> <p>Resolution of 22 March 2003 (SD 2003 No. 31)</p> <p>High Council (NJ 1977, 55) – Distinction between types of strikes</p>
158.	Swaziland		<p>Industrial Relations (Amendment) Act, 2014 (Act No. 11 of 2014)</p> <p>Industrial Relations (Amendment) Act No. 6 of 2010</p> <p>Industrial Relations (Amendment) Act, 2005 (Act No. 3 of 2005)</p> <p>Industrial Relations (Amendment) Act, 2000 (No. 8 of 2000)</p> <p>Industrial Relations Act (No. 1 of 2000)</p> <p>Police and Public Order: Act 17/1963</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
159. Sweden	<p>Constitution/Instrument of Government Article 14 – A trade union or an employer or employers' association shall be entitled to <u>take industrial action</u> unless otherwise provided in an act of law or under an agreement.</p>	<p>Employment (Co-Determination in the Workplace) Act, 1976 Labour-stability obligations Section 41 – Prohibition to participate in strike</p> <p>Notice Section 45 – Notice for industrial action (including strike)</p> <p>Public Employment Act, 1994 Labour disputes Restrictions on the right to industrial action Section 23 – Form of industrial action (strike, lockout, etc.)</p> <p>Participation in industrial action Sections 25 and 26 – Employees' participation</p>
160. Switzerland	<p>Constitution Article 28 – Libert� syndicale</p> <ol style="list-style-type: none"> 1) Les travailleurs, les employeurs et leurs organisations ont le droit de se syndiquer pour la d�fense de leurs int�r�ts, de cr�er des associations et d'y adh�rer ou non. 2) Les conflits sont, autant que possible, r�gl�s par la n�gociation ou la m�diation. 3) La <u>gr�ve</u> et le lock-out sont licites quand ils se rapportent aux relations de travail et sont conformes aux obligations de pr�server la paix du travail ou de recourir � une conciliation. 4) La loi peut interdire le recours � la <u>gr�ve</u> � certaines cat�gories de personnes. 	<p>Legislative Decree No. 148 of 22 June 1949 – Penal Code Sections 330–334 – Sanctions for exercising the right to strike</p>
161. Syrian Arab Republic	<p>2012 Constitution Article 44 Citizens shall have the <u>right to assemble</u>, peacefully demonstrate and to <u>strike</u> from work within the framework of the constitution principles, and the law shall regulate the exercise of these rights.</p>	<p>Legislative Decree No. 148 of 22 June 1949 – Penal Code Sections 330–334 – Sanctions for exercising the right to strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
162. Tajikistan		<p data-bbox="1375 252 1653 279">Labour Code of 15 May 1997</p> <p data-bbox="1375 284 1890 311">Article 4 – Basic labour rights and obligations of workers The state guarantees the right of each worker to: ... (11) engage in strike action; ...</p> <p data-bbox="1375 371 1608 399">Article 211 – Strike action</p> <p data-bbox="1375 403 1749 430">Article 211(2) – Decision to strike by vote</p> <p data-bbox="1375 435 1787 462">Article 211(3) – Notification of length of strike</p> <p data-bbox="1375 467 2078 515">Article 212 – Safeguards and compensation for workers exercising their right to strike</p> <p data-bbox="1375 520 2063 568">Article 213 – Liability of the employer for non-compliance with legislation on collective labour disputes</p> <p data-bbox="1375 572 1845 600">Article 214 – Liability of workers for unlawful strikes</p> <p data-bbox="1375 635 1518 662">Criminal Code</p> <p data-bbox="1375 667 2033 694">Article 152 – Compulsion to be on a strike or non-participation in a strike</p> <p data-bbox="1375 699 1563 726">Article 160 – Penalty</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
163. Tanzania, United Republic of		<p>Employment and Labour Relations Act, 2004</p> <p>4. Definition of strike</p> <p>47. Ballot</p> <p>64. Procedure for exercising organizational right</p> <p>Part VII – Strikes and lockouts</p> <p>75. Right to strike and lockout</p> <p>76. Restrictions on the right to strike and lockout</p> <p>77. Essential Services</p> <p>78. Disputes of interest in essential services</p> <p>79. Minimum services during a strike or lockout</p> <p>80. Procedure for engaging in a lawful strike</p> <p>81. Procedure for engaging in a lawful secondary strike</p> <p>83. Nature of protection for a lawful strike or lockout</p> <p>84. Strikes and lockouts not in compliance with this part</p> <p>85. Protest action</p> <p>Employment and Labour Relations (Code of Good Practice) Rules, 2007 (GN No. 42 of 2007)</p> <p>Part IV – Strikes and lockouts</p> <p>Public Service (Negotiating Machinery) Act, 2003 (No. 19 of 2003)</p> <p>Part IV – Strikes and lockouts</p> <p>26. Rights and conditions to strike and to lockout</p> <p>27. Strikes and lockout not allowed</p> <p>28. Incitements</p> <p>29. Prohibition of acts of discrimination</p>
164. Thailand		<p>Labour Relations Act, 1975</p> <p>Section 5 – Interpretation of strike</p> <p>Chapter II – Settlement of labour disputes</p> <p>Section 22 – Employees recourse to strike</p> <p>Chapter III – Lockout and strike</p> <p>Sections 34–36 – Strike conditions</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
165. The former Yugoslav Republic of Macedonia	<p>Constitution Article 38</p> <p>The <u>right to strike</u> is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.</p>	<p>2007 Labour Relations Law – No. 80/93-2007 Article 79 – According to law, employees are permitted to go on strike for the purpose of attaining their economic and social rights resulting from employment.</p> <p>Act of 20 July 2000 on Civil Servants (consolidation) Article 34</p> <p>Law on Public Undertakings (Nos 38/96; 9/97) Sections 32–36 – Strike in a public enterprise</p> <p>Criminal Code Article 156 – Violation of the right to strike</p>
166. Timor-Leste	<p>Constitution Section 51 (right to strike and prohibition of lockout)</p> <ol style="list-style-type: none"> 1. Every worker has the <u>right to resort to strike</u>, the exercise of which shall be regulated by law. 2. The law shall determine the conditions under which services are provided, during a <u>strike</u>, that are necessary for the safety and maintenance of equipment and facilities, as well as minimum services that are necessary to meet essential social needs. 3. ... 	<p>Law No. 4/2012 – Labour Code Chapter III – Right to strike and lockouts Article 95</p> <ol style="list-style-type: none"> 1. The right to strike is protected by the State, in the terms provided for in the Constitution 3. There is specific legislation relating to exercising the right to strike and lockouts <p>Law No. 5/2012 of 29 February 2012 – Strike Law Article 2 – Definition of strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
167. Togo	<p>Constitution Article 39 Le <u>droit de grève</u> est reconnu aux travailleurs. Il s'exerce dans le cadre des lois qui le réglementent.</p>	<p>Loi n° 2006-010 du 13 décembre 2006 portant Code du travail Chapitre II – Des conflits collectifs et de l'exercice du droit de grève Section III – De la grève et du lock-out Article 268 – Définition Article 269 – Droit de recourir à la grève pour la défense des intérêts professionnels Article 270 – Préavis Article 271 – Négociations pendant la durée du préavis Article 272 – Expiration du préavis Article 273 – Services essentiels Article 274 – Liste des entreprises qui fournissent un service essentiel Article 275 – Déroulement de la grève Article 276 – Suspension du contrat de travail Article 277 – Interdiction des actes de coercition et de violence Article 278 – Services minimums Article 279 – Contestations relatives à l'exercice du droit de grève Article 280 – Sanctions pour actes de violence ou d'intimidation Article 281 – Grève illicite</p> <p>Loi du 20 janvier 2013 portant statut général de la fonction publique Article 244 – Le droit de grève est reconnu aux fonctionnaires dans certaines limites.</p> <p>Décret n° 91-167 du 31 mai 1991 organisant le droit de grève dans les services publics</p>
168. Trinidad and Tobago		<p>Industrial Relations Act (Act No. 23 of 1972) Part V – Disputes procedure 60. Strike or lockout action procedures 61. Referral to court 62. Strike and lockout action in conformity with this Part 63. Industrial action not in conformity with this Part 64. Application to the Court to avoid rescission of contract 65. Stop order in the national interest 66. Industrial action prohibited during hearing, etc. 67. Industrial action in essential services, prohibited 68. Offence for persons to contribute financial assistance to promote or support industrial action 69. Persons prohibited from taking industrial action 70. Liability of officers of companies</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
169. Tunisia	<p>Constitution de 2014 Article 36 Le droit syndical est garanti, y compris le <u>droit de grève</u>. Ce droit ne s'applique pas à l'armée nationale. Le <u>droit de grève</u> ne comprend pas les forces de sécurité intérieure et la douane.</p>	<p>Code du travail (version consolidée de 2011) Chapitre XIII – Règlement des conflits collectifs de travail Articles 376-390</p> <p>Code disciplinaire et pénal maritime, 2010 Dispositions relatives à la répression des grèves (Articles 53-56)</p>
170. Turkey	<p>Constitution Article 54 Workers have the <u>right to strike</u> during the collective bargaining process if a disagreement arises. The procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of, and the exceptions to them shall be regulated by law.</p> <p>The <u>right to strike</u> and lockout shall not be exercised in a manner contrary to the rules of goodwill, to the detriment of society, and in a manner damaging national wealth.</p> <p>The circumstances and workplaces in which <u>strikes</u> and lockouts may be prohibited or postponed shall be regulated by law.</p> <p>In cases where a <u>strike</u> or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute. The decisions of the Supreme Arbitration Board shall be final and have the force of a collective labour agreement.</p> <p>The organization and functions of the Supreme Arbitration Board shall be regulated by law.</p> <p>Those who refuse to go on <u>strike</u> shall in no way be barred from working at their workplace by strikers.</p>	<p>Law on Trade Unions and Collective Labour Agreements, 2012 – Law No. 6356 Part 11 – Strike and lockout Article 58 – Definition of a strike Article 60 – Decision to call a lawful strike or order lawful lockout and their implementation Article 61 – Strike vote Article 62 – Prohibition of strikes and lockouts Article 63 – Postponement of strikes and lockouts Article 64 – Execution of strike and lockout Article 65 – Workers excluded from taking part in a lawful strike or lockout Article 66 – Guarantee of right to strike or lockout Article 67 – Effect of a lawful strike or lockout on contracts of employment Article 68 – Prohibition of recruitment or other employment Article 69 – Effect of a lawful strike or lockout on entitlement to housing Article 70 – Consequences of an unlawful strike or lockout Article 71 – Declaratory action Article 72 – Abuse of the right to strike and lockout Article 73 – Strike and lockout pickets Article 74 – Powers of the civil authority in the event of a strike or lockout Article 75 – Decision to end a strike or lockout</p> <p>Act No. 6356 on Trade Unions and Collective Labour Agreements Article 58 – Restrictions during collective bargaining negotiations Article 61 – Voting Article 62 – Essential services Article 66 – Contracts Article 67 – Effect of lawful strike on collective bargaining agreement</p>
171. Turkmenistan		<p>Labour Code, 2009 Article 395 – Mandatory arbitration</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
172. Tuvalu		<p>Industrial Relations Code, 1975 Section 2 – Interpretation of strike Part IV – Adherence to agreements and awards Section 22 – Unlawful strikes Section 23 – Minister’s prerogatives Sections 25 and 26 – Liabilities Part V – Essential services Sections 28–33 – Protection of essential services, life and property Part VI – Strike ballots Section 34 – Strike ballots Schedule (section 2) – List of essential services</p>
173. Uganda		<p>The Labour Disputes (Arbitration and Settlement) Act, 2006 (Act No. 8) 28. Unlawful industrial action 29. Unlawful organization of industrial action 30. Employee’s right to participate in industrial action 31. Picketing 32. Acts of intimidation or annoyance 33. Essential services 34. Lawful industrial action in essential services 35. Information about essential services 36. Designation of essential services 37. Prosecutions Schedule 2 – Essential services</p> <p>The Labour Unions Act, 2006 Section 2 – Interpretation – Definition of strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
174. Ukraine	<p>Constitution Article 44 Those who are employed shall have the <u>right to strike</u> in order to protect their economic and social interests. A procedure for exercising the <u>right to strike</u> shall be established by law taking into account the necessity to ensure national security, public health protection, and rights and freedoms of others. No one shall be forced to participate or not to participate in a <u>strike</u>. The prohibition of a <u>strike</u> shall be possible only on the basis of the law.</p>	<p>Law No. 4050-VI of 17 November 2011 on Civil Service Article 13, paragraph 2 – No right to strike for civil servants</p> <p>Criminal Code Article 174 – Compulsion to participate in a strike or preclusion from participation in a strike</p> <p>Act No. 137/98-VR of 3 March 1998 on the procedure for settlement of collective labour disputes Section 17 – Strikes Section 18 – Right to strike Section 19 – Decision to declare a strike Section 20 – Leading a strike Section 21 – Conclusion of agreement on settlement of a collective labour dispute or supervision of its fulfilment Section 22 – Deeming strikes illegal Section 23 – Ruling to deem a strike illegal Section 24 – Cases in which it is forbidden to strike Section 25 – Settlement of a collective labour dispute in circumstances where strikes are prohibited Section 26 – Ensuring the viability of an enterprise during a strike Section 27 – Guarantees for workers during a strike Section 28 – Consequences of participation by workers in a strike Section 29 – Liability for violations of legislation on collective labour disputes Section 30 – Liability of workers for participation in a strike ruled illegal by a court Section 31 – Liability for violations of labour legislation or of terms of collective labour agreements which have led to the start of a collective labour dispute Section 32 – Liability for organizing a strike ruled illegal by a court or for non-fulfilment of a ruling deeming a strike illegal Section 33 – Liability for compelling participation in a strike or for obstructing participation in a strike Section 34 – Compensation for damage caused by a strike</p>
175. United Arab Emirates		

