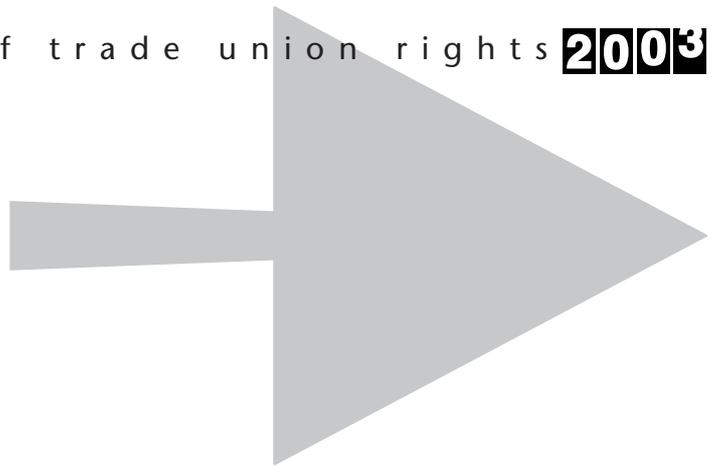


**annual
survey** of violations of trade union rights **2003**



Period under review: January to December 2002.

The survey was written by the ICFTU Trade Union Rights Department.

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Foreword

This 2003 edition of the Annual Survey details violations of trade union rights in 133 countries during the year 2002. These violations range from provisions in national legislation which restrict legitimate trade union activity, through outright bans on freedom of association, to intimidation, wrongful detention, torture and murder of trade unionists. The report shows how fundamental rights enshrined in Conventions of the UN's International Labour Organisation (ILO) are flouted in countries around the world, depriving millions of working people of their rights to trade union representation, and thus fair wages and decent working conditions.

Colombia remained the most dangerous place on earth for trade union activity, with 184 documented cases of murder of trade unionists, along with systematic use of violence and intimidation against union members and leaders. The campaign of anti-union repression was carried out with impunity, and none of those responsible for the appalling murder toll were brought to justice.

In common with other undemocratic regimes such as Belarus, and Cuba, the Chinese authorities persisted in stifling legitimate trade union activity as a mainstay of their exercise of power. Efforts by Chinese workers to organise free trade union activity were repressed, often with violence, against a background of rising social tensions due to the massive economic changes taking place there. Anti-union repression also increased in Venezuela and Zimbabwe and remained a feature in several other countries in Africa and the Americas, as well as in Asia-Pacific, where the South Korean authorities continued to imprison union leaders. The North Korean regime continued its absolute ban on free trade unionism. All forms of trade union activity remained illegal in virtually every Gulf state, although welcome changes were made in Bahrain, where possibilities for free trade union activity were opened up.

The Survey highlights how globalisation, in the absence of mechanisms to ensure full respect for ILO standards, is leading to international competition based on a "race to the bottom". Restrictions and deficiencies in law deprived millions of workers in export processing zones and in agriculture of their rights. Conditions in export processing zones were generally extremely exploitative with women workers suffering most. Rural workers in several countries were denied union rights and faced repression by employers and governments. In Brazil for instance, 16 cases of killing of rural workers were documented.

Loopholes in legislation allowed employers to reduce workers' entitlements and rights in various ways including through subcontracting and precarious employment contracts. Workers employed in privatised public enterprises, such as in the telecommunications sector in Peru and in several instances in central and eastern Europe and the Newly Independent States, were deprived of entitlements obtained through collective bargaining. Many thousands lost their jobs with little, and in some cases no, compensation. These workers were frequently left with no employment prospects, or had to join the millions of people worldwide working in informal or unprotected jobs, outside the coverage of legislation.

Many examples are cited of governments violating the rights of their own employees, including in several industrialised countries. Excessively broad definitions of "essential services" were used to curtail the rights of public sector employees in many jurisdictions, for example in several Caribbean countries. Cases were brought before the ILO concerning a range of restrictions contained in provincial-level legislation in Canada, and numerous examples of employers discriminating against trade unionists and repressing union organising efforts took place in the United States, in the private and public sectors. In a number of other industrialised countries existing legislation contravening ILO standards remained in force.

Certain countries appear in the Survey year after year, often for recurring violations of the same nature. The ongoing refusal of these countries to respect fundamental labour standards, such as repression of trade unions and widespread use of forced labour by the Burmese military dictatorship, underlines the need for additional mechanisms to support the ILO's role to promote and guarantee workers' rights. These must include changes to the rules and procedures of the international bodies responsible for finance, investment and trade.

International trade union action in 2002 resulted in some notable successes, with detained trade unionists released, perpetrators of crimes against working people brought to justice and workers receiving vital international support in their efforts to obtain respect at work. After years in detention, Ethiopian Teachers' Union leader Taye Woldesmiate was finally released, and former military officers from the Pinochet era in Chile were imprisoned for murdering trade unionists during the time of that regime. Like thousands of others in countries worldwide, workers at the Lighthouse factory in Thailand were able to call in international support to ensure that their grievances were addressed after their employer had undermined their rights.

Responding to trade union rights violations wherever they occur, and campaigning for a fundamental transformation of globalisation, remain at the core of the ICFTU's global mission. In carrying out this mission, we pay tribute to all those who have given so much, even at the cost of their own lives, to the cause of working people worldwide.



Guy Ryder
General Secretary

The eight core labour standards of the ILO (International Labour Organisation)

**It is indicated in the text whether a country has ratified
the following conventions :**

- N° 29 Forced Labour (1930)
- N° 87 Freedom of Association and Protection of the Right to Organise (1948)
- N° 98 Right to Organise and Collective Bargaining (1949)
- N° 100 Equal Remuneration for Work of Equal Value (1951)
- N° 105 Abolition of Forced Labour (1957)
- N° 111 Discrimination in Employment and Occupation (1958)
- N° 138 Minimum Age for Employment (1973)
- N° 182 Worst Forms of Child Labour Convention (1999)

The disintegration of state structures coupled with the lack of will of many African governments have had a very negative impact on protection of democratic principles and of the fundamental rights of African citizens. Trade union rights have again been the first to suffer from this lack of respect.

As in previous years, the inability of governments to resist the requirements of the IMF and the World Bank to implement structural programmes has led to job losses throughout the year. In many countries, such as Angola, the Democratic Republic of Congo, the Central African Republic, Nigeria and Togo, workers have not been paid for the work they have actually done. And those who have lost their jobs have joined the ranks of millions of workers already employed in the insecure informal economy so as to earn just enough to survive on.

Trade union rights violations have been noted in two new countries in this year's report, Côte d'Ivoire and Gabon; in the former, a bitter conflict in the airline company Air Afrique resulted in the beating up of seven hunger strikers protesting against non-payment of their wages, and in the latter over 500 municipal workers were issued with threats of dismissal following a strike.

Many union leaders were arrested throughout the year. In the Democratic Republic of Congo, 10 union leaders from the Kwilu Ngongo Sugar Company were sentenced to 10 months imprisonment, accused of being the instigators of confrontational strike leaflets. In Nigeria, the President of the NLC was arrested twice in January, together with about 50 other union officials, following a protest by the trade union confederation against an oil price hike. He was subsequently

Africa



accused of criminal conspiracy, inciting unrest and involvement in public order offences. Similarly, the General Secretary of the Malawian MTUC was arrested for embezzlement without any prior accusation. The charge was made after he had issued statements committing his union to fight amendments to the Constitution that would allow the Head of State to stand for a third term of office. The overall trade union situation in Malawi worsened again and many other governments continued to view union activities with clear enmity. In Djibouti the authorities tried, this time to no avail, to disrupt the 2nd Ordinary Congress of the UDT. In Uganda, the government suspended the annual meetings of 19 unions despite international pressure. The developments in Swaziland, the last absolute monarchy in Africa, caused serious concern. The government's official delegate at the June International Labour Conference in Geneva openly threatened the General Secretary of the SFTU, Jan Sithole. Although legislation was relaxed at the end of 2001, persecution of trade unionists in Swaziland remains a daily occurrence.

However, Zimbabwe is the African country that caused most concern in 2002. The power of President Mugabe was brought to bear particularly strongly on the free trade unions of the ZCTU. A law adopted in January 2002 was used widely by the authorities to undermine union activities and arrest dozens of trade unionists. Some of the latter were tried and some were even beaten up in police stations. Others were abducted, sometimes with the connivance of the local authorities, and only narrowly escaped death.

Some encouraging signs were perceptible in 2002, particularly in Ethiopia, where a sustained international trade union

solidarity campaign secured the release, after 6 years' imprisonment, of the General Secretary of the ETA, Dr Teye Woldesmiate. But the government of Ethiopia continued to violate freedom of association almost systematically by detaining other trade unionists. The promises made by the government to reform the strictest trade union laws in Africa date back since 1994, but were once again not kept.

Throughout Africa, trade unionists are regular victims of harassment and intimidation. As shown above, they are subjected to arbitrary arrest, detention and torture and may even die, in some cases, as a result of their activities.

In South Africa, one of the better pupils on the African continent, private security guards at a mining company killed two miners as they were trying to enter their workplace in protest at their dismissal following a strike.

In Senegal, the breakaway group from the CNTS, following a split provoked by the government, had its main office within the labour exchange set on fire intentionally, leading to the death of a trade unionist.

In other countries, union activities are quite simply banned. This is the case in Libya, where no union activities are permitted, and in Egypt, Uganda and Sudan, where legislation provides for a single trade union. Taking the African continent as a whole, the year 2002 again demonstrated the wide gulf, in almost all cases, between relatively mild national legislation and practice in the countries concerned.

Africa



Africa

Algeria

POPULATION : 29,800,000 / CAPITAL : Algiers / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Freedom of association – with limitations

The State of Emergency remained in force, limiting all democratic rights including trade union rights, notably the right to strike. Autonomous unions still face problems in obtaining legal recognition. Members of the National Autonomous Union of Public Administration Staff (SNAPAP) in Oran continued to be intimidated.

THE LEGISLATION

Workers have the right to form trade unions, but must have the government's approval before they do so. The law prohibits unions from associating with political parties and from receiving funds from foreign sources. To register, unions must submit a statement announcing their formation to the authorities and receive official acknowledgement within 30 days. A union must represent at least 20% of workers in an enterprise.

The courts are empowered to dissolve unions that engage in illegal activities.

Right to strike restricted

A strike may only be held after a 14-day period of compulsory mediation, conciliation or arbitration. The government can prohibit a strike if it feels it may cause a serious economic crisis. A minimum level of public services must be maintained during public sector service strikes. Under the State of Emergency decreed in 1992, any action taken with the intention of either obstructing the operation of establishments providing a public service or impeding traffic or freedom of movement in public places may be considered a subversive or terrorist act, liable to a penalty of up to 20 years' imprisonment.

Collective bargaining recognised

The right to collective bargaining is recognised in law for all unions, and discrimination by employers against union members is prohibited.

RIGHTS IN PRACTICE

The National Autonomous Union of Public Administration Staff (SNAPAP), reports that its members have regularly faced harassment and persecution since the 1992 coup d'état. Two applications to form a national confederation have been opposed by the government. They have also been prevented from setting up branch unions, notably in hospitals. Organising has also been obstructed through the use of sanctions, threats and dismissals in local administrations, in the water sector, public works, customs and in civil defence. Member unions have also frequently been prevented from holding general assemblies.

The authorities have obstructed the registration of other unions, by simply refusing to acknowledge receipt of their registration application. This was the case for the Algerian Confederation of Autonomous Trade Unions (CASA), which was created in April 2001, representing five national trade union federations. It applied for registration to the Ministry of Labour, but by the end of the year the Ministry had still not acknowledged receipt.

The smaller, independent unions face problems because they do not usually represent over 20% of workers in an enterprise.

EVENTS IN 2002

Authorities close trade union office

In March, the public authorities closed the office of the National Autonomous Union of Public Administration Staff (SNAPAP) in Oran, so they could use it to store files of candidates in the legislative elections, denying SNAPAP the right to continue to occupy its office.

Trade unionists receive suspended prison sentences for encouraging a strike

The Prefecture of Oran suspended eight trade union members from work on the grounds that they encouraged public employees to observe a strike at the Prefecture's headquarters. They were given suspended prison sentences because they were on a hunger strike.

Trade union leader harassed

The authorities, in particular the Prefect of Oran intimidated and harassed the Secretary-General of SNAPAP, forcibly closing the premises of an association for which he was responsible, which was also used as the trade union's office.

Angola

POPULATION : 12,800,000 / CAPITAL : Luanda / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The lack of democracy and restrictions on civil liberties mean that trade union rights abuses still continue, especially against independent trade unions.

Government approval required

The Constitution provides for the right to form and join trade unions, although government approval is required.

Strike restrictions

The right to strike is recognised, but strictly regulated. Many areas of activity are classified as "essential services." The law does not contain any effective measures to prohibit employer retribution against strikers. Collective bargaining is recognised in law, and discrimination against union members is theoretically prohibited.

RIGHTS IN PRACTICE

Rights not respected

In practice the lack of democracy and restrictions on civil liberties make it difficult for unions to enforce their rights. The government exercises control over the National Union of Angolan Workers (UNTA), which is affiliated to the ruling MPLA party. Two independent organisations, the CGSILA national centre and the SIMA union exist, but are discriminated against. When a group of train drivers from the Luanda Railways Company persuaded colleagues to leave the UNTA and join the CGSILA in November 2000, they were promptly sacked. Collective bargaining is restricted in practice. The government is the country's biggest employer and through the Ministry of Public Administration, Employment and Social Security sets wages and benefits on an annual basis. This involves consultation with the unions, but no negotiation.

EVENTS IN 2002

Background

In April, a ceasefire agreement was signed between Angolan UNITA rebels and the government, ending an almost 30-year long civil war that killed at least 500,000 people and displaced four million others. The agreement came shortly after Jonas Savimbi, the UNITA rebel leader, was killed by the army in February.

Police breaks workers protest movement

In January, the police ended a 440-day long workers protest at the Angonave maritime public transport company. Since October 18 2000, about a hundred employees had been taking turns on watch at the company premises. Franklin dos Santos, leader of the Independent Maritime Workers' Trade Union of Angola (SIMA), explained that since 1990, Angonave had refused to pay the shares to which every employee is entitled each year, according to agreements signed in the framework of the company's forthcoming privatisation. The workers also claimed 30% of the company's shares. Angonave had been undergoing a serious financial crisis since 1990, and the company was declared bankrupt during 2000. In 2001, the government accused the employees of breaking the strike laws, but a Luanda court ruled that they had acted legally.

Benin

POPULATION : 6,100,000 / CAPITAL : Porto-Novo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Recently adopted legislation relaxed restrictions on the right to strike. However seafarers are still excluded from the Labour Code.

THE LEGISLATION

Seafarers excluded

The Labour Code recognises the right to form and join trade unions. However, unions must deposit their statutes with the Ministry of the Interior to obtain legal recognition, under penalty of a fine. Seafarers are excluded from the Labour Code. The law stipulates that they are covered by the Merchant Marine Code, which does not grant them the right to organise or to strike.

Limitations on the right to strike

The right to strike is recognised in both the public and private sectors. While still falling short of international standards, the strike law approved in May 2001 did go some way to meeting trade unions concerns. It no longer allows the government to prohibit any strike by claiming it threatens the economy or the national interest.

It does not remove the requirement to give advance notice before taking strike action, but does reduce it from five days to three. It still imposes limitations by demanding the continuity of essential public services, and allows the government to requisition civil servants in the event of a strike.

RIGHTS IN PRACTICE

Strikes prevented

Some government departments prevent civil servants from going on strike by using the leeway given to them in law to draw up long lists of employees who may be requisitioned.

Parallel unions

In some cases, company managers discourage trade unions and support parallel unions instead.

Botswana

POPULATION : 1,500,000 / CAPITAL : Gaborone / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



In spite of proposed new legislation allowing public servants to unionise, some restrictions remain.

THE LEGISLATION

New bills allow public servants to unionise but there are some exceptions

Workers may form trade unions, with the exception of teachers and civil servants, who may only form associations. Three labour bills – the Employment (Amendment) Bill, the Trade Unions and Employers Organisations (Amendment) Bill, and the Trade Disputes Bill – aimed at bringing Botswana's laws in line with ILO conventions were to be discussed in parliament in 2003. One of them allows public servants to unionise for the first time, with the exception of the Botswana Defence Force, the Botswana Police, the Local Police and the Prisons Service.

“For the first time workers in this country will speak with one single and unified voice. Both the private sector and government will now take unions more seriously because of the muscle we shall have at our disposal,” said Ronald Baipidi, president of the Botswana Federation of Trade Unions (BFTU).

However one section of the Trade Disputes Bill empowers the Minister to determine the conditions for union membership.

The Employment (Amendment) Bill protects employees if their employer becomes insolvent, by means of a privilege on that employer’s assets. It also establishes a Labour Advisory Board.

Some restrictions removed

The Trade Unions and Employers Organisations (Amendment) Bill removes the condition requiring more than 30 employees to form a trade union. The Registrar’s power to de-register a trade union or federation if one of their officers is a non-citizen will also be abolished. Those who leave their jobs will be able to keep their trade union membership even if they have worked in another industry. The restrictions placed on those who want to be members will be removed. The Minister of Labour’s power to investigate trade union membership will also be removed. The unions will no longer need the Minister’s approval to affiliate to international trade unions. In addition, trade unions will be legally entitled to receive funds from outside the country without the Minister’s approval. Finally, elected officials will be allowed to be in the trade union on a full time basis.

The Trade Disputes Bill creates a panel of full time and part time mediators and arbitrators, chaired by the Commissioner of Labour. The Panel must mediate on trade disputes which are referred to it by the Labour Department within 30 days.

Some restrictions maintained

Trade unions have to be registered, via the Registrar of Trade Unions, with the Ministry of Labour. If a trade union is not registered, union committee members are not protected against anti-union discrimination.

Restrictions on the right to strike

The right to strike is recognised, but workers must first submit their demands to complex arbitration procedures. Strikes are not allowed in essential services, the list of which exceeds the definition given by the ILO: for example, the Bank of Botswana is included.

Collective bargaining limited

Collective bargaining is allowed, provided the union represents at least 25% of the workforce.

Workers may not be fired for union-related activities.

Export processing zone

The same labour laws apply to Botswana’s export processing zone as to the rest of the country.

RIGHTS IN PRACTICE

There is very little collective bargaining, as few unions meet the 25% representational criteria.

The government has used its strike legislation to order workers back to work, as in the case of employees of the Botswana Agricultural Marketing Board, who went on strike in 2000 because they had not received their salary adjustments. During 2002, there were no legal strikes in Botswana.

Burkina Faso

POPULATION : 18,500,000 / CAPITAL : Ouagadougou / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The restrictions on the right to strike for civil servants remained in place, while magistrates were banned from striking altogether.

THE LEGISLATION

The right to form trade unions is recognised in law, with the exception of those in essential services.

Restriction on the right to strike for civil servants

The right to strike is recognised. However, the government has the right to requisition public servants in the event of a strike. This can be applied to all civil servants, not just those who exercise authority in the name of the State or the interruption of whose services would endanger life or safety. Some civil servants are banned from striking, notably labour inspectors and uniformed personnel.

Strike ban for magistrates

At the end of October 2001, the Minister of Justice announced that, under a major reform of the justice system, magistrates would no longer be allowed to go on strike. The ban followed the first strike by magistrates in 41 years, organised that April by the Burkinabe Magistrates' Union (SBM).

Collective bargaining

Unions have the right to engage in collective bargaining for wages and other working conditions.

RIGHTS IN PRACTICE

In practice trade unionists are often subjected to intimidation. In previous years some union leaders were transferred away from their membership base and trade union meetings were raided. There have been reports that the authorities have sought to undermine or weaken trade unions, especially during strike action. In several cases, the privatisation of state enterprises has been undertaken without adequate trade union consultation, if at all. Protest action has often resulted in the workers and their union representatives being victimised, suspended or dismissed. Media workers, and especially journalists have also faced considerable difficulties.

Cameroon

POPULATION : 14.600.000 / CAPITAL : Yaounde / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although workers are allowed to form and join trade unions, the law imposes many restrictions. Workers who do not comply with the Labour Code provisions on trade unions risk severe prison sentences. The authorities frequently interfere with trade union activities. Trade unionists continued to be intimidated. Some were suspended, others sacked.

THE LEGISLATION

Government authorisation required

The 1992 Labour Code allows workers to form and join trade unions, but imposes restrictive conditions on that right. There are separate procedures in the public and the private sectors. Unions in the private sector must apply for registration with the Ministry of Labour. Public sector unions must register with the Ministry of Territorial Administration. It is illegal to form a union that includes both public and private sector workers, and to form a union that includes private sector workers from different sectors, even closely related sec-

tors such as building and wood workers. The law provides for prison sentences and fines for workers who form a trade union and carry out trade union activities without registration.

The law prohibits anti-union discrimination and allows fines to be levied against employers convicted of this, but does not provide for any restitution, in the form of reinstatement or compensation, to the wrongfully dismissed workers.

Limitations on the right to strike

The Labour Code recognises the workers' right to strike, but only after mandatory arbitration. However, there is no established procedure for arbitration, and arbitration rulings are not legally enforceable, so they can be overturned or simply ignored by employers. A minimum service has to be provided in certain sectors, including transport, which is not considered an essential service by the ILO. Civil servants do not have the right to strike.

Bargaining – enforcement measures weak

The right to collective bargaining is recognised but the legal mechanisms for applying collective agreements are very weak.

Export processing zones

Firms operating in the EPZs are exempt from certain aspects of the Labour Code, but must comply with internationally recognised labour standards. An official notice by the National Office for Industrial Free Zones contains a list of "incentives". It also states that employers enjoy "flexibility in hiring/firing workers".

Revision of labour code – further restrictions

The government is reviewing its labour code, and it is feared that the proposed amendments will further restrict many aspects of workers' freedom of association and right to collective bargaining. Registration procedures will be strengthened and a union will only be legal after it has received the Registrar's certificate. While this is a formality in many countries, here strict representational criteria have to be met. These include sectoral and geographical coverage, which the unions fear will make it easier for the government to discriminate between unions. The new code will also give the Registrar broad powers to cancel trade union certification and provides less effective protection for trade union officials.

RIGHTS IN PRACTICE

Government interference

Harassment and intimidation against trade unionists continued throughout the year 2002

The government interferes in trade union activities in several ways. It favours the workers' organisations it sees as easier to control. It uses the requirement for a union to be registered to withhold or indefinitely delay recognition from trade unions that it sees as too independent.

The government sometimes demands that workers setting up a union produce job descriptions signed by the employer as a precondition for registering the union. This makes it impossible for workers in the informal economy and independent or self-employed workers to form a union.

There have also been reports of independent trade unions being refused access to bargaining processes in favour of pro-government organisations. Only pro-government unions have been allowed to sit on the National Consultative Labour Commission.

The government exploited and exacerbated divisions within the Confederation of Cameroon Trade Unions (CSTC) which split into two factions. The government refused to recognise the leadership elected in 1999 at a congress whose legitimacy was upheld in a court of law. Instead the government went on to deal with the rival faction. It banned the legitimately elected faction, led by Benoît Essiga, from taking part in May Day activities.

Collective bargaining almost non-existent

Collective bargaining is almost non-existent. No formal collective bargaining negotiations have taken place since 1996. Some agreements between the government have been shelved or ignored by the government after being negotiated.

EVENTS IN 2002**Workers' representatives suspended**

In March, an agreement was signed between the workers and the management of Doba Logistics, one of the main contractors for construction work on the Chad-Cameroon Oil Pipeline project involving the Cameroon Oil Transportation Company (COTCO), the Chad Oil Transportation Company (TOTCO), the oil companies Exxon Mobile, Chevron, and Petronas, and the World Bank. Doba Logistics, however, did not honour the agreement, and the workers went on strike from May 14 to 25. On May 14, the company management suspended nine workers' representatives and dismissed 12 workers. Construction activities had started in November 2000, and the workers had been complaining since December 2000 about low pay, poor working conditions, the lack of adequate housing and food, discrimination between white and black workers and the non-respect of freedom of association. COTCO had persistently refused to enter into social dialogue with the Federation of Building, Public Works and Allied Workers of Cameroon (FTBAC), which, on several occasions, left the workers no alternative but to go on strike.

Workers' representative fired

On June 14, Labogénie (the National Public Works Laboratory involved in studies and geo-technical controls in the pipeline project) dismissed Jean-Michel Mbagu, the workers' representative and inter-State coordinator for trade union follow-up in the pipeline project, because of his trade union activities. Additional sanctions taken against him included six months wage arrears and non-payment of benefits.

Central African Republic

POPULATION : 3,600,000 / CAPITAL : Bangui / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The problem of salary arrears of public servants and State officials led to many strikes, which the government tried to break by exerting pressure on the trade unionists.

THE LEGISLATION**Limits on freedom of association**

The labour code allows all workers to join trade unions, without prior authorisation. A person who has lost the status of worker, either because he or she is unemployed or has retired, cannot in principle belong to a trade union or take part in its leadership or administration. Trade union officers must belong to the occupation their union represents. Both requirements place limits on the skilled personnel that a union could hire.

Complicated strike procedures

The right to strike is recognised in both public and private sectors, but is curtailed by complicated procedures. After a union has presented its demands, and the employer has responded to those demands, there has to be conciliation between labour and management. If no settlement is reached an arbitration council must rule that the union and the employer failed to agree on valid demands; only then may a strike be called which can subsequently be declared legal. If a union calls a strike, only its members can join in the action. The government reserves the right to requisition workers if it is in the "general interest". The labour code does not foresee sanctions against employers for acting against strikers.

The Code does not specifically recognise the right to bargain collectively, but does protect workers from employer interference in the administration of a union.

RIGHTS IN PRACTICE**Collective bargaining minimal**

In the civil service wages are set by the Ministry of Labour, further to consultation but not negotiation with the unions. In the private sector, collective bargaining has played a role in setting wages, but this has been undermined by the continuing catastrophic economic situation and long-term salary arrears.

EVENTS IN 2002

The year saw a large number of strikes in the health and education sectors, because of many months of non-payment of salary arrears.

Anti-union pressure and manoeuvres

In December, the cross-sectoral teachers' organisation Interfédérale des Enseignants de Centrafrique (IFEC) denounced the "underhand" government measures to break the strike it had organised since September 23, aimed at obtaining the nine of the 32 months of salary arrears owed to civil servants and officials. The unions especially condemned the pressure exerted on children's parents and the improper recruitment of unqualified temporary teaching staff to replace teachers. It also condemned the redeployment of several striking teachers to different parts of the country and the veiled threats made against union officials in Bangui and the provinces.

Dialogue between the government and trade unions broke down in May 2001, with the unions accusing the government of failing to honour an agreement signed on 6 March of that year. The agreement aimed at ending a fierce five-month strike by civil servants by paying wages regularly and settling salary arrears.

Chad

POPULATION : 7,600,000 / CAPITAL : N'Djamena / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



The government has continued to delay the start of negotiations on amending the 1969 General Collective Agreement. Union rights' violations have continued on the construction site for the oil pipeline between Chad and Cameroon.

THE LEGISLATION**Old legislation still in place**

The right to form and join trade unions is recognised in the Constitution and all employees except members of the armed forces are free to do so. However, a 1962 ordinance subjects the establishment of associations to the authorisation of the Ministry of the Interior and confers extensive powers on the authorities to oversee the management of associations.

Strikes restricted in public sector

The Constitution recognises the right to strike, although this is limited in the public sector by a 1994 decree that requires a minimum service to be maintained. Under the new Labour Code, accounts and supporting documents for the financial transactions of trade unions must be still submitted to the labour inspector upon demand.

Intervention allowed

The Labour Code specifically recognises the right to collective bargaining, but does allow for some government intervention. The Code protects unions against anti-union discrimination, but there is no formal mechanism for resolving complaints.

RIGHTS IN PRACTICE

The government says that the 1962 ordinance is no longer applied to trade unions and trade unions recognise that. It also says that the 1994 decree limiting public sector strikes has never been applied in practice. It is being slow to repeal these laws however.

EVENTS IN 2002

Suspension of trade unionists

In March, an agreement was signed between the workers and the management of Doba Logistics, one of the main contractors for construction work on the Chad-Cameroon Oil Pipeline project involving the Cameroon Oil Transportation Company (COTCO), the Chad Oil Transportation Company (TOTCO), the oil companies Exxon Mobile, Chevron, and Petronas, and the World Bank. Doba Logistics, however, did not honour the agreement, and the workers went on strike from May 14 to 25. On May 14, the company management suspended nine workers' representatives and dismissed 12 workers.

Refusal to negotiate

In August, a three-day general strike paralysed private and public sector enterprises. The general workers' union affiliated to the ICFTU, Union des Syndicats du Tchad (UST), called the strike to protest against the non-payment of wage arrears, the government's refusal to start negotiations on amending the 1969 General Collective Agreement, which the union had been calling for since November 2001, and union rights' violations. Some private enterprises cut the wages of workers who joined the strike. A second general strike call was launched in September.

Côte d'Ivoire

POPULATION : 16,000,000 / CAPITAL : Yamoussoukro / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



All workers, with the exception of military personnel and police officers, have the right freely to form and become members of trade unions, and restrictions on the right to strike are fairly limited. Police violence and arrests of trade unionists have been reported during the year.

THE LEGISLATION

The Constitution of 23 July 2000 guarantees the right to form trade unions and the right to strike in both the public and private sectors.

The labour laws give workers, the liberal professions and self-employed workers who do not employ staff the right to form and join trade unions. However, military personnel and police officers are excluded from these provisions. Employers are prohibited from applying pressure either for or against a trade union. Only Côte d'Ivoire nationals, nationals of a country with which reciprocal trade union and worker protection agreements have been concluded or foreigners who have been legal residents in the country for at least three years, may exercise administrative and managerial functions in a trade union. Trade unions may "form unions under any name whatsoever".

Right to strike – exclusions and restrictions

All workers, with the exception of military personnel and police officers, have the right to strike after a notice period of six days aimed at encouraging negotiations. Any strike started without notice is prohibited. The union must notify the Labour Ministry in writing that it intends to strike, giving its reasons, and its demands. The Ministry must then start up negotiations with the conflicting parties. The President of the Republic may, if he considers that the strike could threaten public order or the general interest, submit the dispute to arbitration. This is the case when "the strike affects an essential service whose interruption could

endanger the lives, health or security of all or a part of the population", and in cases of "acute national crisis". The Labour Code does not list the services considered to be essential.

Strikes are prohibited before a complicated, conciliation, mediation and arbitration procedure has been exhausted, and a notice period of six working days has elapsed.

In the public sector, the right to strike is recognised, once again with the obligation to respect the six-day notice period. Staggered work stoppages or rolling strikes are prohibited. A minimum service is required, particularly in public hospitals.

Collective bargaining

All workers, with the exception of military personnel and police officers, have the right to collective bargaining.

RIGHTS IN PRACTICE

In practice, only a small proportion of the labour force is unionised.

Collective bargaining agreements have been concluded in the majority of major companies and public sector organisations. When salaries are not negotiated directly between employers and trade unions, the Ministry of Employment and the Civil Service fix them based on professional categories.

In practice, no cases of anti-trade union discrimination have been reported.

EVENTS IN 2002

Background

The country was shaken by a military insurrection that started on September 19, which left 270 people dead in Abidjan alone, as well as leading to a massive displacement of migrant workers. In the climate of violence that followed, there were many violations of human rights and of trade union rights.

Liquidation of Air Afrique: no dialogue

At the beginning of the year, the trade unions protested strongly against the decision taken on January 10 by the eleven heads of the African states that own Air Afrique to close the company without putting forward a social plan and, above all, without consulting the trade unions. There were also lively protests against the decision by the Transport Minister, in his capacity as Chair of the African members of Air Afrique transport ministers' committee, to requisition company equipment and personnel. This left a climate of tension between the management of the company, the military and the trade unions, and harassment against trade union leaders and members increased dramatically.

Hunger strikers brutalised and arrested

During the night of June 23 and 24, the police dislodged seven women employed by Air Afrique who had been carrying out a hunger strike in front of the French development agency (AFD) offices in Abidjan – the AFD was a minority shareholder in the pan-African company that went into liquidation. Eudoxie Beboh, the spokesperson for the strikers told the French press agency (AFP) that police officers arrived at the scene at 3am in the morning and started beating them up, since they were a nuisance to the AFD. Another woman reported that they had been dragged a long distance while being showered with abuse. The workers also asserted that two of them and thirty family members and friends had been arrested and taken to the police station, and that another person had been transferred to a general hospital. The Air Afrique staff claims included ten months of back pay and redundancy payments.

Strikers arrested

On July 23, 8,000 dockers in Abidjan and San Pedro started a five-day strike to protest against the imprisonment of the General Secretary of the Côte d'Ivoire national dockworkers' trade unions (SYNADO-CI), Moussa Fofana, and to demand a pay rise. According to SYNADO-CI, eleven dockers were arrested during the demonstration.

Democratic Republic of Congo

POPULATION : 49,600,000 / CAPITAL : Kinshasa / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Despite the signature of a fragile peace agreement in December, bringing four years of civil war to an end, trade union rights guaranteed under the law are very often ignored. Trade unionists are regularly threatened and intimidated, and some of have been imprisoned for their activities.

THE LEGISLATION

Rights on paper

The legislation grants all categories of workers with the exception of magistrates and military personnel the right to organise. No prior authorisation is required to set up a trade union. The right to strike is recognised, although unions must have prior consent and adhere to lengthy mandatory arbitration and appeal procedures. The law prohibits employers from retaliating against strikers.

The right to bargain collectively is also recognised. In the public sector however, the government sets wages by decree and the unions can only act in an informal advisory capacity.

RIGHTS IN PRACTICE

No respect in practice

In practice, the civil war and the collapse of the formal economy mean that there is very little respect for trade union rights. Employers ignore labour regulations and the government does little to enforce them. Soaring inflation and the constant depreciation of the Congolese franc render any pay rises agreed through collective bargaining meaningless.