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
176. United Kingdom		<p data-bbox="1375 256 1973 312">Trade Union and Labour Relations (Consolidation) Act, 1992 (Chapter 52)</p> <p data-bbox="1375 316 1805 343">62. Right to a ballot before industrial action</p> <p data-bbox="1375 346 1778 373">65. Meaning of “unjustifiably disciplined”</p> <p data-bbox="1375 376 1980 427">180. Effect of provisions restricting right to take industrial action Part V – Industrial action</p> <p data-bbox="1375 430 1980 458"><i>Protection of acts in contemplation or furtherance of trade dispute</i></p> <p data-bbox="1375 461 1778 488">219. Protection from certain tort liabilities</p> <p data-bbox="1375 491 1615 518">220. Peaceful picketing</p> <p data-bbox="1375 521 1890 549">221. Restrictions on grant of injunctions and interdicts</p> <p data-bbox="1375 552 1666 579"><i>Action excluded from protection</i></p> <p data-bbox="1375 582 1832 609">222. Action to enforce trade union membership</p> <p data-bbox="1375 612 1995 639">223. Action taken because of dismissal for taking unofficial action</p> <p data-bbox="1375 643 1608 670">224. Secondary action</p> <p data-bbox="1375 673 1906 700">225. Pressure to impose union recognition requirement</p> <p data-bbox="1375 703 1839 730"><i>Requirement of ballot before action by trade union</i></p> <p data-bbox="1375 734 1906 761">226. Requirement of ballot before action by trade union</p> <p data-bbox="1375 764 1951 791">226A. Notice of ballot and sample voting paper for employers</p> <p data-bbox="1375 794 1682 821">226B. Appointment of scrutineer</p> <p data-bbox="1375 825 1682 852">226C. Exclusion for small ballots</p> <p data-bbox="1375 855 1697 882">227. Entitlement to vote in ballot</p> <p data-bbox="1375 885 1697 912">228. Separate workplace ballots</p> <p data-bbox="1375 916 1912 943">228A. Separate workplaces: single and aggregate ballots</p> <p data-bbox="1375 946 1563 973">229. Voting paper</p> <p data-bbox="1375 976 1608 1003">230. Conduct of ballot</p> <p data-bbox="1375 1007 1733 1034">231. Information as to result of ballot</p> <p data-bbox="1375 1037 1816 1064">231A. Employers to be informed of ballot result</p> <p data-bbox="1375 1067 1615 1094">231B. Scrutineer’s report</p> <p data-bbox="1375 1098 1733 1125">232. Balloting of overseas members</p> <p data-bbox="1375 1128 1906 1155">232A. Inducement of member denied entitlement to vote</p> <p data-bbox="1375 1158 1839 1185">232B. Small accidental failures to be disregarded</p> <p data-bbox="1375 1189 1877 1216">233. Calling of industrial action with support of ballot</p> <p data-bbox="1375 1219 1877 1246">234. Period after which ballot ceases to be effective</p> <p data-bbox="1375 1249 1935 1276"><i>Requirement on trade union to give notice of industrial action</i></p> <p data-bbox="1375 1279 1800 1307">234A. Notice to employers of industrial action</p> <p data-bbox="1375 1310 1935 1337">235. Construction of references to contract of employment</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
		<p><i>Industrial action affecting supply of goods or services to an individual</i></p> <p>235A. Industrial action affecting supply of goods or services to an individual</p> <p>235B. Application for assistance for proceedings under section 235A</p> <p>235C. Provisions supplementary to section 235B</p> <p><i>No compulsion to work</i></p> <p>236. No compulsion to work</p> <p><i>Loss of unfair dismissal protection</i></p> <p>237. Dismissal of those taking part in unofficial industrial action</p> <p>238. Dismissals in connection with other industrial action</p> <p>238(2). No selective dismissal</p> <p>238A. Participation in official industrial action</p> <p>238B. Conciliation and mediation: supplementary provisions</p> <p>239. Supplementary provisions relating to unfair dismissal</p> <p><i>Criminal offences</i></p> <p>240. Breach of contract involving injury to persons or property</p> <p>241. Intimidation or annoyance by violence or otherwise</p> <p>...</p> <p>246. Definition of strike</p> <p>Employee Relations Act, 1999</p> <p>Article 29 – Ballot</p> <p>Article 235 – Definition of strike</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
177. United States		<p>National Labor Relations Act (Title 29, Chapter 7, subchapter II, United States Code) Section 1 – Findings and policies Section 7 – Rights of employees Section 8 – Unfair labor practices Section 9 – Representatives and elections (paragraph 3) Section 10 – Prevention of unfair labor practices (k) (Hearings on jurisdictional strikes) (l) (Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process) Section 13 – Limitations (Section 163. Right to strike preserved) Section 501(2) – Definition of strike</p> <p>Title II (Title 29, Chapter 7, subchapter III, United States Code) Conciliation of labor disputes in industries affecting commerce; national emergencies Section 203 – (Section 173. Functions of service) (c) (Settlement of disputes by other means upon failure of conciliation) National emergencies Section 206 – (Section 176. Appointment of board of inquiry by President; report; contents; filing with service) Section 208 – (Section 178. Injunctions during national emergency) Conciliation of labor disputes in the health-care industry Section 213 – (Section 183) (a) (Establishment of boards of inquiry; membership)</p> <p>Federal service labor management relations statute Article 7116(b)(7) – Prohibition of strike action</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
178. Uruguay	<p>Constitución Artículo 57 La ley promoverá la organización de sindicatos gremiales, acordándoles franquicias y dictando normas para reconocerles personería jurídica. Promoverá, asimismo, la creación de tribunales de conciliación y arbitraje. Declárase que <u>la huelga es un derecho gremial</u>. Sobre esta base se reglamentará su ejercicio y efectividad.</p>	<p>Ley núm. 13720, Comisión de Productividad, Precios e Ingresos. Se crea para la actividad privada y se determina su integración y cometidos Artículo 3, f) [...] Ninguna medida de huelga o «lock out» será considerada lícita si el problema que la origina y la decisión de recurrir a tales medidas no han sido planteadas con no menos de siete días de anticipación a la Comisión. Artículo 4 – Servicios públicos – Interrupción de servicios esenciales</p> <p>Ley núm. 12590, Licencias Anuales. Se modifica y amplía el régimen de vacaciones remuneradas para los empleados y obreros de actividades privadas Artículo 8 – No se descontaran las ausencias de trabajo que tengan origen en la huelga.</p> <p>Ley núm. 19051, Falta de Pago por Parte de los Empleadores de Incentivos, Premios, Asiduidad y/o Beneficios o Rubros Laborales de Cualquier Tipo. Se reputa nulo y violatorio del derecho y la actividad sindical Artículo 1 – Todo descuento de la prima por presentismo o de otras partidas de naturaleza salarial vinculadas a la asistencia del trabajador a su lugar de trabajo, deberá efectuarse de manera proporcional al tiempo de ausencia que se registrare cuando tal ausencia tuviere por causa el ejercicio del derecho de huelga en cualquiera de sus modalidades.</p> <p>Decreto núm. 165/2006, Relaciones laborales. Procedimientos autónomos; Mediación y conciliación voluntaria; Consulta y negociación previa; Ocupación en ejercicio del Derecho de Huelga. 30 de mayo de 2006 Artículo 3 – Consulta y negociación previa Artículo 4 – Ocupación en ejercicio del derecho de huelga</p> <p>Decreto del Poder Ejecutivo núm. 145/005, de fecha 2 de mayo de 2005 Artículo 1 – Derogación de los decretos núms. 512/966 de 19 de octubre de 1966, y 286/000 de 4 de octubre de 2000 NB – El decreto núm. 512/66, habilitaba a los empleadores a solicitar al Ministerio del Interior la desocupación de los locales de trabajo ocupados por los trabajadores</p>