Private sector

Employers in the private sector see trade unions as disruptive foreign bodies and regularly refuse to meet workers' delegations. In addition, they rarely apply collective bargaining agreements, as they know that the authorities will virtually never react. This was notably the case in the company 'Congo Futur SPRL' where the Minister of Labour turned a deaf ear to calls from the Confédération démocratique du travail (CDT) when it denounced the management's refusal to meet the trade unions, to provide them with premises and to respect labour legislation. Similar violations have been reported within 'New Protection sprl', an Italian-Congolese refining company and at Chevron. In the latter, the technicians working for the subcontracting company Escokin do not have the right to form a union.

Public sector

Despite the high number of civil service and state workers' trade unions (more than 50), the authorities refuse to allow trade union elections. This was notably the case in the Banque centrale du Congo at Matadi (Lower Congo).

Protests repressed

Protests by trade unions, usually about low pay or unpaid wages, are firmly repressed.

EVENTS IN 2002

Background

On December 17, a peace agreement was signed in Pretoria, South Africa, between President Joseph Kabila and the two main rebel groups, Congo Liberation Movement and the Congolese Rally for Democracy. The parties agreed to form a transition government and to organise elections within 30 months. The conflict, which began in 1998, has cost the lives of around 2.5 million civilians.

Arrests and imprisonment of trade unionists at the Kwilu Ngongo Sugar Company

On April 26, ten trade unionists at the Compagnie sucrière de Kwilu-Ngongo were sentenced to ten months in prison and 100,000 Congolese francs in fines by the District Court at Cataractes in Mbanza-Ngungu. The trade unionists were arrested in March on the Labour Inspectorate premises where they had been called for a joint meeting at the end of a conflict with the management. They were then transferred to the Mbanza-Ngungu prison and charged with having orchestrated the strike, although the strike never took place thanks

to the negotiations. For several days the men were held in a secret detention centre. They were then transferred to the prison in Matadi just after they had appealed against the decision handed down by the District Court. On October 14, they were provisionally freed in return for payment of a bond of 300,000 Congolese francs (around €1,000). On November 23, they were sentenced to six months in prison and fined 50,000 Congolese francs by the Court of Appeal in Matadi. They were allowed to go free since they had already effectively spent more than eight months in detention. On December 14, they lodged an appeal against the decision of the Court of Appeal.

The CDT believes that the trade unionists were subjected to inhuman and degrading treatment during their detention.

The CDT reported that during the period between March 7 and April 26, the National Information Agency (ANR) had detained 80 workers for questioning about their support for the ten imprisoned trade unionists. Many of them were humiliated during their interrogation.

Dismissal and harassment of trade unionists at FINA

During May, the president of the trade union delegation at FINA was suspended for protesting against the suspension of 12 workers, two of them trade unionists. The replacement delegate was repeatedly harassed and forced to resign. All of the workers were subsequently fired by the employer in what was incorrectly termed an "amicable separation".

Harassment, arrest and constraints on the activities of a trade union leader

On June 5, Steve Mbikayi, general secretary of the trade union Solidarity, was arrested by the Police d'Intervention Rapide (PIR) near the headquarters of the Office National des Transports (ONATRA) in Kinshasa-Gombe while he was running a strike called to secure payment of wage arrears for ONATRA workers. Steve Mbikayi was also harassed by the security services (ANR) and had his passport confiscated at the time of the 90th ILO Conference in Geneva, which he had been hoping to attend.

Arrest of the president of the trade union delegation of the OCC/Lower Congo

In June, the president of the trade union delegation of the Office congolais de Contrôle in Matadi (Lower Congo) was detained for several days after publicly denouncing the mafia networks that operated with total impunity in the port of Matadi.

Kidnapping of three trade union leaders

On October 9, Emery Tshitamba, Bosco Mudingay and Ebale Manzenge - the first two trade union leaders in SYNAFET and the third in SYNERSURS - were kidnapped in suspicious circumstances in the centre of Kinshasa. They had led a civil service strike and informed Mr Mukulungu, the civil service minister, that they would extend it if the trade union's pay claims were not satisfied. The Civil Service Minister had publicly named the three trade unionists as the leaders to be eliminated.

Harassment of trade unionists at the OFIDA

Mr Lubamba, the President of the trade union delegation at the Office des Douanes et Accises (OFIDA) was arrested in his office after publicly denouncing embezzlement carried out by the Minister of Finance and the Budget and the OFIDA. Another trade unionist, Brunel Nsiala, was harassed because of his trade union activities. The management refused to give him a posting.

Arrest of two trade union leaders

On December 21, Philippe Lema Kivoka, the provincial confederal secretary of the CDT in Lower Congo, and Gérard Phambu Nzuzi, permanent local confederal secretary of the CDT at Kwilu-Ngongo, were arrested at Gérard Phambu Nzuzi's home in Kwilu-Ngongo, on charges of holding secret trade union meetings. They were then taken to Matadi in a vehicle belonging to the Kwilu-Ngongo Sugar Company.

Djibouti

POPULATION : 600,000 / CAPITAL : Djibouti / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105



Government authorisation required

Numerous restrictions undermine freedom of association and the right to strike. The government's policy consists of sidelining representative and independent trade unions and replacing them with yellow "unions". In October, a trade union leader was sacked but reinstated in November.

THE LEGISLATION

The law recognises the right of workers to join trade unions, but with limitations. A union can only be formed with the prior authorisation of the government. In order to hold trade union office, a person must be a Djibouti national. The proposed new Labour Code, drafted unilaterally by the government, will make it even more difficult to establish a trade union.

Strikes in public service limited

Similarly, while the right to strike is recognised, it is curtailed. The authorities have broad powers to requisition public servants who are on strike, and unions planning strike action must contact the Ministry of the Interior 48 hours in advance.

RIGHTS IN PRACTICE

There is virtually no respect for trade union rights. Trade union action has been repeatedly repressed ever since the government sacked nine leaders of the ICFTU-affiliated Djibouti Union of Labour (UDT) and the Djibouti General Workers' Union (UGTD) in 1995 in retaliation for a protest strike against structural adjustment measures. The government then created a completely unrepresentative "trade union collective". After ILO pressure and during visits by international trade union delegates, the government has repeatedly promised that the situation would improve, and that it would allow the UDT and UGTD to hold a congress. However in 2002 the government supported dissidents who disrupted the UDT national congress. Although the congress was cut short, it re-elected the legitimate leaders. In September 2002, the UDT managed to hold its 2nd ordinary congress, which was attended by representatives of international organisations like ICFTU-AFRO, despite government attempts to prevent this.

Both organisations have had their dues frozen, their bank accounts blocked and their premises confiscated, while union leaders have been harassed and protest demonstrations have been met with police violence. The government has rejected repeated proposals for dialogue and conciliation and consistently reneged on promises to apply ILO recommendations on trade union freedoms.

Teachers' unions have also been repressed. In 1996 scores of teachers were sacked after striking in protest at salary arrears. In 1997, five officials from the secondary schoolteachers' union SYNESED were dismissed and disqualified from teaching for taking part in the salary protests. Solidarity strikes to support the officials were put down with force.

EVENTS IN 2002

At the start of the year the National Assembly reduced retirement pensions, without consulting the social partners.

Pressure on union leader

On 7 October, Housing, Environment and Planning Minister Abdallah Abdillahi Miguil arranged for the dismissal of Abdoukalek Waberi Ouffaneh, General Secretary of the Building and Public Works Union (SP-

BTP) and General Treasurer of the Djibouti Union of Labour (UDT). He was eventually reinstated in November. He had already been subjected to other measures aimed at preventing him from exercising his trade union duties.

Sacked unionists not reinstated

By the end of the year, nine UDT and UGTD leaders sacked for their involvement in strikes in 1995 had still not been reinstated.

Equatorial Guinea

POPULATION : 400,000 / CAPITAL : Malabo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The government has ratified all the ILO core conventions since 2001, but in practice it has continued to deny trade union rights.

THE LEGISLATION

Obstacles to freedom of association

The constitution provides for the right to organise unions. According to the 1992 law on trade unions however, a union must have at least 50 members from the same workplace and the same geographical area in order to register, effectively blocking union organisation.

The right to strike and to bargaining collectively exist, but there are no provisions protecting workers from acts of anti-union discrimination.

The government ratified several ILO core conventions in 2001, including conventions 87 and 98, but it has still not adapted its legislation accordingly.

RIGHTS IN PRACTICE

Union recognition denied

Trade union rights are abused in Equatorial Guinea.

Despite its legislation, the government does not recognise "independent" trade unions. The authorities have consistently refused to register the Union Sindical de Trabajadores de Guinea Equatorial (UST) which cannot operate openly. The authorities also refused to legalise the public sector union, the Sindicato Independiente de Servicios (SIS). While it met all the registration requirements the government objected to the term "independent" in its title.

When workers try to form trade unions, the police visit their homes and intimidate them.

There is no collective bargaining. The government and employers set wages, with little or no participation by workers.

Egypt

POPULATION : 66,700,000 / CAPITAL : Cairo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Strong restrictions on union rights remain in place.

THE LEGISLATION

Single national centre

Workers may form trade unions provided 50 employees in an enterprise wish to do so. "High administrative officials" in government and public sector enterprises may not join unions. Freedom of association is restricted by the fact that all unions have to belong to the only legally recognised trade union centre, the Egyptian Trade Union Federation (ETUF), which has close relations with the ruling party. The ETUF has the power to control the nomination and election procedures for trade union office. The law also specifies how much unions have to pay to federations in affiliation fees and how much the federations have to pay the national centre.

A 1993 Act entitled "law on guarantees for democracy", relating to professional trade union associations, closely regulates elections in these organisations, detailing requirements for quorum, length of office, and electoral procedures.

Very limited collective bargaining rights

The government sets wages and other terms and conditions of employment in the public sector after consultation with the unions. There is very little collective bargaining in the private sector. Companies must comply with certain government-established standards, particularly in relation to the minimum wage, social security and official public holidays. Any clause in a collective agreement which could jeopardise the economic or security interests of the country is declared invalid.

Strikes prohibited

Strikes are considered to be obstacles to public order and have been declared illegal since the state of emergency decreed by the government in 1981. Strikers face two-year prison sentences. The Public Prosecutor can ask the criminal courts to remove a trade union executive committee from office for provoking a strike in the public services.

New market-oriented labour law

The broad outlines of a new Labour Law were drafted in 1995 would apply to both the public and private sectors. It is hoped that the new bill will bring improvements in consultation and collective bargaining. However it will also make it much easier for employers to dismiss workers, will not greatly improve the right to strike, and will maintain the ETUF's trade union monopoly.

The Committee for the Defence of Labour Unions has said that the law would give employers "a unilateral right to terminate a job contract, change job descriptions, cut salaries, (and) assign workers to other posts than those stated in the contract."

RIGHTS IN PRACTICE

There has been an increase in unofficial strike action over the last two years, reflecting the inadequacy of current industrial relations mechanisms to deal with workers' problems.

In the private sector, employers are not interested in bargaining, and do not even respect government requirements on the minimum wage, social security etc.

Refusal to recognise union

When the Titan Cement Company and the French cement group Lafarge jointly acquired the Egyptian company Beni Suef Cement, they refused to recognise the General Trade Union for Building and Wood Industries Workers (GTUBWIE) and prevented union representatives from operating.

Export processing zones

The private employers in Egypt's "industrial parks" (set up to attract foreign investors) show very little respect for labour rights. Most workers in the "Tenth of Ramadan City" zone are forced to sign letters of resignation before beginning employment so that they can be fired at the employers' convenience. Working conditions are very bad – long hours, low pay, poor safety standards – but it is difficult for labour activists to do anything about it, given the restrictions on collective bargaining and ban on strikes. According to an Egyptian labour rights NGO, "bosses use pay cuts and transfer workers to remote areas to silence activists or summarily dismiss them saying they have failed to obey instructions". Police are reported to hire workers to spy on fellow employees to pre-empt strike attempts.

Ethiopia

POPULATION : 61,400,000 / CAPITAL : Addis-Ababa / ILO CORE CONVENTIONS RATIFIED : 87-98-100-105-111-138



In spite of the release of Dr. Taye Woldesmiate, leader of the teachers' union in May, there has been no general improvement in the respect for trade union rights. Many trade unionists remain in prison, some are afraid to return from exile while many others are harassed. The government is reportedly still interfering in trade union activity.

THE LEGISLATION

Freedom of association restricted

Most workers have the right to form and join trade unions under the Constitution, but the 1993 Labour Proclamation specifically excludes teachers and civil servants who can only belong to "associations". There can only be one trade union in an enterprise, and there must be at least 20 workers before a union can be formed. The Ministry of Labour has the power to cancel the registration of a trade union. However, the government has indicated that the Ministry of Labour and Social Affairs had submitted draft legislation to the Council of Ministers, which would vest the power of cancellation solely in the Ethiopian courts.

Strike procedures cumbersome

The right to strike is recognised, but the procedures to be followed for a strike to be legal are restrictive. Strikes must be supported by a majority of the workers concerned. The government must be given 10-day notice and the reason for the action. If the case is already before a labour board, there must be a 30-day advance notice period.

Essential services broadly defined

Strikes are banned in essential services, which are very widely defined to include air transport and railway services, urban and inter-urban bus services, filling stations, banks and postal services.

Since 1994 the government has promised the ILO that it would draft new legislation to bring it into line with international standards. So far it has failed to meet those promises.

RIGHTS IN PRACTICE

Government interference

The government's blatantly interferes in trade union affairs in all sectors. Many trade union leaders have been removed from their posts and/or forced to leave the country. In November the Confederation of Ethiopian Trade Unions (CETU) said that trade union leaders are still being sent to prison because they sought to protect their rights, while many more are sacked simply for forming a trade union.

Ethiopian Teachers' Association

The Ethiopian Teachers' Association (ETA) has been a particular target for harassment and the government has persecuted many of its leaders since the 1993 Proclamations. The government helped a splinter group form the "New ETA" and redirected the ETA's union dues to it. ETA President Taye Woldesmiate spent six years in prison until he was finally released in May 2002 thanks to a global trade union campaign. He had been held for three years before being sentenced, after an unfair trial, to 15 years' imprisonment for con-

spiracy to overthrow the state. The death of two ETA leaders and an ETA supporter are linked to the conspiracy theory against Dr. Taye. Kebite Desita, who was forced under torture to give evidence against the ETA president, died in prison from his ill treatment; Shimales Zewide, acting general secretary, died from poor health brought on by imprisonment; Assefa Maru was shot dead by police. Other ETA members are harassed and threatened and live in fear of their lives.

Meanwhile the ETA General Secretary Gemorav Kassa continues to live in exile. At the end of 2002 and following Dr. Taye's release, Kassa was considering returning to Ethiopia. However, there are clear indications that his physical security would not be guaranteed if he returned to Ethiopia.

In June 2002, the International Labour Conference singled out six countries for anti-union repression, Ethiopia was among them. The ILO demanded that the government immediately "take steps to bring its legislation and practices into line with the principles of freedom of association," and that "the government immediately stop interfering in the affairs of trade union organisations."

EVENTS IN 2002

Trade union leader released after 6 years in prison...

On May 10, Dr. Taye Woldesmiat, the president of the Ethiopian Teachers' Association (ETA) was released from prison, after the Supreme Court ruled that he had been charged under the wrong article of the Constitution. When he visited the ILO headquarters in October, he requested that international pressure be maintained on the government: "Many people are still in jail, our office is still blockaded and our bank accounts are still frozen," he said.

...and another arrested

On December 3, Maekelawi Criminal Investigation Bureau (MCIB) agents arrested Ato Abate Angore, acting general secretary of ETA, without any explanation. He was held in a MCIB prison cell, in Addis Ababa, where he was denied visits from colleagues or relatives. In 2001 he had been detained for three days after he returned from Utrecht, Netherlands, where he had taken part in the FNV – a Dutch ICFTU affiliate – annual congress. He was accused of instigating the people against the government after releasing a press statement, which was considered inflammatory, about the Addis Ababa University students' strike for academic freedom in April 2001. Since then, he had been summoned to the MCIB several times, and was awaiting a court hearing when he was arrested.

Gabon

POPULATION : 1,233,000 / CAPITAL : Libreville / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



Although trade union rights are recognised by the law for the great majority of national workers, migrant workers are not encouraged to form trade unions. Several hundred municipal workers, including trade unionists, on strike were threatened with dismissal. A private employer introduced a dismissal procedure aimed at employees who wanted to set up a trade union, without waiting for the labour inspectorate opinion.

THE LEGISLATION

All workers have the right freely to form and become members of the trade union of their choice. Trade unions must be registered to obtain official recognition. The trade unions and confederations can freely join international bodies and participate in their activities.

**Right to strike –
limitations**

Workers in the public sector can join a trade union and have the right to strike, although this is limited in the event of a threat to public safety.

A strike may only be started following notification eight days in advance, after arbitration has failed. The Labour Code prohibits the government from intervening directly against strikers who adhere to the arbitration and notification procedures.

**Discrimination
against trade unions**

The law does not expressly prohibit discrimination against trade unions. However, the courts can sentence employers that are found guilty to compensate employees that are the victims of such actions.