	Country	Constitutional provisions referring to strike action	Legislative measures on strike action
179.	Uzbekistan	Constitution Article 34 Right to form, inter alia, trade unions and to participate in <u>mass movements</u> .	Criminal Code Article 218 – Direction of illegal strike or impediment to operation of enterprise, institution, or organization in emergency state.
180.	Vanuatu		Trade Disputes Act, 1983 Section 1 – Interpretation of strike public service Part IV – Trade disputes affecting essential services Section 25 – Definition of “essential service” Section 26 – Conciliation or arbitration Section 27 to 32 – Proclamation of emergency Section 33 – Prohibition of strike and lockouts during emergency Part V – Provisions with respect to strikes, lockouts, etc. Section 33A – Notice of strike or other industrial action Section 34 – Powers of Minister Section 40 – Application of the Act to Government
181.	Venezuela, Bolivarian Republic of	Constitución Artículo 97 Todos los trabajadores y trabajadoras del sector público y del privado tienen <u>derecho a la huelga</u> , dentro de las condiciones que establezca la ley.	2012, decreto núm. 8938, mediante el cual se dicta el decreto con rango, valor y fuerza de Ley Orgánica del Trabajo, los Trabajadores y las Trabajadoras Capítulo III – Del conflicto colectivo de trabajo Sección Primera – De los pliegos conflictivos (Artículos 472-482) Sección Segunda: De los servicios mínimos indispensables y servicios públicos esenciales (Artículos 483-485) Sección Tercera: De la huelga (Artículos 486-491) Sección Cuarta: Del arbitraje (Artículos 493-496)

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
182. Viet Nam		<p>2012 Labour Code Chapter XIV – Resolution of labour disputes Section 4 – Strikes and strike resolution Article 209 – Strikes Article 210 – Organizing and leading strikes Article 211 – Procedures for going on strike Article 212 – Procedures for soliciting opinion of the worker’s collective Article 213 – Notice of the starting time of a strike Article 214 – Rights of parties prior to and during a strike Article 215 – Cases where strikes are illegal Article 216 – Notice of the decision on temporary closure of the workplace Article 217 – Cases in which the temporary closure of the workplace is prohibited Article 218 – Wages and other lawful rights of employees during strikes Article 219 – Prohibited acts before, during and after a strike Article 220 – Cases where strikes are prohibited Article 221 – Decisions on postponing or cancelling strikes Article 222 – Resolution of strikes which do not follow the statutory procedures</p> <p>Section 5 – Consideration of the lawfulness of strikes by the court Decree No. 43/2013/ND-CP of 10 May 2013, detailing Article 10 of the Trade Union Law on trade unions’ rights and responsibilities to represent and protect the rights and legitimate interests of employees Article 12 – Trade unions’ rights and responsibilities to organize and lead strikes</p> <p>Decree No. 41/2013/ND-CP of 8 May 2013, detailing the implementation of the Labour Code’s Article 220 on the list of employing units in which strikes are prohibited and settlement of demands of employees’ collectives in these units</p> <p>Decree No. 58-CP of 31 May 1997 on the wage payment and settlement of other interests for on-strike labourers</p> <p>Circular No. 12-LDTBXH/TT of 8 April 1997 guiding the petition to adjust the list of enterprises not allowed to stage a strike</p>