There are no free trade zones in Gabon.

RIGHTS IN PRACTICE

Trade unionists in both the public and private sectors are often discriminated against. They are regularly harassed or simply dismissed.

EVENTS IN 2002**Trade unionists
suspended following a
strike**

In November 2001, the trade unions Synafonte and Solidarity called a municipal workers' strike in Libreville to protest against the mayor's non-payment of social security contributions to the CNSS (Caisse nationale de sécurité sociale) as well as the non-payment of family allowances and retirement pensions. In January 2002, 525 municipal workers, including trade unionists, were threatened with dismissal. Two trade unionists had their salaries suspended, whilst six others were suspended from their posts and demoted. The head of human resources was also forced to resign for having declared the municipal workers' strike legal and for refusing to dismiss the strikers without prior labour inspectorate authorisation. On January 24, Gabonese President Omar Bongo appointed a mediator and a protocol agreement was signed by the parties. However, the protocol had not been implemented by October 2002.

**Threats of dismissal
for wanting to set up
a trade union**

When workers at the Placages d'Okoumé du Gabon (POGAB) factory began to organise a trade union, they came up against strong opposition from the director, Jean-Marc Ferron, who threatened them with dismissal if they went ahead with their plans. The redundancy programme started in December before the labour inspectorate had issued its opinion.

Ghana

POPULATION : 18,900,000 / CAPITAL : Accra / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



The legislative restrictions on the freedom of association remain in place.

**Limitations on union
recognition****THE LEGISLATION**

The Constitution grants freedom of association, but several pieces of labour legislation effectively limit this freedom. The Industrial Relations Act (IRA) of 1965 and the Trades Union Ordinance (TUO) of 1941 both impose restrictions on trade union activities. The IRA stipulates that the Trade Union Registrar shall not recognise a trade union for any class of worker where a trade union already represents any part of that class. The 1941 Trade Union Ordinance grants the Registrar extensive scope to oppose the registration of a trade union.

The Emergency Powers Act of 1994 restricts freedom of association in areas presently and formerly under a state of emergency. The Act provides for very extensive powers that could be employed to restrict legitimate trade union rights.

The law prohibits acts of anti-union discrimination, and employers found guilty can be required to reinstate workers who have been fired as a result.

Compulsory arbitration

The right to bargain collectively is covered by the IRA, but there are serious restrictions on the free exercise of the right to collective bargaining.

The IRA provides for compulsory arbitration by the Minister to resolve a dispute if one party to the dispute requests it. This makes it possible for employers to renege on their commitment to bargain and call for arbitration instead.

The IRA also grants the Trade Union Registrar wide powers to refuse to recognise a trade union as representative for the purposes of collective bargaining.

Complex strike procedures

The IRA provides for the right to strike, but sets out a strike procedure which is so arduous and complicated that legal strikes become almost impossible. The law protects strikers from retribution, but can also stipulate severe penalties for illegal strikes, including fines and prison terms.

RIGHTS IN PRACTICE

Anti-union discrimination

In practice, unions report that in many companies there is anti-union discrimination, which the authorities fail to stop. Many employers are particularly resistant to senior staff being unionised.

No legal strikes

The authorities have never recognised a strike as legal in Ghana, because all strikes have failed to meet the specifications set out in the IRA.

Guinea

POPULATION : 8,000,000 / CAPITAL : Conakry / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111



Intimidation and harassment prevent the respect of rights.

THE LEGISLATION

The Labour Code states that all workers, except military and paramilitary personnel have the right to form and join trade unions.

Workers have the right to strike, but must give 10 days notice, and employers can impose binding arbitration.

Strike limitations

Strikes are prohibited in essential services, which are broadly defined to include transport, radio and television.

Collective bargaining is recognised. The law does not contain any measures to prevent anti-union discrimination or to protect trade unions against interference by employers.

RIGHTS IN PRACTICE

Intimidation

Union activities are met with interference and harassment. Strikes are rarely carried out because of the level of intimidation beforehand.

Kenya

POPULATION : 30,000,000 / CAPITAL : Nairobi / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



Trade union rights suffer many restrictions in law and in practice. Although the right to strike is recognised, it is subject to major legal restrictions. The government has an unfortunate habit of declaring strikes illegal whenever it feels that they cause too much trouble. This happened in September and October during a four-week long strike called by teachers in protest against the government's persistent failure to implement a pay rise agreement concluded in 1997.

THE LEGISLATION

Government can deny registration

Workers in enterprises of seven workers or more have the right to form and join trade unions. They must be registered by the Trade Union Registrar, which has the right to deny registration.

Restrictions on the right to strike

The law authorises the right to strike, but this right is subject to major restrictions. All disputes must be submitted to the Ministry of Labour 21 days prior to calling a strike. In the case of essential services such as education, health, air traffic control or water utilities, the pre-strike period is 28 days. Once the dispute has been submitted, the Ministry of Labour may then act as arbitrator, appoint a mediator, or submit the dispute to the industrial court. However, no strikes are permitted during the cooling-off period. The Ministry of Labour also has the discretionary right to decide whether a strike is legal or not.

Both the Trade Disputes Act and the Industrial Relations Charter authorise collective bargaining. However public employees do not have the right to negotiate collectively their terms and conditions of employment. It is hoped that the labour law review (see below) will change this.

All labour laws, including the right to organise and bargain collectively apply in the export processing zones.

Labour law review

The Kenyan authorities have spent several months consulting stakeholders in a comprehensive labour law review process. A task force was set up in May 2001 and was due to complete its work by August 2002. The report is subject to further consultations with stakeholders. It is expected that the review process will be followed by a new draft law, to be the subject of further discussions.

RIGHTS IN PRACTICE

Obstructing the right to strike

In practice the right to strike is frequently violated in Kenya. During the notice period the Minister of Labour generally intervenes and proposes a mediator for the dispute. If the negotiations break down, the government usually refers the matter to an industrial court, pre-empting any decision to take strike action. In cases where workers have become frustrated with the lengthy process and have decided to go ahead with a strike, the government has declared their action illegal.

Rights ignored in EPZs

The EPZ Authority and the government grant many exemptions to labour legislation in the zones. Anti-union discrimination is rampant and in many cases workers have been sacked simply because they participate in trade union activities.

Civil servants denied a union

The Kenya Civil Servants' Union was de-certified in 1980. President Moi annulled this act in 1992, but the decision was never enforced, despite two parliamentary motions (1993 and 1997). The need for a civil servants' union is pressing. Some austerity measures are draconian; for example, civil servants who are laid off are never allowed to hold a government job again, even though some of them are under 25 years of age.

Ban to be lifted The Labour Minister, Joseph Ngutu, promised, in August 2001, to lift the ban on the civil servants' unions, as plans to legalise the Kenya Civil Servants Union were in their final stages. Technical issues were being addressed by a special task force that was expected to finish its work by the end of year 2001. On December 10 the union was re-registered.

EVENTS IN 2002

In December, National Rainbow Coalition's Emilio Mwai Kibaki was elected Kenya's third President.

Tea plantation workers refused union recognition

In early January, the High Court upheld the Trade Union Registrar's rejection of the proposed Kenya Tea Workers Union. Tea industry workers had attempted to split from the Kenya Plantation and Agricultural Workers Union. Officials of the proposed union had appealed against the Registrar's 1998 decision, but the High Court ruled that the officials had failed to prove that the only way open to them was to form a new union, saying, "If it is a matter of self-ego driving some persons to over-rate themselves into thinking that they can provide better leadership, that is not a consideration for the Registrar or the court."

Retired air traffic controllers called back to replace strikers

On April 6, President Moi directed retired air traffic controllers from the civil service, armed forces and the private sector to report to the director of the Civil Aviation, so that they could replace the 150 controllers who had been on strike for nine days over wage claims. He called the strikers' behaviour "unpatriotic," and also invited international expatriates and those from the East African region to apply for the jobs. Forty-five pensioners came out of retirement to take up work left by the strikers. In Nairobi alone, 37 workers were dismissed and 82 suspended for defying government orders to return to work and taking part in an illegal strike. Others from the Eldoret, Lokichoggio, Moi and Malindi airports received the same treatment. Transport and Communications Permanent Secretary Sammy Kyungu said that it was very likely that those suspended would be dismissed. "They [those suspended and sacked] can appeal to the Public Service Commission according to the laid down regulations," he told the Daily Nation.

Strikers' meeting ends in tears

Twenty police threw tear gas canisters to disrupt the striking air traffic controllers' meeting to discuss their next action.

Striking workers arrested and sent to court

Twelve air traffic controllers were arrested in Nairobi on April 8, and eight others appeared before a court in the coastal city of Mombasa on charges of incitement.

All striking workers get the sack

In mid April, all the striking air traffic controllers were sacked. This affected about 330 out of 500 of them who had initially received suspension letters.

Government persists in refusing to implement pay increase agreement

In September, the Kenya National Union of Teachers (KNUT) called a strike to protest against the government's persisting failure to implement the 1997 Teachers Service Commission (Remuneration of Teachers) order, under which all teachers serving in government schools were awarded 150 to 200 % salary increases to be paid over five years. The first phase of 25 to 45 % was paid in 1998 but four of the five phases of the salary awards are still unpaid. In May, Labour Minister Joseph Ngutu appointed a conciliation panel to arbitrate between the union and the Teachers Service Commission (TSC) over the 1997 pay deal but the panel withdrew, saying that the government was not willing to compromise.

Striking teachers dispersed with teargas

On September 23, thousands of striking teachers clashed with the police, who lobbed teargas at them in several towns. Union leaders were arrested and an education official was badly beaten after going to a school to take a roll call. Education minister Henry Kosgey termed the strike as "unethical and unprofessional," and ordered teachers to report to work or face disciplinary action, saying the strike was illegal.

Agreement unilaterally revoked

On September 24, Henry Kosgey unilaterally revoked the 1997 order. The following day, he threatened to sack all striking teachers, ordered the TSC to stop paying teachers' salaries and instructed it to start recruiting unemployed teachers. The High Court rejected these moves. Lawyer Lee Muthoga, who was the vice-chairman of the arbitration panel appointed in May, said that the TSC Act did not permit the minister or any other party to revoke the order, and that Mr Kosgey's actions were illegal.

Government interferes with union dues

On September 28, the government dealt another heavy blow to the teachers' union by cancelling an order that allowed it to receive instant contributions directly from their employers. The order, in place since 1998, allowed the TSC was to deduct 2 % of any teacher's basic salary and send it straight to the union.

High Court orders reinstatement of the agreement

On September 30, The High Court annulled the government's decision to revoke the 1997 pay increase agreement and ordered it be reinstated.

Charges against trade unionists dropped

On October 30, four KNUT officials and eight teachers were acquitted of charges relating to the four-week long strike that took place through September and October. Different charges had been brought against them, including violent robbery, taking part in an illegal meeting and creating a disturbance.

Anti-union company refuses to bargain

In early November, employees of a Kericho-based dairy company threatened to go on strike if the company did not meet their demands. The workers accused the firm's management of denying them their basic rights by barring them from joining any trade union. "The company has totally refused to recognize the Trade Union or enter into Collective Bargaining Agreement," the Kenya Commercial Food and Allied Workers Union said.

Police attempt to form union

On December 5, the Kenya Police Union was launched, although the Police Act only allows police to form a representative association. It was not clear whether the union, which planned to represent officers in the regular police force, the Administration Police, the General Service Unit (GSU) and other forces under the Commissioner of Police, would be granted registration.

Striking workers get the sack

On December 13, striking Molo Town Council workers were sacked.

Lesotho

POPULATION : 2,000,000 / CAPITAL : Maseru / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The law allows workers in the private sector to form and join trade unions, but workers' rights are frequently violated, especially in the garment industry. Public servants are denied both the freedom of association and the right to strike.

THE LEGISLATION

Workers in the private sector have the right to form and join trade unions without prior authorisation. All trade unions must however be registered with the Registrar of Trade Unions.

Public servants denied union rights

Public employees are prohibited from forming and joining trade unions. They can only form or join "associations" that have consultative status.

The right to strike is recognised, but complicated procedures must be followed before strike action is authorised. Civil servants are not allowed to strike.

In law, all legally recognised trade unions enjoy the right to organise and to collective bargaining.

RIGHT IN PRACTICE

Legislation not enforced

Government and some employers do not observe trade union freedoms. In the private sector the complex procedures and employers' anti-union attitude make it very difficult to operate a trade union. Foreign employers in the industrial zones - mainly textile groups from South Africa, Hong Kong and Taiwan - pay wages below the statutory minimum, refuse to pay sickness benefits and make unilaterally deductions from wages/salaries of their employees. Although there is legislation to prevent this happening, the authorities turn a blind eye to these infringements.

Harassment

Many employers stop union organisers from entering factory premises to organise workers or represent them in disputes. In some cases employers intimidate union organisers and members, threatening the latter with dismissal.

No legal strikes

Because the strike procedure is complicated, there has not been a single official strike in the country since independence in 1966. There have been regular spontaneous protest actions over the years, however. Workers continue to risk losing their jobs and being taken to court.

EVENTS IN 2002

Anti-union harassment at clothing factories

In 2001, the Ethical Trading Action Group (ETAG), a Canadian anti-sweatshop coalition, published a report on two garment factories, Sun Textiles (Pty) Ltd., and Nieng Hsing International. The report said that the Sun Textiles management refused to sign a recognition agreement with the union, or to allow the union to operate in the factory. Union members who tried to recruit other workers faced dismissal. Workers worked long hours, received low pay, and 20% of them had temporary contracts. At Nieng Hsing, shop stewards reported that the management was very anti-union, and victimised workers who joined the Lesotho Clothing and Allied Workers Union (LECAWU). Union activity or general meetings were not allowed inside the factory, although the union managed to recruit during the lunch break. Again, workers faced long hours, low pay, and were under constant pressure to meet high production targets.

On March 1, the ETAG's next report focused on three garment factories (Sun Textiles and two factories belonging to the Taiwanese multinational Nien Hsing) and described similar poor working conditions.

Management persists in delaying union recognition

On March 15, an in-plant strike by workers at Sun Textiles forced management to sign an agreement with the LECAWU to improve working conditions on the plant. Management also pledged to sign a union recognition agreement as soon as the union could demonstrate that it was supported by more than 50% of the workers. Although the union had signed up 80% of the workers at the time of writing, management has still not signed the recognition agreement.

Union recognised at two factories

On December 5, the LECAWU signed an agreement with the management of both Nien Hsing garment factories. The agreement recognises shop stewards' rights and establishes procedures for resolving union-management issues. Management at both factories also began deducting union dues from workers' pay cheques, thereby recognising that the union had signed up more than 50% of the workers at both factories.

Foreign companies change anti-union attitude through direct international pressure

The Sun Textiles and the Nien Hsing factories formerly produced "Cherokee" brand jeans for the Canadian Hudson's Bay Company (HBC), which are sold at its Zellers stores across Canada. When ETAG confronted them with evidence of serious workers' rights abuses at the factories, the HBC left Lesotho rather than working with its suppliers to improve conditions.

In contrast, Gap, which also sources from the Nien Hsing factories, responded to NGO pressure by initiating union-management dialogue and persuaded Nien Hsing to allow union representatives into the factories, as required by the Lesotho Labour Code. As a result, LECAWU signed up over 50% of the workers at both factories.

Libya

POPULATION : 5,200,000 / CAPITAL : Tripoli / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



There was no change in Libya, where basic trade union rights are denied.

Independent trade unions banned

Independent trade unions are banned. The government views them as “unnecessary intermediaries between the revolution and the working forces”. Workers may join the General Federation of Producers/Workers (GUP/N) which is controlled by the government and administered by the “People’s Committees”. Foreign workers may not join the GUP/N.

The right to strike is not recognised. The notion of collective bargaining exists in law but is undermined by the fact that the government must approve all collective agreements to ensure that they are in line with the nation’s economic interests.

RIGHTS IN PRACTICE

No trade union activity

There is no real trade union activity in practice.

Discrimination against migrant workers

Migrant workers make up much of the labour force, but are badly treated. As they are not allowed to form or join trade unions, even the official so-called workers’ organisation, GUP/N, they have no protection from the discrimination to which they are regularly subjected.

Madagascar

POPULATION : 15,500,000 / CAPITAL : Antananarivo / ILO CORE CONVENTIONS RATIFIED : 87-98-100-111-138-182



Trade union rights are recognised in law, subject to a few restrictions, but do not operate in practice, particularly in the export processing zones where anti-union discrimination remains rife.

THE LEGISLATION

Restrictions for public servants and seafarers

The Constitution guarantees both public and private sector workers the right to join and form trade unions. However, this right is not extended to workers in so-called essential services. Radio and television broadcasting and banking are included in this classification, exceeding the limits set by the ILO’s accepted definition of “those whose interruption would endanger the life, personal safety or health of the whole or part of the population.” The Labour Code provides for the right to collective bargaining.

The Labour Code does not cover seafarers. Under the Maritime Code they do have the right to conclude collective agreements but their right to organise is not specifically recognised in law.

Strike limitations

The right to strike is recognised, although workers first have to exhaust conciliation, mediation and arbitration procedures. The government has the power to require public employees to work to end or avert a strike in its broad definition of essential services.

The Labour Code prohibits anti-union discrimination. Labour legislation applies fully in the export processing zones.

RIGHTS IN PRACTICE

Protection not enforced

Labour legislation is very rarely applied and the government very rarely takes any notice of union representatives. Workers face anti-union discrimination.

Rights ignored in EPZs

The labour legislation is blatantly violated by the 200 or more firms in Madagascar's export processing zones and the government is either unable, owing to limited resources, or unwilling to inspect these workplaces and investigate reports of anti-union discrimination. As a result, workers have been unable to join or form trade unions. One of the national trade union centres, Fivondronamben'ny Mpiasa Malagasy (FMM), has denounced the deplorable conditions in the zones, where wages are often below the legal minimum, working hours excessively long and sexual harassment is rife.

No redress for Social Security workers

Another case of blatant rights violations, at the National Social Security Institute, has continued. It began in 1997 when workers went on strike in protest at a unilateral cut in benefits contained in the collective agreement. The Labour Ministry mediated the dispute and ordered the benefits to be paid and that no sanctions were to be taken against the strikers. In direct contravention of this order, 20 union leaders were subsequently fired. The Director of the Institute refused to pay the benefits, and was taken to court. The judge ordered the workers reinstated and the benefits paid, but the Director again refused and appealed against the judgement. Shortly afterwards many higher-level union officials were transferred against their wishes to remote posts several hundred kilometres from the capital city, to stop their union activities.

Government's unilateral change to tripartite body

In August 1999 the government unilaterally altered the composition of the tri-partite Governing Board of the National Social Security Fund (CnaPS), from four government, eight employer and eight worker representatives to six of each. It also gave itself a turn in the presidency, which it did not have before. The government then failed to respond to a request for social dialogue, although it finally set up an ad hoc commission to discuss the issue in May 2000. In August the High Court declared the Decree unconstitutional. In a new draft decree the government proposed to give itself the right to appoint one of the six workers representatives on the board. Five national trade union federations and other Malagasy unions have complained to the ILO.

Government interference in trade union affairs

On May 31 2000 the government issued a Decree requiring trade unions to provide a list of their members, a copy of their by-laws and the names of their serving officers. The government claimed this was merely to ensure that trade unions were representative. As the ILO pointed out, a record of membership dues should be sufficient for this purpose, as a list of names could make members more vulnerable to anti-union discrimination.

The country's trade unions also allege that the Ministry of the Public Service, Labour and Social law interferes in the elections of worker representatives to serve on various tripartite bodies; organises missions involving workers' delegates without the knowledge of their confederations for the purpose of appointing them to regional tripartite bodies; and requests proposals for candidates other than those already put forward by the confederations for membership of these bodies.

EVENTS IN 2002

Context

At the start of the year the island was paralysed by a general strike called at the end of January by the "self-proclaimed president" Marc Ravalomanana, aimed at driving the outgoing President, Didier Ratsiraka, from power. Marc Ravalomanana felt he had been elected in the first round of the presidential election held on December 16 2001, while Didier Ratsiraka argued that a second round should be fought. Marc Ravalomanana eventually won, but at the cost of a two-month long general strike. The strike meant the loss of work for tens of thousands of workers and its overall cost was estimated at €500 million.

Sacking and imprisonment of trade unionists

Trade unionists at the SIRAMA State-owned sugar factory were dismissed on December 5 2001, despite the province's Labour and Social Protection Inspectorate's refusal to endorse the dismissals. Some of those concerned were even imprisoned, charged with impeding the activities of SIRAMA, voluntary destruction of goods and setting fire to sugar cane fields. Testimonies from about 120 workers, local councillors and the TIM showed these accusations were false.

Malawi

POPULATION : 11,000,000 / CAPITAL : Lilongwe / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although trade union rights are recognised in law they have been increasingly ignored recently in practice. Some employers and the government, as a public sector employer, have strongly resisted union activity.

THE LEGISLATION

Rights recognised in theory

Workers have the right to form and join trade unions. This includes civil servants, with the exception of army personnel and the police. Unions must register with the Ministry of Labour, but this is largely a formality.

Registered unions may strike. However strike action can only be taken after all dispute settlement and conciliation procedures have been exhausted. The employer and the Ministry of Labour must be given at least seven days notice. Workers in essential services have a limited right to strike. The law does not specifically prohibit retaliation against strikers.

Collective bargaining is recognised in law, provided the union represents at least 20% of employees at enterprise level. At sectoral level unions must represent at least 15% of employees.

Labour laws apply in the export processing zones.

RIGHTS IN PRACTICE

Employer resistance

Because barely 10% of workers are in formal employment, the labour legislation automatically excludes the vast majority of workers in the informal economy. For that small minority, freedom of association and collective bargaining are limited by the resistance of some employers, including the government, to respect these rights.

Ineffective legislation

Ambiguities in the application of the law, especially the right to strike, and continuing government interference in trade union activities, reduce the effectiveness of this law to protect workers. The law does not specify exactly which services are essential; enabling the authorities to declare strikes illegal.

Similarly, employers ignore the prohibition on anti-union discrimination. The National Bank of Malawi, for example, unilaterally abrogated an agreement with the Commercial, Industrial and Allied Workers' Union (CIAWU), while District Education Officers have been fired for being members of the Teachers' Union of Malawi.

Equally, many companies in the EPZs resist union activity, while the unions complain that they have little access to workers in the zones.

In small scale companies such as bakeries, the employees are often locked in overnight. This makes it virtually impossible for unions to organise them.

Enforcement of legislation by the Ministry of Labour is ineffective.

EVENTS IN 2002

Union leader arrested

On October 25, Francis Antonio, General Secretary of the Malawi Congress of Trade Unions (MCTU), was arrested on trumped up charges of fraud and theft. He was wrongly accused of having misappropriated \$1600 earmarked for a seminar on child labour. After spending the night in a Blantyre Police cell, he was brought to court, where he denied the charges. His arrest came shortly after he made a statement committing the trade union movement in Malawi to fight against changes in the national constitution which would have enabled the President of the country to stand for a third time of office.

Mauritania

POPULATION : 2,600,000 / CAPITAL : Nouakchott / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Freedom of association and the right to strike are recognised in law, but are subject to major restrictions. The draft new Labour Code would retain some of these and add new ones. In practice, unions find it very hard to defend workers' rights because of many employers' negative attitudes. Certain practices, such as slavery and torture, are still used in poorly administered regions, despite the laws banning them.

THE LEGISLATION

Restrictions on freedom of association

All workers, except for members of the military and the police, are free to join and form trade unions. However the government has the power to decide whether or not to recognise a trade union, as authorisation must be given by the Office of the Public Prosecutor.

At present, foreign workers do not have the right to become trade union officials. The new draft of the Labour Code would require foreign workers to have worked in Mauritania and in the profession represented by the trade union, for a period of at least five years.

Protection of trade union leaders is not explicitly provided for in the Labour Code, although it is conferred on workers' delegates within companies.

Obstacles to the right to strike

The right to strike is recognised, but the current Labour Code permits strikes to be prohibited in the event of referral to compulsory arbitration. Civil service unions have to give one month's notice before holding a strike while in the private sector they must provide official notification that conciliation procedures have broken down.

General strikes are difficult to organise, since the government generally invokes errors in administrative procedures or the overtly "political" nature of the strike to ban them.

The government can dissolve any trade union involved in what it considers an "illegal" or "politically-motivated" strike.

According to the ILO, the Labour Code also restricts the right to strike in sectors considered "non-essential".

Collective bargaining

The right to collective bargaining is recognised.

Reform of the Labour Code – still delayed

A bill to reform the Labour Code was drafted in 1993. It was examined and adopted by the National Labour Council and is expected to be adopted by the government and parliament in 2003. It contains severe restrictions on trade union rights.

A trade union still has to be authorised by the Office of the Public Prosecutor before it can be legal.

Sanctions can still be taken against a union. The Office of the Public Prosecutor can provisionally suspend a trade union at the simple request of the Ministry of the Interior if it feels the union has not complied with the law, without giving any reasons.

Protection for elected trade union officials is not explicitly ensured.

The limitations on the right to strike remain in the new code

The right to call a general strike is subject to interpretation, as there is a legal void in the existing text, while in the new draft the public authorities have the right to judge the legality or otherwise of a strike. The unions have no right of appeal against this decision.

Executive and managerial staff are not allowed to strike.

RIGHTS IN PRACTICE

Rights ignored

Unions report that there is virtually no social dialogue, and employers are very reluctant to deal with them. Social dialogue generally only takes place when workers take industrial action. In many companies freedom of association is constantly short-circuited because employers interfere in union elections. This occurs frequently in the private sector where union delegates are very vulnerable.

In addition, there are temporary arrests or detentions, particularly in sectors where there are disputes.

Ineffective labour inspection

The enforcement of rights is complicated by the fact that labour inspectors have few means at their disposal and corruption is rife. Some have to cover regions that extend over 6000 km₂ without a telephone or a vehicle. Even when a dispute breaks out, labour inspections are limited to voluntary conciliation. When a union takes the matter to a higher level, the legal environment is such that court rulings are often contradictory and sometimes completely ignored by companies.

Old attitudes persist

Although slavery was abolished by law in 1981, there are still pockets where the attitude of master and servant prevails, making it difficult for trade unions to organise.

The CGTM reported that workers are occasionally imprisoned and tortured simply because employers have denounced so-called wrongdoing at workplaces. It quotes the case of five employees of IBS (a biscuit company), who were arrested in their homes for having allegedly stolen biscuits, and subsequently imprisoned and tortured for a week at the El Mina police station, between May 31 and June 6 2002. They were released for lack of evidence, but they were nonetheless sacked with no compensation.

EVENTS IN 2002

On October 19, warehouse packers in the port town of Nouakchott went on strike. Ten days later they were joined by dockers in the port, who started an unlimited strike on October 29 to demand an increase in payment rates per metric ton. According to the anti-slavery NGO SOS-Esclaves Mauritanie, the government then got the local transport police to bring unemployed people from the capital city suburbs to the docks to break the strike by intimidating the trade unionists and strikers, although the strike had been organised in accordance with the relevant legal procedures. The CGTM also reported a number of mysterious disappearances and arrests following the strike. The General Secretary of the Dockersville union and other trade unionists were harassed by the police. Far from aiming to bring the conflicting sides together, the Minister of Labour appeared to have actively made the situation worse.

Mauritius

POPULATION : 1,200,000 / CAPITAL : Port Louis / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



Trade union rights are recognised by law and are generally respected in practice. However, some unscrupulous employers in the EPZ textile sector violate trade union rights; the Ministry of Labour normally intervenes rapidly to help sort out these incidents.

THE LEGISLATION

Strike restrictions

The Constitution protects workers' right to form and join trade unions.

The right to strike is also recognised under the Industrial Relations Act (IRA), but there are limitations. The IRA imposes a 21-day cooling off period before any strike can begin, and the Labour Ministry can order that the case be taken before the industrial court for binding arbitration. The government also has the right to declare any strike illegal which is likely to cause extensive damage to the economy.

Export processing zones

Labour legislation applies in the export processing zones (EPZs), but there are also specific labour laws that condone longer working hours (45 hours a week plus 10 hours' compulsory overtime in the EPZs compared to 35 to 48 hours in non-EPZ sectors).

Proposed reforms

The government has begun a labour law reform project in cooperation with the ILO, but no new legislation has come into force yet.

RIGHTS IN PRACTICE

Hostile employers

Freedom of association is generally respected in practice, although this is not the case with some employers in the EPZ's.

Several factors are at the root of the low level of unionisation in the EPZs. Because of the lack of effective union representation there are cases where health hazards and workplace-related illnesses have not being addressed and rectified within a reasonable time.

Both the ILO and the national trade union centres, the Mauritius Labour Congress and the Mauritius Trade Union Congress have demanded that the law be amended to rectify the lack of legislative protection against anti-union discrimination, especially in EPZs.

Unions also find it difficult to get access to and organise migrant workers, particularly those from South East Asia, who tend to work long hours and be cut off from other workers. Similarly, there have been reports of trade unions facing difficulties in organising workers in the growing off-shore business sector.

Workers who participate in an illegal strikes are frequently sacked.

Morocco

POPULATION : 29,300,000 / CAPITAL : Rabat / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



Trade union rights, which are guaranteed by law, are sometimes not protected in practice. Some national and multinational enterprises openly flout those rights, with the authorities' connivance.

THE LEGISLATION

Workers are free to form and join trade unions without prior authorisation. Agricultural workers enjoy fewer rights than others and magistrates are completely barred from carrying out trade union activities.

Restrictions on right to strike

The right to strike is recognised in social legislation, although the law also provides for the compulsory arbitration of disputes. The Moroccan Workers' Union (UMT) has called for the repeal of article 288 of the penal code on "the freedom to strike" which it says gives the employers too many prerogatives and enables them to take strikers to court, where they face fines or prison sentences.

A new strike law has been drafted. The Minister of Employment proposes that the decision to take strike action should be taken either by the union representing the staff or by the majority of employees if they are not represented by the union. The employers would like the approval for strike action to be raised to two thirds of all workers in the enterprise. The current draft also states that the employer should be warned of strike action at least seven days in advance. It would ban strikes in essential services. These new provisions on the right to strike were supposed to be incorporated in the new Labour Code, which has not yet been adopted.

There is effective recognition of the right to collective bargaining in law, but it is inadequately protected.

No progress on new code

Discussions on a proposed new Labour Code continued to drag on and reached a new impasse. If adopted the Code would bring some improvements, such as the removal of compulsory arbitration. However, the government announced during the year that it wanted the Code to be more flexible to make Morocco more attractive to investors. The unions feared some of the government's proposals would undermine existing union rights. The Code had still not been adopted by the end of 2002.

RIGHTS IN PRACTICE

In practice, wages are often set by employers, although there is a tradition of collective bargaining in some sectors, including industry.

In some cases, disputes have arisen because employers have failed to implement collective bargaining agreements.

In several companies and even within the public sector, labour law is often ignored.

Some of the worst offenders are multinational companies, who act with the authorities' connivance. For example, when a trade union was set up in November 2000, at a subsidiary of the Irish "Fruit of the Loom" group in the town of Salé - a factory employing over 1,200 workers - a whole arsenal of anti-union tactics was unleashed: militiamen were recruited to intimidate participants at the union assembly, eight leaders elected by the grass roots were dismissed, the employer displayed a banner outside the plant calling for "a union-free factory" and there was a press campaign. When the Moroccan confederation UMT, an ICFTU affiliate, reported the case to the governor of Salé, he sided with the "Fruit of the Loom" management, stating bluntly that he didn't want any unions in his prefecture.

EVENTS IN 2002

On January 17 in Rabat, the police violently dispersed demonstrators including about 100 unemployed, highly qualified people. The group had already made two attempts to meet in front of the Parliament building to demand their right to work, but the police had prevented them from doing so. On this third attempt the police drove them away with truncheons. Some 20 demonstrators were injured, including five seriously. Such demonstrations, which the authorities term "unauthorised", are common in Morocco, where many well-qualified people are finding it hard to get a first job.

On March 15, the International Federation of Journalists (IFJ) appealed to the upper house of the Moroccan Parliament to reject the proposed new press code. It contained many restrictions on freedom of information and had been strongly criticised by independent media organisations. This provoked a confrontation between the party of Prime Minister Abderrahmane Youssoufi and the media, and Younes Mjahed, a member of the IFJ Executive Board and General Secretary of the Moroccan National Press Union (SNPM) was dismissed. The Prime Minister is also the director of the newspaper Itihad Ishtiraki where Younes Mjahed worked. "The decision to dismiss Younes Mjahed was a blatant case of victimisation and the management should acknowledge that it acted illegally and reinstate him immediately", stated Aidan White, General Secretary of the IFJ. The Prime Minister had criticised Younes Mjahed, as he resented the union's opposition to the new press code.

On May 3, the SNPM denounced the repression of press freedom in Morocco and the media barons' refusal to sign collective agreements with journalists. On the same day a new journalists' union was formed: the Federation of Moroccan Journalists (FJM).

On May 30, one of the confederations called a national strike, calling for a solution to the unemployment problem, to re-boost wages, for trade union rights to be respected and for all suspended or dismissed trade unionists to be reinstated.

In December, the UMT protested against "the flouting of workers' rights", citing the port of Casablanca where "employees of a tugboat company were sacked for demanding their rights". The UMT also denounced breaches of freedom of association, saying that, "Since early December anti-union repression has reached explosive levels". In Kénitra 24 trade unionists were imprisoned for demanding application of the minimum wage.

Mozambique

POPULATION : 17,900,000 / CAPITAL : Maputo / ILO CORE CONVENTIONS RATIFIED : 87-98-100-105-111



Public servants still face limitations on their trade union rights, although the national trade union centre OTM-CS believes this could soon change.

THE LEGISLATION

Freedom of association limited for public officials

The Constitution states that all workers, without exception, have the right to join a trade union. However, public officials are excluded from some elements of the 1998 Labour Law that sets out the rights to freedom of association.