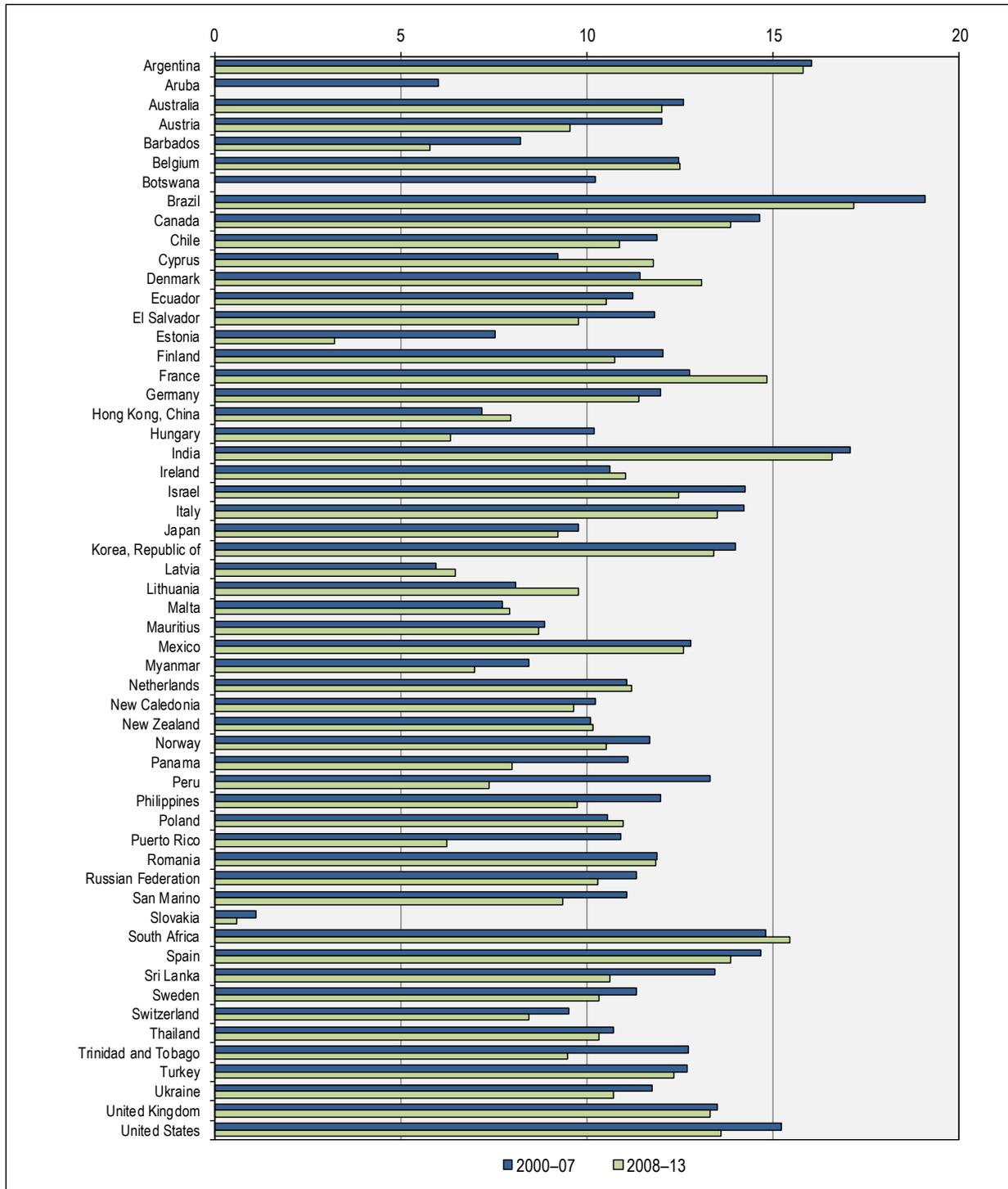
Country	Constitutional provisions referring to strike action	Legislative measures on strike action
183. Yemen		<p>Labour Code, Act No. 5 of 1995 Chapter XII – Labour disputes and legitimate strikes Part I – Settlement of labour disputes Part II – Legitimate strikes (Articles 144–150 and Article 156 on penalties)</p> <p>Law No. 35 of 2002 on the organization of workers’ trade unions Article 29 – Fonctions du Conseil central Articles 40-44 – Droit de grève</p>
184. Zambia		<p>Industrial and Labour Relations (Amendment) Act, 2008 (No. 8 of 2008) <i>Amending section 3 of the Act – Definition of strike</i> <i>Amending section 78 of the Act</i> <i>Amending section 85 of the Act</i></p> <p>Industrial and Labour Relations (Amendment) Act, 1997 (No. 30 of 1997)</p> <p>Industrial and Labour Relations Act, 1993 (No. 27 of 1993) Section 3 – Interpretation Section 78 – Failure to reach settlement by conciliation Section 85 – Jurisdiction of court Section 101 – Prohibition from participation in lockouts or strikes Section 103 – Attendance at or near place of residence Section 107 – Essential service certificates</p>

Country	Constitutional provisions referring to strike action	Legislative measures on strike action
185. Zimbabwe	<p>Constitution Article 65(3) Except for members of the security services, every employee has the right to participate in collective job action, including the <u>right to strike</u>, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.</p>	<p>Labour Act (Chapter 28:01) (Acts 16/1985) (as amended 2006) Section 2 – Interpretation (“collective job action” includes strike action) Section 9 – Unfair labour practices by trade union or workers committee (paragraph f) Section 24 – Functions of workers’ committees (paragraphs 1. c and d) Section 29 – Registration of trade unions and employers’ organizations and privileges thereof (paragraph 4. g) Section 30 – Unregistered trade unions and employers’ organizations (paragraph 3. a) Section 35 – Requirements of constitution of registered trade unions or employers Organizations (paragraph a) Section 54 – Collection of union dues (paragraph 5) Section 98 – Effect of reference to compulsory arbitration under Parts XI and XII (paragraph 11) Part XIII – Collective job action 102. Interpretation in Part XIII 103. Appeal against declaration of essential service 104. Right to resort to collective job action 104A. Picketing 106. Show cause orders 107. Disposal orders 108. Protection of persons engaged in lawful collective action 109. Liability of persons engaged in unlawful collective action 110. Appeals 111. Cessation of collective job action 112. Offences under Part XIII</p>

Appendix II

Statistical data on strike action and lockouts extracted from the ILO statistical database

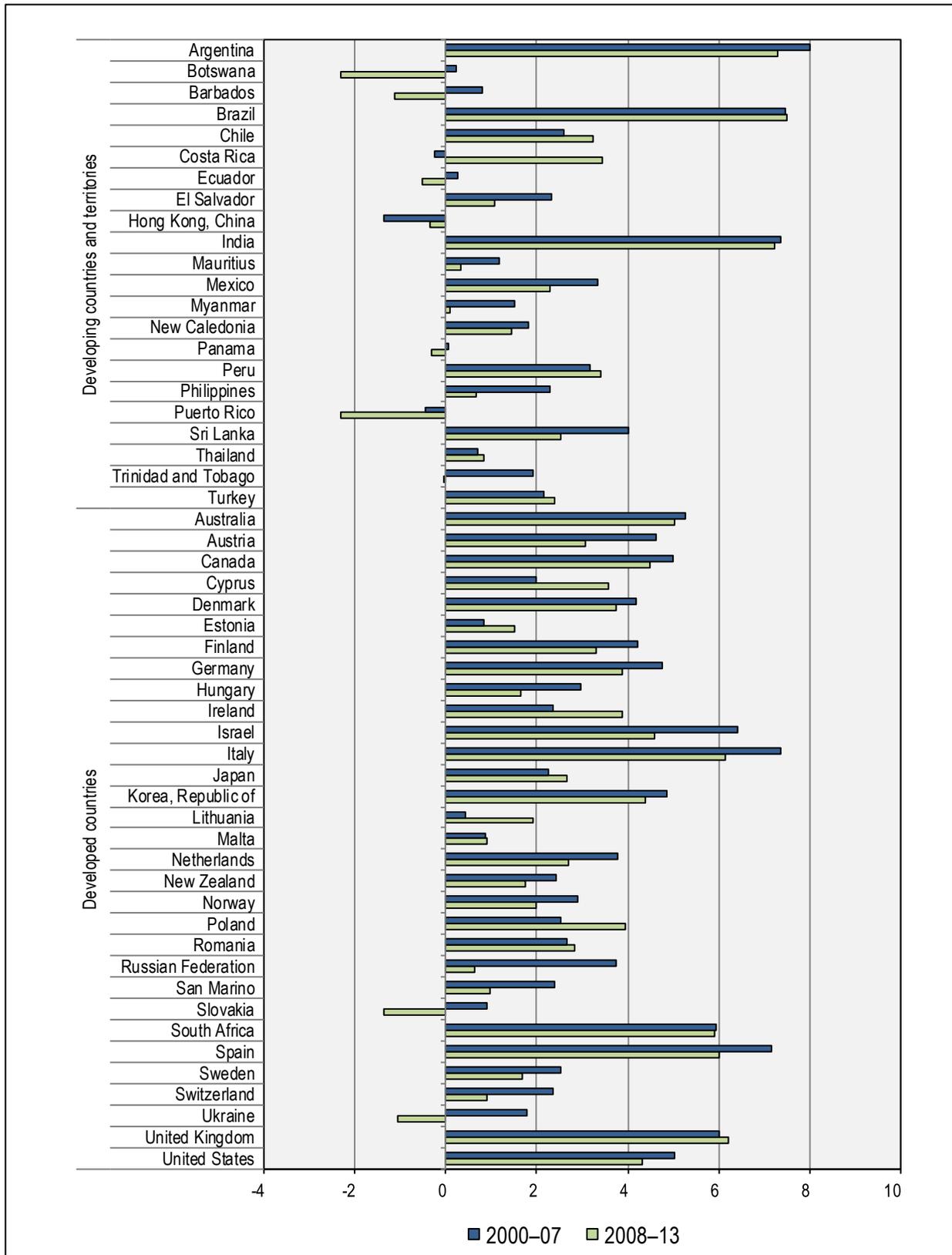
Figure 1. Average number of days not worked due to strikes and lockouts (expressed in natural logarithm)



Note: This figure gives the annual average figure for days not worked due to strikes and lockouts over the periods 2000-07 and 2008-13, expressed in natural logarithms. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind.

Source: ILO: Department of Statistics database, available at: <http://www.ilo.org/ilostat>.

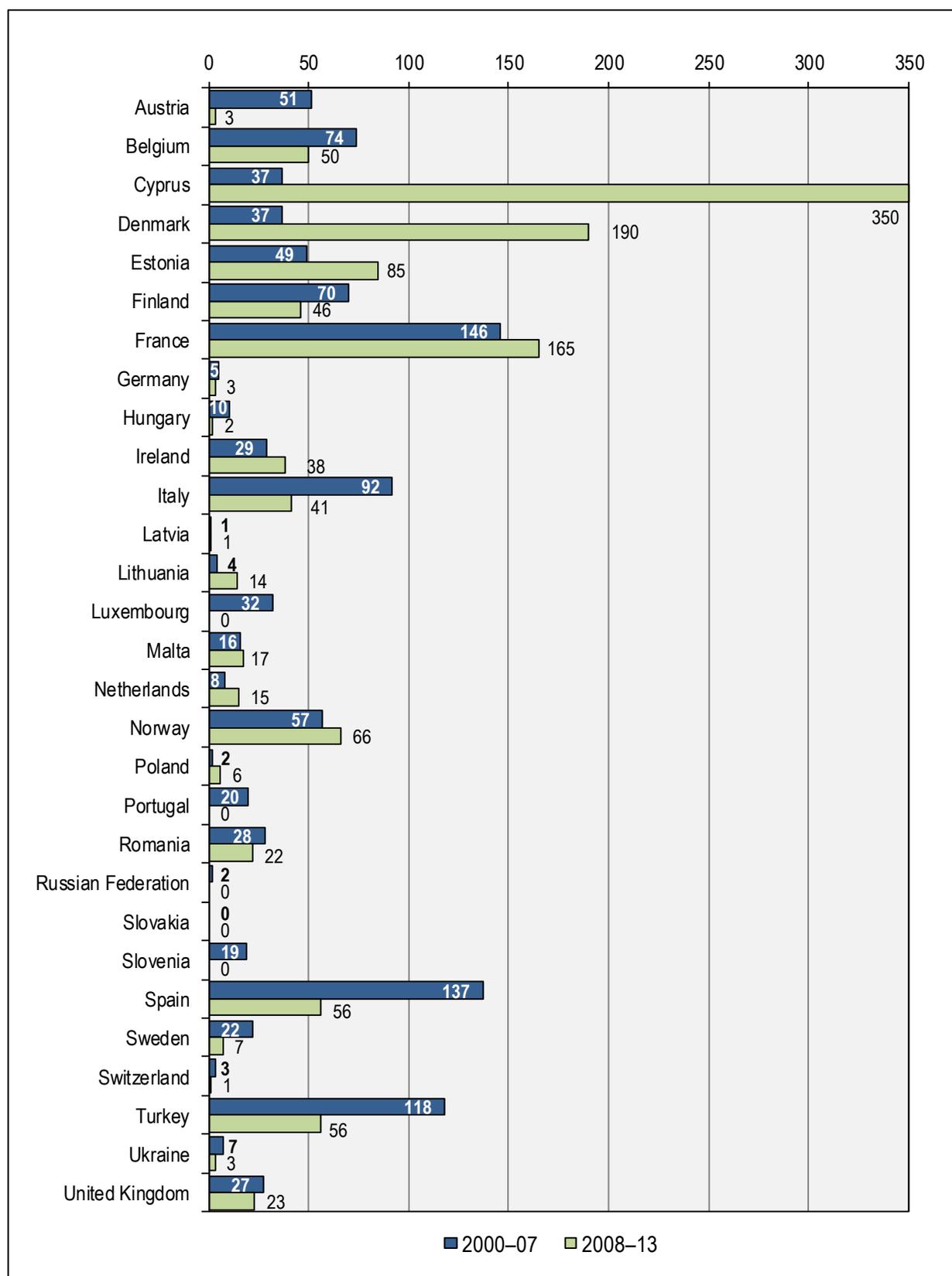
Figure 2. Average number of workers involved in strikes and lockouts
(expressed in natural logarithm)



Note: This figure gives the annual average figure for workers involved in strikes and lockouts over the periods 2000-07 and 2008-13, expressed in natural logarithms. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind.

Source: ILO: Department of Statistics' database, available at: <http://www.ilo.org/ilostat>.

Figure 3. Average number of days not worked in Europe due to strikes and lockouts per 1,000 employees (annual averages for the period 2000–07 and 2008–13)



Source: ILO: Department of Statistics database, available at: <http://www.ilo.org/ilostat>.