Ineffective protection from discrimination

Anti-union discrimination is also prohibited but the penalties are not sufficiently dissuasive.

Interference in collective bargaining – and abusive definition of essential services

The 1991 Labour Law grants the majority of workers the right to bargain collectively, although again public servants engaged in State administration are excluded from its scope, and are covered by a special statute.

Decrees no. 33 of 1990, and Act no. 8/1998, define essential services for which the government reserves the right to interfere in the collective bargaining process by imposing compulsory arbitration in the case of an industrial dispute. Several of the occupational categories listed as essential services, such as combustible asbestos, the loading and unloading of livestock and perishable foodstuffs, and postal and transport services, are not compatible with the ILO's definition of those services "whose interruption would endanger the life, personal safety or health of the whole or part of the population." The OTM-CS has elaborated proposals to be submitted for the revision of this legislation.

Right to strike – not for all

The Constitution guarantees the right the strike, although again this right is not extended to the military, the police, civil servants or workers in the broadly defined essential services. Under the 1991 Labour Law the hiring of substitute workers and lockouts by employers are forbidden, and strikers are protected from retribution.

Rights in practice

There have been cases where anti-riot police have responded violently to worker demonstrations, as in January 1998, when one striker was killed and four others wounded when police fired live ammunition to disperse 250 demonstrators.

Export processing zones

According to the national trade union centre OTM-CS, unionists face discrimination and unfair dismissal, and workers are dismissed for going on strike. The OTM-CS also says that collective agreements are not respected, and nor is the principal of equal pay for equal work.

Namibia

POPULATION : 1,700,000 / CAPITAL : Windhoek / ILO CORE CONVENTIONS RATIFIED : 29-87-98-105-111-138-182



Workers are free to form trade unions and the law recognised the right to strike except for workers in essential services and in the EPZs. Farmers and employers in the EPZs are still hostile to trade unions. Amendments to the Labour Act to be implemented in early 2003 are expected to improve the dispute settlement machinery.

THE LEGISLATION

Workers are free to form and join trade unions, and the law provides for collective bargaining.

Right to strike denied to workers in EPZs

The right to strike is recognised, although workers in essential services are excluded. The Export Processing Zones Amendment Act in 1996 also denied this right to all workers in the zones.

Limitations

Strike action can only be used in disputes involving specific workers' interests such as pay rises, and there must be a 48-hour notice period. Disputes over workers' rights, including dismissals, must be referred to the labour court for arbitration. Current arbitration and dispute solving mechanisms are cumbersome, leading to a long backlog of cases.

New labour law

The government has drafted a new Labour Act to replace the 1992 Act. It contains comprehensive amendments to the dispute settlement machinery, and removes some of the existing confusion over the law by

removing obscure language. In October 2002, the Minister of Labour, Marco Hausiku, announced that the amendments to the Labour Act, designed to simplify dispute resolution and clarify certain issues, were to be implemented in early 2003.

RIGHTS IN PRACTICE

Hostility – particularly in the EPZs

Recent studies indicate that employers are still generally hostile towards trade unions. They refuse to recognise them, many do not accept their presence, and do not wish to negotiate collective agreements with them. This trend is particularly apparent in companies operating out of the Walvis Bay EPZ.

Organising obstructed

Although farm and domestic workers make up a sizeable portion of the Namibian labour force and are covered by the Labour Code, employers still intimidate them when they try to organise trade unions.

EVENTS IN 2002

Trade union leader harassed

On February 20, Cuana Angula, the General Secretary of the Namibian Food and Allied Workers Union (NAFAU), who had joined a workers' demonstration over wage increases at the entrance of the Windhoek Safari Hotel, was grabbed and pushed inside the hotel by members of the Police Special Field Force (SFF). The SFF members told him he was under arrest, and ordered him to go to the Windhoek Police Charge Office and report to a certain Police officer. But when he arrived there, he could not find the person concerned. SFF members and private security guards also physically dispersed the strikers as they attempted to set up a blockade at the entrance of the hotel.

Union denied access to factory

In July, the Ramatex textile factory denied the NAFAU the right to unionise workers. NAFAU national organiser Sackaria Simon told The Namibian that the union had asked Ramatex if it could meet with workers during lunchtime but the request was turned down. This contradicted a Ramatex press statement a week before in which the newly established Malaysian company said it was committed to freedom of association and to respecting Namibian laws and workplace regulations. NAFAU General Secretary Cuana Angula had apparently angered Ramatex's management when he said the union was concerned about working conditions at the factory.

Teargas and rubber bullets to disperse strikers

In August, police fired teargas and rubber bullets to disperse an angry crowd of between 300 and 400 striking workers at the Skorpion Zinc mine outside Rosh Pinah. Fourteen strikers and two policemen were injured. The workers, employed by companies contracted to build a refinery at the new mine, were striking for better wages. They also complained that higher-skilled South African workers were allegedly considerably better paid. After the clashes, 3,000 of the 3,500 construction workers were dismissed. They were all later re-hired, but the strike leaders faced disciplinary charges.

In November, workers at the Skorpion Zinc mine alleged they were being punished for taking part in the August strike. Several workers told The Namibian they were laid off a day after 16 South Africans were brought to the mine to do their jobs. Martin Wills, Human Resources Manager for the Operation Team of NamZinc, the company overseeing the construction at Skorpion, confirmed that workers had been laid off, but said both South Africans and Namibians were affected. He explained that the progress in the project required sophisticated skills and that many workers were being "demobilised because their construction work has been completed." The Namibians felt they were targeted for striking in August to protest at the favouring of South African workers.

Nigeria

POPULATION : 110,800,000 / CAPITAL : Abuja / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Trade union rights are still restricted. Some workers are totally deprived of the freedom of association and the right to strike, such as the police, who defied the prohibition in February, at their cost. Any trade union activity is very difficult in the EPZs.

THE LEGISLATION

The constitution recognises the right of workers to join or form trade unions, but despite the repeal of some of the anti-labour decrees from the military era, restrictions on that right still remain. At least 50 workers are needed to form a trade union, an excessive requirement by international standards. The freedom of choice is restricted by the stipulation in the Trade Unions Act that no trade union can be registered to represent employees where a trade union already exists.

The right to organise is denied to workers in essential services, the list of which exceeds the ILO's definition. It includes employees of the Customs and Excise Department, the Immigration Department, the Prison Service and the Central Bank of Nigeria.

The right to strike is undermined by a section of the Trade Unions (Amendment) Decree of 1996 that makes check-off payments conditional on a "no strike" clause during the lifetime of a collective agreement.

It is also limited by an amendment to the Trade Disputes Act which allows for compulsory arbitration, with a penalty or a fine or six months' imprisonment for anyone failing to comply with the award issued by the National Industrial Court.

Export processing zones

Article 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones. Article 13(1) of the same Decree makes it very difficult for workers to form or join trade unions, as it is almost impossible for worker representatives to gain free access to the EPZs. Moreover, the Export Processing Zones Acts prohibits strikes and lockouts for a period of ten years after a company begins its activities in a given EPZ.

RIGHTS IN PRACTICE

The Nigeria Labour Congress reported increasing violations of workers' human and trade union rights. This included intimidating workers to leave the union, some employers' refusal to recognise the union, and sacking workers' representatives for trade union activities. The increasing use of casual labour, notably in the oil industry, also makes it more difficult for unions to organise and protect those rights.

EVENTS IN 2002

On January 16, the President of the Nigeria Labour Congress (NLC), Adams Oshiomhole, and at least nine other trade union leaders, were arrested while leading a nation-wide protest over a hike in petrol prices. They were charged with criminal conspiracy, inciting disturbance, disturbing public peace and unlawful assembly. They were released on bail, but Adams Oshiomhole was arrested again the next day. Hundreds of protesters had gathered in the Nigerian capital, Abuja, in front of government offices to demonstrate against the failure of negotiations on the 15.3% increase of petrol prices. They were met by a barrage of tear gas from the Nigerian authorities. Both the government and the High Federal Court of Abuja declared the strike illegal. In total, some 50 union leaders and members were arrested for participating in the strike.

At least 30 policemen were arrested for participating in an unprecedented national strike held on February 1, after the authorities declared the strike a mutiny, as any trade union activity is prohibited to members of the security forces. The policemen were protesting against wage arrears, and the deterioration of their working and living conditions. The federal government released 5 billion Nairas (\$44 million) to pay policemen's outstanding salaries and allowances. At the same time, 153 policemen were sacked, and over 2,000 faced trial for participating in the strike.

In March, junior army officers bent on starting a strike like their counterparts in the police were threatened by the Nigerian Army with the death penalty if they pressed on with the action.

Rwanda

POPULATION : 7,100,000 / CAPITAL : Kigali / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Trade unions operate in a climate of fear, face government interference, anti-union employers and a lack of infrastructure to protect their rights.

THE LEGISLATION

Workers have the right to form trade unions. Union membership is voluntary and open to all salaried workers, including public sector employees. Agricultural workers are excluded from the current 1976 code and are therefore denied protection of their trade union rights. The relevant section of the code has still not been amended, despite repeated reminders from the ILO.

Unions must register with the Ministry of Justice for official recognition, but this is just a formality.

The right to collective bargaining is recognised.

The right to strike is recognised, although all state employees are forbidden from taking part in strikes.

New legislation – pros and cons:

- Act on the status of civil servants

The government says that it is reviewing the act on the status of civil servants, and that under the new draft civil servants will have the same rights and liberties as other citizens. This rather vague stipulation suggests they will be allowed to strike. At the same time the bill undermines civil servants' rights, as it prohibits state employees from publicly expressing their political, philosophical or trade union opinions. The national trade union CESTRAR has pointed out that this is tantamount to prohibiting organising.

New Labour Code

The New Labour Code was adopted on December 30 2001 and came into force on March 1 2002. It brought some improvements but also some limitations. It allows foreign workers to be elected to trade union office after they have lived in the country for at least five years, provided non-nationals do not exceed one third of the union's officers. The Code restricts the right to strike in essential services, but the definition of these services is too broad to be compatible with ILO standards. It includes the maintenance of installations and "vital socio-economic sectors".

RIGHTS IN PRACTICE

Institutional vacuum

Rwanda is still recovering from the effects of the 1994 genocide. The General Secretary of CESTRAR points out that although trade union rights legislation looks acceptable on paper, there is an institutional vacuum when it comes to applying and monitoring it. There are still no labour courts, for example. The country does not have the resources, as it is still struggling with structural adjustment and much of the population is still

living in desperate poverty as a result of the civil war. Similarly, the right to strike is just an illusion, because there is no effective protection for workers against retribution.

A climate of fear still prevails in the country, as the authorities have reportedly interfered in trade union affairs, and employers are rarely sympathetic to their cause. The telephone company forbids staff representatives from attending union meetings, while employers in the sugar and textile industries are clearly anti-union.

Senegal

POPULATION : 9,200,000 / CAPITAL : Dakar / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although freedom of association and the right to strike are recognised there remain many restrictions. The government still retains the right to grant or withdraw official accreditation of a trade union and the 2001 Constitution severely undermines the right to strike. In March the intentional arson attack on the Labour Exchange led to the death of one trade unionist.

THE LEGISLATION

Government approval required

The Labour Code recognises the right of workers to form or join trade unions, and any group of workers in a similar trade or the same profession may create a union. There are limitations, however. A trade union cannot exist legally without the Ministry of the Interior's approval, and the public authorities have broad powers to dissolve trade unions by administrative authority.

Strike restrictions, particularly in civil service

Similarly the right to strike is recognised but restricted. Private sector unions must give three days' notice, and civil service unions must give at least one month's notice. The authorities also have broad powers to requisition workers from private enterprises and public services and establishments for the safety of persons and goods, the maintenance of public order, the continuity of public services or meeting the country's essential needs, a broad definition that is open to abuse. The law also states that workplaces or the immediate surroundings may not be occupied during a strike.

New Constitution a setback

The new Constitution adopted on January 22 2001 seriously undermines the right to strike by stipulating that strike action must not infringe upon the freedom to work or jeopardise the enterprise.

The right to collective bargaining is recognised.

RIGHTS IN PRACTICE

Labour code excludes majority

The majority of workers are excluded from the Labour Code because they are in the agricultural or informal economies, where the Code does not apply.

EVENTS IN 2002

The context

In January manoeuvres by President Abdoulaye Wade to undermine the trade union movement caused a split within the national centre affiliated to the ICFTU, the Confédération nationale des travailleurs du Sénégal (CNTS), through the creation of the so-called "Force for Change" (CNTS-FC). President Wade's dislike of the CNTS was demonstrated publicly on March 4, at the official launch of employment week, when he addressed Mody Guiro, the CNTS General Secretary, in the following terms: "...I know all about duality and pluralism. I really don't know why you have been appointed or whom you represent. Even if your confederation is the most representative, how can you speak for the workers?" And he went on: "...if I were in charge of allocating speaking rights I wouldn't let you speak."

Suspended prison sentence for demanding freedom of association

On March 7, about 100 guards from the private security firm Sen Sécurité demonstrated in front of the President's palace, protesting against their difficult working conditions and for the right to join a union. There were clashes with the police and 21 guards were referred to the Dakar serious offences court. The guards went on trial for holding "an illegal public meeting" and "attacking" the police "in the course of their duties", and were all given one-month deferred prison sentences. The guards had demonstrated in front of the palace to draw the public's and the President's attention to their demands - they have no rights and can be sacked for making even very small requests, since their boss had banned them from joining a union.

Attack on the Labour Exchange: death of a trade unionist

On March 21, the Labour Exchange – where the CNTS has its head office – was wrecked and set on fire by about 50 unidentified people. The attackers, who were armed with Molotov cocktails, clubs and knives, splashed the offices and anyone who was there with oil before setting them alight. Four trade unionists were seriously burnt in the fire and one of them, Moussa Aw, died in hospital from his burns on 31 March.

Five CNTS-FC officials were charged in connection with the event: Cheikh Diop, General Secretary of both the CNTS-FC and the oil and gas trade union, Doudou Fall Niang, General Secretary of the maritime fishing union, Dame Lô and Fallou Samb of the road transport union and Matar Sèye of the clothing workers union.

South Africa

POPULATION : 42.800.000 / CAPITAL : Pretoria / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although trade union rights are guaranteed by law, and were consolidated by labour law amendments introduced in March, the practice is often different. Law enforcement is weak, especially in the agricultural sector and in foreign-owned companies, where managers threaten workers with relocation if they complain.

THE LEGISLATION

The 1995 Labour Relations Act (LRA) recognises the main trade union rights. The act applies to both the public and private sectors, recognises the workers' right to form trade union and protects them against unfair dismissal. Employers can, however, lay off workers on the grounds of "operational requirements". The right to strike is also recognised for all workers including the public sector, provided they do not work in essential services or the security forces. It is undermined by a provision in the law that allows employers to hire replacement workers during a strike.

The LRA provides for collective bargaining rights and organisational rights, such as trade union access to work sites and the deduction of trade union dues.

Progressive amendments

In March 2002, the LRA was amended to allow workers in companies employing more than 50 workers (or 10% of the workforce, whichever is lower) to strike against retrenchments. The amendment gives workers the right to go to court for breaches of procedural fairness, and either to go on strike or to have the substantive fairness of the dismissals tested in court. Employers will have to prove that any information they refuse to disclose is irrelevant and will have to give 30 days' notice of retrenchment to workers with more than a year's service, after they have exhausted the time for meaningful engagement.

The amendments strengthen collective bargaining structures to encourage the representation of small businesses in bargaining councils, extend their scope to cover workers in the informal and home-work sectors and give them greater powers to enforce collective agreements.

Also, all contracts and collective agreements will be binding on the new employer when a company is transferred, and all dismissals arising from transfer or insolvency will be automatically deemed unfair.

Commission of Conciliation, Mediation and Arbitration (CCMA) procedures will be simplified and speeded up.

RIGHTS IN PRACTICE

Organising obstructed on farms

Trade union rights are not always respected in practice. In the agricultural sector, in particular, employers are hostile to unions and organising is difficult because union organisers are considered trespassers on private property. Workers who try to form or join trade unions face intimidation, violence and dismissal.

Anti-union textile industry

The Southern African Clothing and Textile Workers' Union (SACTWU), affiliated to the national centre COSATU, reported that Taiwanese textile factory owners in KwaZulu-Natal summarily dismiss workers who dare to join. Workers have become so afraid of losing their jobs that they do not want the union to take up grievances on their behalf, despite poverty wages and appalling working conditions. In 2001, twenty factory owners in Newcastle threatened to abandon up to 8,000 workers and relocate to Lesotho after being ordered to pay minimum wages and eliminate dangerous working conditions. Labour Department officials finally took a tough line with one textile factory after twins born to a woman worker locked up in the factory died because paramedics could not reach her. SACTWU research showed that many textile factories routinely lock up their workers on nightshift. By the end of the year some of the factories had already relocated to Lesotho.

Weak enforcement

The National Union of Metalworkers South Africa (NUMSA) reported that factories in the Eastern and Northern Cape were being investigated for flouting labour laws. The Eastern Cape Labour Department has accused most factory employers in the State of disregarding the Basic Conditions of Employment Act and said that small businesses in particular disregarded labour laws and discriminated against workers. Again, anti-union employers intimidated workers into not letting unions defend their rights. Many employees were not aware of their labour rights, and there are too few labour inspectors – five for 300 factories – to ensure enforcement.