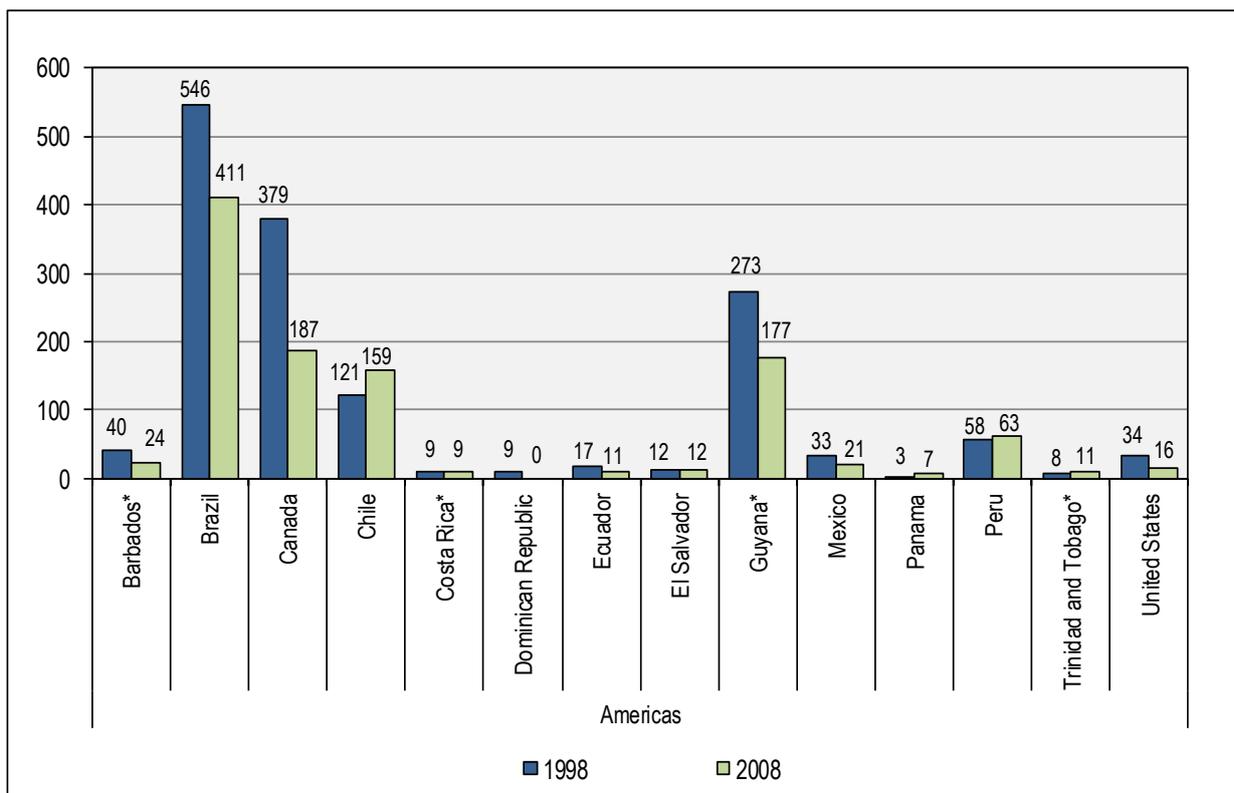
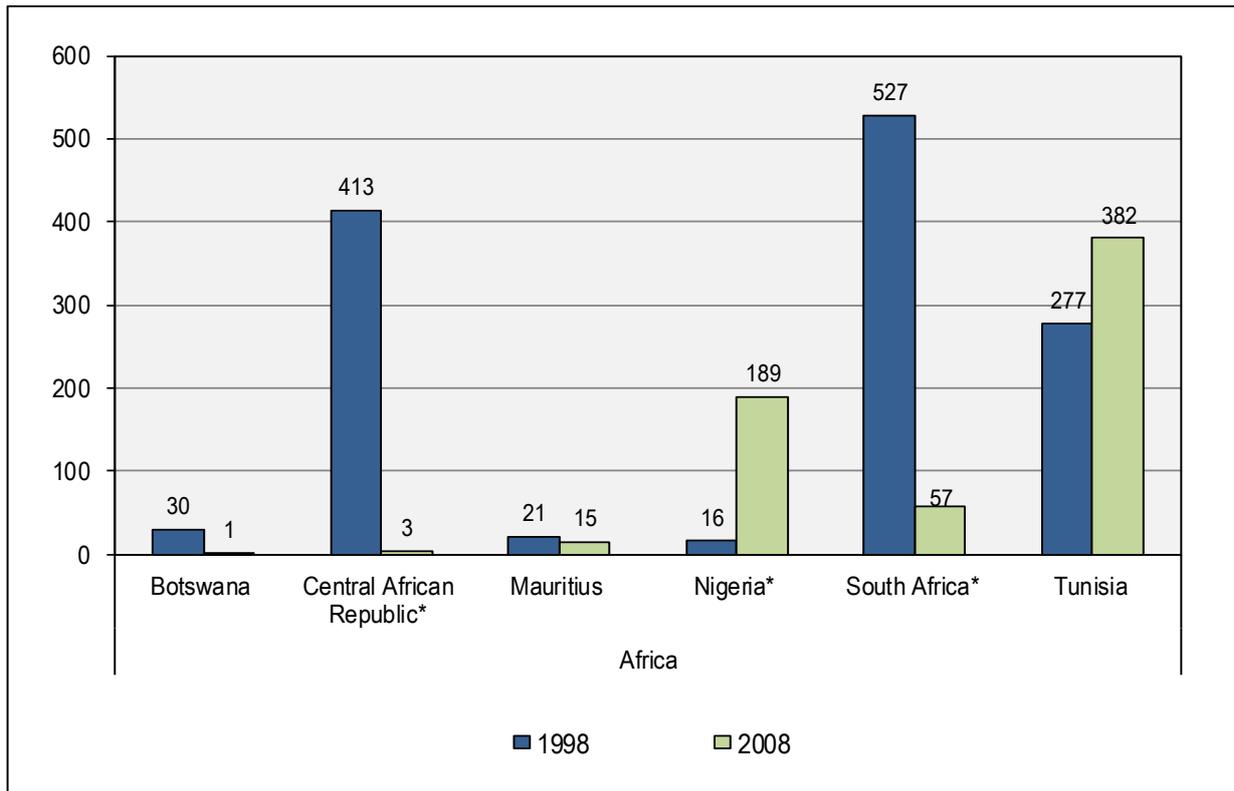
Explanation of data used in figure 3