Bargaining ineffective in public sector

Public sector restructuring and privatisation have exposed the weakness of the collective bargaining process in this sector. While unions have been consulted, the government does not need union agreement to go ahead with a decision. In 2001, COSATU called a two-day nationwide general strike to protest at privatisation and its impact on workers and job security.

EVENTS IN 2002

Strikers dispersed with teargas

On July 12, the police used teargas and rubber bullets to disperse 100 strikers from the South African Municipal Workers Union (SAMWU) who were demonstrating in Cradock, East Cape, to demand a 10% wage increase. At least ten SAMWU members sustained minor injuries while three others, including chairperson Douglas Botoman, were arrested and charged with public disorder.

Workers shot by security guards

On October 7, two mineworkers were killed and 14 others were seriously injured at the Boksburg goldmine, east of Johannesburg, after they were shot at by East Rand Proprietary Mines (ERPM) security guards. A week before, 4,000 Boksburg miners had taken part in the two-day general strike against privatisation called by the COSATU, but failed to return to work when the strike ended. ERPM then unilaterally terminated its contract with the sub-contractor that supplied the labour, because of its "inability to provide an uninterrupted labour supply." The guards, acting on instructions from the management, told the miners to pack up and leave immediately. But when they tried to enter the grounds, the guards shot at them.

Sudan

POPULATION : 30,400,000 / CAPITAL : Khartoum / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111



Background

There were no improvements. Sudanese legislation does not allow for any genuine trade union activity and none is tolerated outside the state-controlled SWTUF. The legitimate trade union has been forced underground and trade unionists live in fear.

THE LEGISLATION

After the 1989 coup, the democratic trade unions were dissolved and most of the union leaders were either sacked or arrested. The 1992 Trade Union Act established a trade union monopoly controlled by the government. Since then, strikes are outlawed and collective bargaining is nearly non-existent. Whenever a dispute arises, the Minister of Labour can refer the matter to compulsory arbitration. A government-appointed and controlled body sets salaries. According to the Legitimate Sudan Workers' Trade Union Federation (SW(L)TUF), the national trade union centre in exile, based in Cairo, trade unionists were the first victims of massive layoffs that occurred about ten years ago.

New Labour Code

The new Labour Code went into effect in December 2000. The new Code continues to deny trade union freedoms and reinforces government control over trade unions. The SW(L)TUF lists the principal violations contained in the code as follows:

- The government defines the scope of unions' activity, their organisational structures and alliances – all areas that they should be free to determine themselves.
- Article 5.5 says that the objectives of unions include "cooperation with the government bodies and community forces for the promotion of national independence and security, and the government's international relations". Violation of this provision will obstruct the registration of a union, according to Article 31a.
- Article 12 stipulates that unions shall have a five-year term. The second item of the same article says the "the General Federation in consultation with the General Registrar determines the start and end of the union's term in accordance with a regulation to be issued by the General Registrar". Again such decisions should be the sole responsibility of the union.
- Article 18 regards the funds of the union as public funds.
- Article 22 says that a decision on the full-time release of a unionist from his job "is to be taken by the General Registrar".
- Article 27 states that the General Registrar is nominated by the President on the recommendation of the Justice Minister. This post should be neutral.
- The articles covering the powers and authorities of the General Registrar are deliberately confusing. Article 32a says "The General Registrar may abrogate the procedures of the elections in a union if he is convinced of their shortcomings. In this case he is empowered to order new elections."
- Penalties for the infringement of the trade union law are not itemised, suggesting that a sentence of six months and/or a fine is applicable in all cases.

RIGHTS IN PRACTICE

The situation in Sudan is a matter of serious concern. Human rights activists, including trade unionists and especially journalists, have been harassed, intimidated, arbitrarily arrested, detained and tortured. Security officers usually act with impunity: while investigating cases, they are allowed to arrest and hold suspects and torture them. Trade unionists live under constant fear.

Swaziland

POPULATION : 900,000 / CAPITAL : Mbabane / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-18



In spite of recent changes in the legislation, the regime remained fiercely anti-union, which became obvious during the International Labour Conference in June, when the government representative openly threatened the SFTU General Secretary.

THE LEGISLATION

State of Emergency still in force

The State of Emergency introduced in 1973 remained in force. Political parties are banned and constitutional freedoms suspended.

Many legal restrictions

The Industrial Relations Act of 2000 was supposed to bring Swazi law in line with international standards, but in reality it still contained some of the old restrictions from the 1996 Act. Threats of losing trading privileges, notably of being withdrawn from the United States' Generalized System of Preferences, led to an amended Act being adopted in November 2000. It allows workers to form trade unions, to draw up their own constitutions, and to negotiate their terms and conditions of employment.

It still contains many discrepancies with ILO conventions however:

- Prison staff do not have the right to form or join a union.
- The procedure for announcing a strike is long and complex. There must be a period of 70 days in total between the time a strike is announced and the date the action takes place, making legal strikes virtually impossible.
- Procedures for taking a vote on strike action are too long and complicated.
- A trade union faces civil liability for damage caused during a strike.
- There is no effective protection for trade unions against employer interference.
- A union must represent at least 50% of workers in a workplace to ensure recognition. If it has under 50% representation, recognition is dependent on the goodwill of the employer.

Repressive decree

In June 2001, the government codified its repressive legislation in "Decree No.2", which reinstated a law prohibiting bail for certain offences, including public order offences. It would have strengthened the government's repressive powers in other areas, but after much protest was replaced one month later with Decree No. 3, which removed most measures. It denied bail for certain offences however, giving rise to fears that this will be used against collective trade union action. In 2002, the Court of Appeal annulled Decree no.3, but in an official statement to the public the prime minister, Sibusiso Dlamini made it known that King Mswati III's government had no intention of observing the Court of Appeal's ruling. The prime minister further issued instructions to all law enforcement institutions to disregard the court's ruling.

Head teachers denied freedom of association

In 2001, the authorities informed head teachers that they could not become members of the Swaziland National Union of Teachers.

RIGHTS IN PRACTICE

Attempts to discredit union leader

The trade unions, in particular the national centre, the Swaziland Federation of Trade Unions (SFTU) face fierce government attacks. The general secretary of the SFTU, Jan Sithole, has become a hate figure for the regime. The authorities organised a smear campaign against him and accused him of embezzlement (he was cleared of all charges). The accusation came from the leader of a political party who wanted him to join them. When he refused, the party organised the campaign against him as it wanted the SFTU under its control.

Jan Sithole has been imprisoned several times in recent years and he and his family have received death threats. In 2001, he and five other trade union leaders were charged with contempt of court and brought to trial for continuing a stayaway that had been banned by the authorities. The case was dismissed.

EVENTS IN 2002

Background – the King defies the rule of law

King Mswati's authoritarian power tightened up during the year, in a successful move to bring the judicial authority under his control. In November, the prime minister, Sibusiso Dlamini officially stated that King Mswati III's government had no intention of observing the Court of Appeal's judgement on two matters. The prime minister also issued instructions to all law enforcement institutions to disregard the court's ruling.

In the first case, the Court of Appeal had ruled against the government's appeal not to commit the commissioner of police and a senior police officer to prison. Both the police commissioner and the senior officer had been found guilty for contempt of court after disobeying a court order to allow 200 families from Ka Mkhweli and Macetjeni to return to their homes. The King had ordered them to be forcefully evicted because they refused to pay allegiance to his brother, Prince Magagula, who had been imposed on them as their chief.

In the second case, the Court of Appeal had ruled in favour of an application by a local attorney to nullify the King's Decree No.3 of 2001 which allows suspects arrested for specific offences to be mandatorily detained without the option of bail. The Times of Swaziland reported that on December 19 the High Court gave Prime Minister Sibusiso Dlamini seven days to apologise and withdraw his statement overturning Court of Appeal orders, or the Court would not accept any more government applications. The entire Appeal Court had previously resigned.

Trade union leader threatened

On June 15, Queen Motsa, a Swazi senator and government delegate to the ILO Conference, openly and publicly threatened Jan Sithole, SFTU General Secretary. Amongst other things, she stated that, should Mr. Sithole "continue being troublesome against the country and against the State," she would personally ensure that "he would be made to suffer" when he returned to Swaziland from the Conference. She added that "he will be made to walk on bare feet," implying that he might be forcibly impoverished or made destitute and also, by implication, that he might be imprisoned. The senator then told Jan Sithole that, whatever he intended to say about the situation of his country at the International Labour Conference, he must think about his future and about his own children, if he said bad things about Swaziland. Jan Sithole had already been intimidated, repressed and violently attacked for his trade union activities, together with other trade unionists. He survived an assassination attempt, several years ago, carried out at the request the government's secret service agents.

Political opponent released from prison

In August, the People's United Democratic Movement of Swaziland (PUDEMO) President, Mario Masuku, was released from prison, after spending two years in and out of prison without trial on two trumped up charges of sedition.

Strike declared illegal

In December, the government declared the 48-hour general strike called by the ICFTU-affiliated Swaziland Federation of Trade Unions (SFTU) illegal. The SFTU refused to bow to government pressure, and carried on with its protest against the government's anti-union and undemocratic policies, which were exacerbating the already serious unemployment problem. Jan Sithole also pressed the government to drop plans to buy a US\$ 72 million luxury jet for King Mswati's personal use at a time when a quarter of the country's population was facing famine and the HIV/AIDS pandemic was rapidly escalating.

Tanzania

POPULATION : 34,300,000 / CAPITAL : Dodoma / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The restrictions on trade union rights introduced in 2000 remained in force. There was little respect for trade union rights in the privatised industries.

THE LEGISLATION

The Trade Unions Act, which came into force on July 1 2000, allows workers to form trade unions, but at the same time it dissolved the Tanzania Federation of Free Trade Unions (TFTU). The TFTU was set up in 1995 by a resolution to replace the Organisation of Tanzanian Trade Unions (OTTU). Although it was not legally registered, it was recognised by the workers, employers, international organisations and the government itself as a successor of OTTU.

Heavy restrictions

The Act contains several restrictions on trade union rights. The government has the power to de-register the smaller of two trade unions where more than one exists in an enterprise. The government may suspend a trade union if it considers that the latter violates the law or its own regulations, or that public security or the public order are thereby endangered. It can annul an international trade union affiliation when obtained without the prior approval of government or when it considers that the organisation with which the union is affiliated is dealing with problems other than the regulation of relations between employers and workers. The government also prescribes the terms of office of trade unionists. Failure to comply with government's requirement is subject to fines and/or imprisonment. In any given trade union only one union leader may be occupied full time in carrying out his trade union functions. All others must work full time in the enterprise or industrial sector in which they have been elected. Members of the military forces, of the police and of the prisons service are not allowed to unionise.

Right to strike and collective bargaining undermined

Workers can only take strike action after complicated and protracted mediation and conciliation procedures, which can prolong a dispute by months without resolving it. The law does not protect those taking part in legal strikes from retribution.

Collective bargaining is recognised in law but does not apply to the public sector, where the government sets wages. Collective agreements must be submitted to the Industrial Court for approval and may be refused registration if they do not conform with the government's economic policy.

Zanzibar and Pemba

The Zanzibar government enforces legislation specific to the Zanzibar and Pemba islands. It applies solely to the private sector and does not protect workers against anti-union discrimination.

RIGHTS IN PRACTICE

Privatisation – workers' rights ignored

Tanzanian trade union leaders criticised the lack of transparency in the country's privatisation exercise and the failure to consult the trade unions. The privatisation programme began in 1990, and the number of people working in the civil service has been cut from 355,000 workers in 1992 to 170,000 to date. The lack of union involvement in the process has meant that workers' rights have not been taken into consideration. Employees in the privatised industries are denied the freedom of association and the right to collective bargaining, and face long hours, compulsory night shifts, job insecurity, low pay and forced overtime.

Togo

POPULATION : 4,400,000 / CAPITAL : Lomé / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The political crisis and the anti-union attitudes of President Eyadema's regime have undermined the country's trade union movement. Serious weaknesses remain both in Togo's labour legislation and in enforcing recognised rights.

THE LEGISLATION

Weak laws

Workers have the right to join unions and to strike, apart from members of security services, fire workers and the police. Public sector health workers are allowed to join unions but not to strike. There is no provision protecting strikers against reprisal measures. The 1974 Labour Code prevents foreign workers from holding leadership posts in trade unions.

Nominally the right to collective bargaining exists, but this is limited to a single nationwide agreement that must be negotiated and endorsed by representatives of the government as well as trade unions and employers. The agreement sets nationwide wage standards for all formal economy employees.

Anti-union discrimination is prohibited.

Export processing zones

The law provides exemptions from some provisions of the labour code for companies with export processing zone (EPZ) status, notably the regulations on hiring and firing. Employees of EPZ companies do not enjoy the same protection against anti-union discrimination as other workers.

RIGHTS IN PRACTICE

In practice, collective bargaining is undermined by the economic situation, with salary and pension arrears for public officers running into many months.

The Ministry of Labour fails to enforce the prohibition on anti-union discrimination. This is aggravated by the political situation, since the authorities are intolerant of dissent.

Anti-union attitudes also prevail in the EPZs. In practice, unions are unable to set up in EPZs and the workers are therefore prevented from exercising their freedom of association.

Tunisia

POPULATION : 9,400,000 / CAPITAL : Tunis / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Anti-union activity continues in the private sector.

THE LEGISLATION

The Labour Code provides for workers to form and join trade unions. A union may only be dissolved by court order.

Threat to right to strike

The right to strike is recognised, however the list of essential services – which are defined in the Labour Code as services “whose interruption would endanger the lives, safety or health of all or a section of the population” – which was supposed to be set out in a decree, has never been produced. This leaves the provision open to abuse.

The law bans anti-union discrimination

Collective bargaining is recognised in law. Wages and working conditions are set in triennial negotiations between the UGTT member unions and employers after general guidelines are laid out through national tripartite consultations.

RIGHTS IN PRACTICE

Anti-union attitudes in the private sector

The UGTT has expressed its concern at the anti-union activities of certain private sector employers, particularly where trade union activists have been dismissed and temporary workers introduced to avoid all unionisation. In some industries, such as textiles, building and the hotel trade, a large majority of the workforce is temporary, and it is more difficult to apply the legislation that protects them than in the case of permanent workers.

EVENTS IN 2002

17 workers sacked for opposing the privatisation of their factory

In August, seventeen workers from the State-owned textile company ICAB, at Moknine (140 km from Tunis) which had been acquired by a Franco-Tunisian partnership, were dismissed after opposing the "questionable" nature of the privatisation of their factory. The workers had objected to the sale of the company to a single bidder for the derisory sum of 1.7 million dinars, as its true value was estimated to be 35 million dinars (€26 million). Twelve workers began a hunger strike on November 13 to demand their reinstatement. The workers ended the hunger strike on December 10 after an agreement was reached between the authorities and the UGTT covering financial compensation, the right to early retirement for some and guaranteed re-employment for the youngest workers.

Uganda

POPULATION : 22,600,000 / CAPITAL : Kampala / ILO CORE CONVENTIONS RATIFIED : 29-98-105-138-182



Long-awaited legislative changes were still under way. At the same time, the government continued to interfere in trade union activities. The teachers were still struggling to have their union registered.

THE LEGISLATION

High hurdles for union recognition

The Constitution provides for freedom of association, and legislation provides for compulsory recognition of a union by an employer. Two of the requirements to forming a trade union are that the workforce represented must be no fewer than 1,000 employees, and the union must represent 51% of the workforce.

Workers in services considered as essential may not form or join trade unions. The list includes prison officers, who are not included in the ILO's definition of such services.

Lengthy pre-strike procedures

The right to strike is also protected by law for the majority of workers. However the regulations governing the right to strike specify that prior to striking, "every effort" for reconciliation must be exhausted. The process is long and tedious and requires both parties to agree that a case can be taken to the Industrial Court.

In September 2002, the government said it was refining the final drafts of the labour bills. The Minister of Gender, Labour and Social Development, Zoe Bakoko Bakoru, said that the bills would lay down a mechanism for settling strikes and conflicts between employers, trade unions and government.

Reviewing of labour laws

Two draft bills amend those provisions in the Trade Unions Decree, which requires that unions must belong to the only legally national trade union centre created by a government decree.

RIGHTS IN PRACTICE**Weak enforcement**

The application of labour law is weak. Employers often do not observe the requirement to recognise a union, and the government rarely defends the workers' right to seek such a status. The Industrial Court offers little protection as it is starved of funds and rarely sits. Furthermore, the minimum requirement of 1,000 workers denies many workers in the private sector the right to form a union, and even in bigger workplaces with more than one union, the requirement to represent 51% of the workforce restricts workers and their unions from being recognised.

Recognition denied

The textile and garment sector is a major source of problems with union formation and recognition, and the International Textile, Garment and Leather Workers Federation (ITGLWF) has lodged a complaint with the ILO concerning the government's failure to defend the right of these workers to unionise. Despite having over 2,000 members in 16 factories, the Uganda Textile, Garment, Leather and Allied Workers' Union has only been recognised in one factory. This factory has since threatened the union with de-recognition.