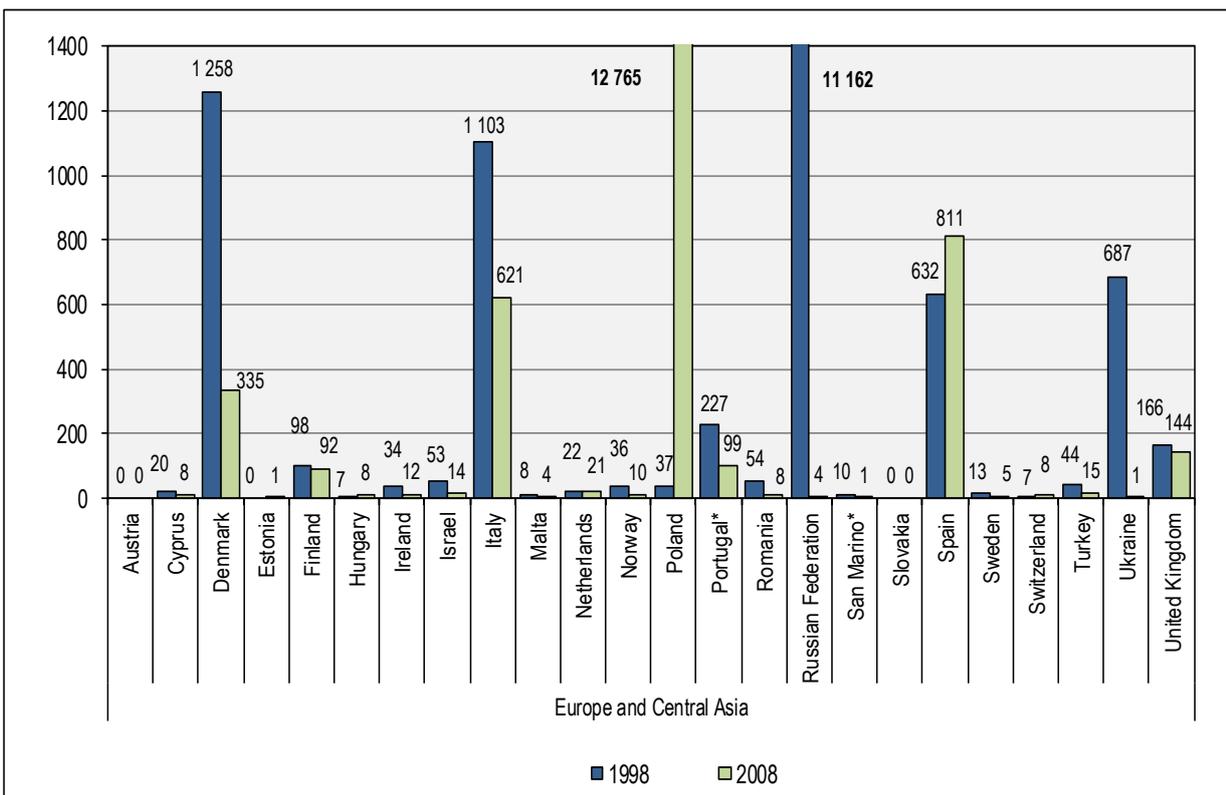
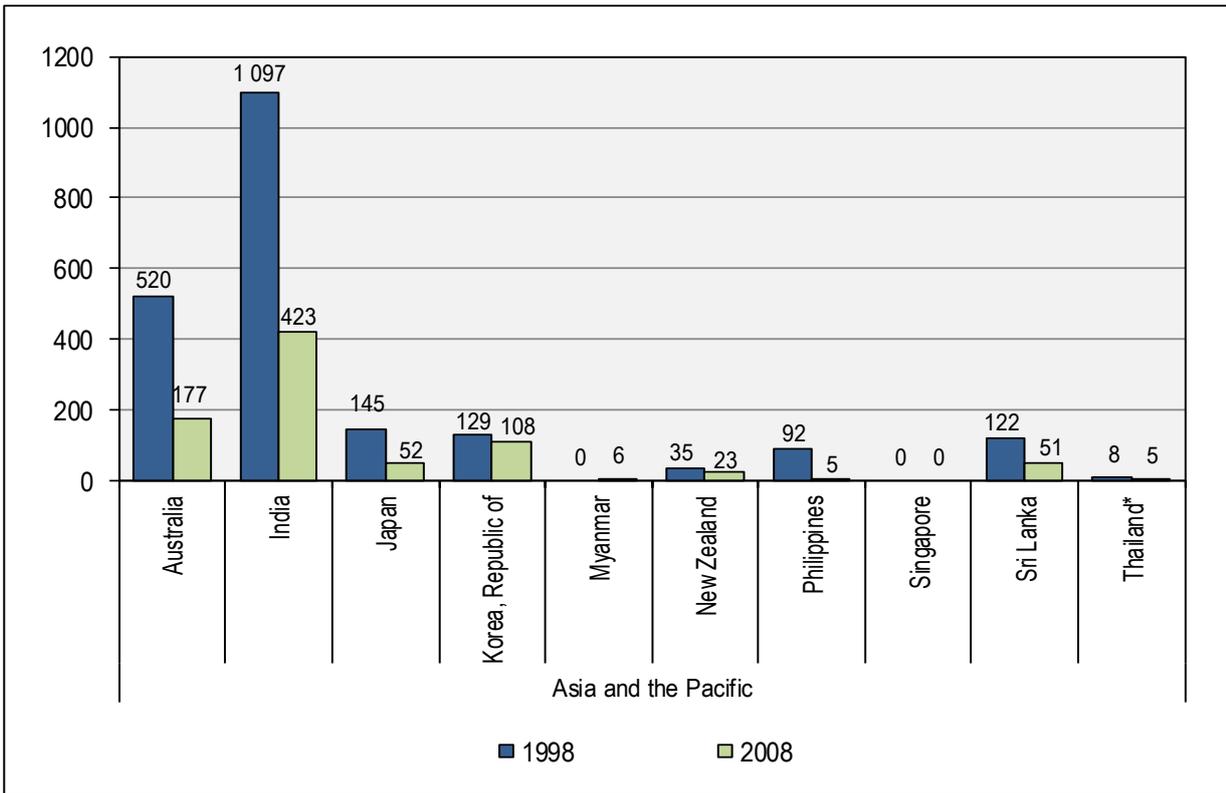
This graph gives the annual average figure for working days lost due to strikes and lockout per 1,000 employees over periods 2000–07 and 2008–13. It should be noted that the average is calculated over the years for which the relevant information is available. The various caveats about incomplete data should be borne in mind. The figure is based on data extracted from the ILO Statistical database: www.ilo.org/ilostat, and supplemented these with data from the European trade union institute dataset: <http://www.etui.org/Topics/Trade-union-renewal-and-mobilisation/Strikes-in-Europe-version-2.0-December-2014#visual> for a couple of countries with incomplete data in www.ilo.org/ilostat.

During the period 2008-2013 the countries that displayed the highest propensity to engage in industrial action (more than 100 days per 1000 employees) were Cyprus, Denmark and France, while Austria, Germany, Hungary, Latvia, Russia, Slovakia, Switzerland and Ukraine had less than 5 days lost per 1000 employees.

During the period 2000–07, the countries that displayed the highest propensity to engage in industrial action (more than 100 days per 1,000 employees) were France and Spain, while Germany, Latvia, Lithuania, Poland, Russia Federation, Slovakia and Switzerland had less than five days lost per 1,000 employees.

Figure 4. Number of strikes and lockouts for countries by region, 1998 and 2008





* Where data for 2008 is not available, the year closest to 2008 was used where possible.

Note: Countries were selected on the basis of available data.

Source: ILO: Department of Statistics database, available at: <http://www.ilo.org/ilostat>.