The problems in the textile and garment sector, and other sectors regarding union recognition campaigns, highlight the fact that law does not prohibit anti-union discrimination, and union activists are not sufficiently protected from retribution by employers for union activities.

EVENTS IN 2002**Teachers still struggling to form union**

The teachers' struggle to have the Uganda National Union of Teachers (UNUT) registered as a union continued throughout the year. The UNUT General Secretary, John Situma Wotsuna, appealed to Members of Parliament on January 18 to support the teachers' union registration. Since 1993 teachers had made several unsuccessful attempts to form a union and have it registered by the government.

In June, the two associations that had in the past been representing teachers, the Uganda Teachers Association (UTA) and the UNUT, signed a memorandum of understanding agreeing to establish the Uganda National Teachers' Union (UNATU). David Muwanga, the President of UTA and co-chairperson of UNUT, said a task force to steer the transformed associations towards a fully-fledged union was also in place.

Appeal to lift restrictions

On September 20, national trade unions members appealed to the government to lift all restrictions imposed on them so they could organise themselves and work more effectively.

Union meetings suspended

The National Organisation of Trade Unions (NOTU) General Secretary, Lyelmoi Ongaba, said that the government was interfering in the running of trade union activities by suspending annual general meetings in all the 19 trade unions. He added that workers had been denied the right to elect their leaders and formulate policies to govern trade unions. A four-person delegation led by the ICFTU-AFRO General Secretary, Andrew Keilembo, went to Uganda to ask the government to lift the suspension. Unfortunately the delegation was unable to meet the relevant officials.

Zambia

POPULATION : 10,200,000 / CAPITAL : Lusaka / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although the legislation allows workers to unionise, anti-union discrimination is prevalent, both in the public and in the private sectors. So many requirements must be met to hold a strike that not a single legal strike has taken place since 1994. In the public sector, the national and municipal authorities have been increasingly reluctant to bargain with their employees. In March, striking journalists were forced back to work at gunpoint.

THE LEGISLATION

Restrictions on the right to join and form unions

Workers have the right to join and form trade unions, although in principle there can only be one union per industry.

Anti union discrimination is prohibited by law, which provides for redress, including reinstatement for workers fired as a result of union activities.

Restrictions on the right to strike

Workers have the right to strike except those engaged in essential services, which exceeds the ILO definition by including fire fighting, sewerage, and certain mining operations. Workers enjoy certain legal protections against employer retribution for strike activities. However, the right to strike is subject to so many procedural requirements that it is next to impossible for workers to hold a legal strike. As a result, no legal strikes have been held in Zambia since 1994.

Collective bargaining is recognised and in the private sector is carried out through joint councils. Civil servants negotiate directly with the government.

RIGHTS IN PRACTICE

Anti-union discrimination prevalent

Anti-union discrimination continues to exist, particularly against public sector workers, and the legal redress procedures are often not effective due to a lack of resources. Many officials of municipal workers' trade unions have been dismissed for union activities. The public sector electricity company recently brought disciplinary proceedings against the General Secretary of the electricity workers' union for reporting the management's plunder of the company's resources.

Private sector employers artificially divide workplaces in order to keep the number of workers below the minimum threshold, so they will not be compelled to recognise a union.

The ZCTU reports a deteriorating situation for basic workers' rights in the private sector, including by multinationals present in the country. A multinational hotel chain refused to pass on a 10% service charge to its employees, although mandated by Zambian law. Workers who protested were disciplined. New workers in some private sector companies, particularly multinationals, are asked to sign a statement choosing a job over a union, and those who are not prepared to give up their right to unionise are not hired.

Increasing reluctance to bargain

While collective bargaining is relatively widespread, public employees and their unions have met with increasing reluctance on the part of the authorities, national and municipal, to bargain with their employees. Several high profile disputes have dragged on for many months, with consistent allegations of bad faith bargaining being levelled against the authorities. A number of these cases have resulted in the workers going on protracted strikes, deemed illegal due to the restrictive legal requirements.

Public sector workers resorting to strikes included magistrates and judges, doctors, nurses, teachers, civil servants and local council workers. In the case of the strike by hospital workers, the minister responsible

had refused to meet the union. Many of those involved in the 2000 doctors' strike were dismissed, while others were forced to accept new contracts shortly after the strike was resolved.

EVENTS IN 2002

Strikers forced back to work at gunpoint

On March 14, the Times of Zambia management in Ndola, in the Copperbelt province, used paramilitary police officers with strong-arm tactics to force striking journalists, most of them unionised, back to work. After dragging them from their homes, the officers forced the strikers to work at gunpoint. The Zambia Union of Journalists (ZUJ) condemned the act as an "unprecedented action" taken by management. The journalists had gone on strike in protest against poor administration which had delayed salary payments. They also demanded the suspension of managing director Emmanuel Nyirenda and of some of his senior managers. After the events, the strikers warned that they would only return to work after the officials involved had been audited. The strike started in Lusaka, the capital city, and had spread to the northern Copperbelt towns of Ndola and Kitwe. The Times of Zambia (one of two leading State-owned newspapers) has its headquarters in Ndola.

Union office set on fire

On December 17, the Mineworkers Union of Zambia (MUZ) building in Luanshya was set on fire by unknown people in unexplained circumstances. The fire, which caused material damage, took place just hours before 2,500 miners decided to go on strike to press for seven months' salary arrears, two years' Christmas bonuses and terminal benefits.

Zimbabwe

POPULATION : 12,400,000 / CAPITAL : Harare / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The year was marked by the highest degree of violence and intimidation that Zimbabwe had ever experienced against trade unionists and pro-democracy advocates. This was particularly marked during the pre-electoral period leading to Robert Mugabe's controversial re-election in March. New legislation was adopted to suppress any kind of opposition, and the trade union movement was the first victim. Trade union meetings were monitored or banned, unionists were constantly under pressure and union leaders were repeatedly arrested and intimidated. Several trade unionists were beaten up.

THE LEGISLATION

There is a two-tier system of labour laws in the country. Private sector workers are covered by the Labour Relations Act (LRA) which recognises the right to form and join trade unions, without prior authorisation. Public servants are covered by the Public Servants Act and a series of public service regulations and directives. Technically they cannot form their own trade unions, only associations, but some of these associations have been able to join the national trade union centre, the ZCTU.

The 1985 Labour Relations Act provided for workers' committees to be set up at each workplace, and to negotiate with management on a wide range of plant-level matters, excluding wages. The committees are independent of trade unions and exist in parallel to them, weakening the influence of unions in the conduct of industrial relations at the workplace.

The 1992 Amendment to the Labour Relations Act provided for collective bargaining but the role and status of trade unions were further diminished by the greater emphasis on workers' committees. Works Councils, composed of management and workers' committees, were given powers to negotiate collective agreements or employment codes. These can override industry-wide agreements reached by employment councils, made up of unions and employers. The government can veto agreements, which it believes are harmful to the economy.

The 1992 Act also provided a broad definition of managerial employees, which included workers such as foremen and supervisors, and excluded them from union membership.

Long and extremely cumbersome procedures must be followed before workers can go on strike, which makes legal strikes extremely difficult to organise. The law gives a wide definition of essential services in which strikes are banned. The Minister of Labour can at any time designate any service or occupation as essential. Almost all strikes are declared illegal. Labour law bans union dues from being used for political purposes. The Minister of Labour has wide powers of control over union finances and can even set the level of union dues.

Zones exempted from labour regulations

Export processing zones (EPZs) were exempted from labour law regulations under the 1995 Export Processing Zone Act. In 1996 the government introduced special regulations which govern the terms and conditions of employment in the EPZs. Strikes are banned, workers are denied legal representation in disputes with employers, and workers can be fired at will. Workers' Committees have limited powers.

New harmonised labour bill

At the beginning of 1999, the government produced the fifth draft, since 1993, of the harmonised labour bill, which was expected to apply to both private and public sector employees. It had still not been adopted by the end of the year.

- The bill allows public servants, teachers and nurses to belong to unions, bargain collectively and have limited strike rights, although it proposes that membership of the Bargaining Council would be at the discretion of the Minister of Labour. Currently, these workers cannot join trade unions, and the government determines their conditions of employment. They are allowed to join associations, which cannot bargain collectively or strike.
- The bill narrows the definition of managerial employees. It maintains the provision that the Minister of Labour could refuse to register collective agreements on unspecified grounds. It also reproduces strike provisions in the previous law making legal strikes virtually impossible. The ZCTU said that scope for conciliation, mediation and arbitration was limited in the new bill, and questioned the purpose of the proposed Labour Advisory Board.
- In 1996 the ZCTU reported that the principle of getting rid of the workers' committees and replacing them with trade union committees had been agreed in tripartite discussions and was contrary to all expectations, this has not been incorporated into a new harmonised labour law. The ZCTU said that members of the committees must also be active trade union members.
- Restrictions on the right to strike are maintained in the draft.

New suppressive legislation

In January 2002, the government enacted new, suppressive legislation, the Public Order and Security Act (POSA). This was used throughout the year to obstruct trade union activities and harass trade unionists. Under the Act, people found guilty of disturbing the peace, security or the public order, or of invading the rights of other people, are liable to a maximum Z\$100,000 fine and/or imprisonment for up to 10 years. In addition, organisers of public gatherings must apply for permission at least four days in advance.

RIGHTS IN PRACTICE

In practice trade unionists from independent trade union rights organisations face harassment and intimidation from government forces and it is extremely difficult for them to carry out any trade union activities.

EVENTS IN 2002

Violence against trade unionists and their properties

On January 11, the home of Isaac Mzimba, the ZCTU district chairperson for Kwekwe was looted and burnt. He subsequently went into hiding. Other trade unionists' homes were looted, and they were beaten because of their trade union activities.

- Trade union leader detained and threatened with death**
- In early February, Basildon Peta, General Secretary of the Zimbabwean Union of Journalists, was detained overnight in Harare central prison under the new Public Order and Security Act (POSA). He fled the country on February 14 after receiving death threats.
- Another case of physical abuse**
- On February 13, a trade unionist went into hiding in Mutare after being beaten and left for dead because of his association with the ZCTU. A group of people had come knocking at his door at around 1.45 am and asked him to hand over anything that he had on the ZCTU. They stole some of his belongings, beat his wife up, and dragged him away from the house. After beating him severely with chains, pipes and whips they left him for dead. Although he managed to identify the leader of the group, the police did nothing to arrest him.
- Trade union leader abducted and tortured**
- On February 16, Ephraim Tapa, president of the ZCTU-affiliated Zimbabwe Civil Service Employees Association, and his pregnant wife Faith Mukukwa, were abducted by a group of ZANU-PF supporters in the Mutoko region (North-East), on their return from a union meeting in Harare earlier that day. They were detained for almost a month and beaten regularly, but were saved by the police just as their torturers were about to kill them.
- Trade union meetings monitored by police; meetings disbanded**
- On March 14, as ZCTU members gathered at an Executive Council meeting at the union's headquarters in Harare, plain-clothes policemen forced their way in to monitor the discussions. When they were asked to leave the premises, they threatened to use force to disband the meeting unless they were allowed to stay. They then disrupted the meeting, saying that it violated the Public Order and Security Act (POSA) as the officials had not given the four-day notice required under the Act. The police also accused the unionists of hiding behind the labour movement when they were in fact engaging in political activities.
- The ICFTU complained to the ILO Committee on Freedom of Association (CFA) on March 15. In November the CFA ruled that the police action had constituted a "serious and unjustifiable interference in trade union activities," and that the public authorities could not enter trade union premises without prior authorisation or without a legal warrant. The CFA requested the government "to ensure that the principles of non-interference by the authorities in the meetings and internal affairs of trade unions [were] respected and to implement the order of the High Court of Zimbabwe." In addition, on April 11, the Zimbabwean High Court had ruled that the POSA did not apply to the ZCTU meeting, and that the police did not have a right to monitor the meeting. The Court prohibited the police from attending the ZCTU General Council meeting on April 12 and other similar meetings.
- Trade union leader detained and intimidated**
- On March 19, Wellington Chibebe, ZCTU General Secretary was detained by the police in Harare and released after being interrogated for hours. He was arrested again on March 25, and intimidated and interrogated for hours and then released. The timing of this second arrest in less than a week came after the ZCTU had refused to allow the police to attend its General Council. The police had warned that they would come at any rate.
- Hundreds of protesters arrested**
- In early April, police broke up anti-government demonstrations in Harare and in other towns across the country. Hundreds of demonstrators took to the streets in protest against the rigged re-election of President Mugabe. At least 354 opposition activists, including trade unionists, were arrested and detained for 24 hours.
- Workers forced to join pro-government "union"**
- On April 28, the Zimbabwe Standard reported that Joseph Brown Chinotimba, vice-president of the Zimbabwe Federation of Trade Unions (ZFTU), had carried out raids on firms suspected of having links with the opposition Movement for Democratic Change. According to the Standard, officials from the ZFTU, (which is under the control of the ZANU-PF), had stormed several companies to force workers to join the ZFTU before the May Day celebrations. They threatened to beat anyone refusing to sign up. Chinotimba reportedly confirmed that his union was forcing workers to join the ZFTU if they failed to "understand that

the ZFTU is now the only trade union capable of representing them.” Chinotimba was also quoted by the newspaper as saying: “We were given the mandate to do so by government. I want to tell you, we are the current government. We have to talk to the workers but if they stand in our way we will be forced to make them dance to our tune. If they want to remain with the ZCTU then they should go to other countries and not stay in Zimbabwe. They should wake up and realise that we are the only recognised trade union in this country.”

More union busting tactics

In flagrant disregard of the April High Court ruling, government-led anti-union harassment continued throughout May. The crackdown on ZCTU activities included threats from the Home Affairs Minister John Nkomo to outlaw the union if it carried out a general strike, threats from the Minister of Public Service Labour and Child Welfare to decertify the ZCTU and to work directly with its affiliates, measures to prop up the ZFTU, and further police harassment of legal trade union meetings.

Trade union leader arrested and beaten by police

On October 8, hundreds of teachers went on strike to demand a 100% wage increase backdated to January. The next day, Raymond Majongwe, the General Secretary of the Progressive Teachers’ Union of Zimbabwe (PTUZ), who had called the strike, was arrested by the police, and charged with violating the POSA. He was accused of threatening teachers in Harare who were refusing to join the strike. Raymond Majongwe was beaten up by the police while being held in custody for 48 hours. On October 11, he appeared in court with a torn shirt and injuries to one eye and an arm. The court released him on a Z\$15,000 bail and fixed his trial for October 25. But he was again arrested on October 15 while addressing teachers from a Harare school.

Two more leaders arrested – striking teachers sacked

Two other PTUZ leaders, Innocent Moyo and Enock Paradzayi, were arrested on October 15 in Bulawayo (South-West) on the same charges. The same day, 627 teachers were sacked for taking part in the strike that started on October 8, which had been declared illegal by the government. In addition, the teachers were barred from leaving the country without the ministry’s authorisation, to prevent them from seeking jobs abroad. The government later announced it had reinstated half of the teachers, pointing out that less than 300 had been charged for supporting the strike. Raymond Majongwe, who dismissed the government’s comments as public relations, claimed that over 400 teachers had been sacked. Most of them were then reinstated, as the relief teachers hired to replace them did not know how the examination procedures operated.

More trade union leaders arrested

On December 9, at least nine trade union leaders, including ZCTU General Secretary Wellington Chibhebhe, were arrested at a ZCTU symposium. Wellington Chibhebhe was beaten with a broom during his detention in a police cell in Harare. Police also threatened that he would be “removed or eliminated” if he did not resign as ZCTU General Secretary. In a court hearing on December 11, the judge rejected the prosecutor’s plea to charge the detainees under the POSA. After the ruling, the police finally released the detainees, but threatened to arrest them again under the provisions of the POSA.

Trade unionists turned back at airport

On December 19, Kelly Zidana, Director of Human and Trade Union Rights at the ICFTU’s African Regional Organisation (ICFTU-AFRO) and Alfred Mudenda, Deputy General Secretary of the Zambia Congress of Trade Unions (ZambianCTU) were refused entry into Zimbabwe. They had come to Zimbabwe to visit ZCTU members.

Widespread violations of trade union rights continued throughout the Americas in 2002, against a background of economic uncertainty in several Latin American countries, legislative restrictions on union activity throughout the hemisphere, and increasing numbers of workers in informal and unprotected work.

Colombia remained the most dangerous place on earth for trade unionists, with an appalling record of murder, kidnapping, violence and intimidation. 184 people were killed as a result of their trade union activity in Colombia during 2002, with a further 17 unsuccessful assassination attempts, 9 "disappearances" and 27 abductions. The reign of anti-union terror was carried out with virtual impunity. Despite evidence of involvement by paramilitary groups opposed to the government and by groups closely associated with the government, none of the murders during the year resulted in successful prosecution of the perpetrators. In addition, the government is planning new legal restrictions further restricting organising and collective bargaining rights. The declaration on August 7 of a "State of Internal Unrest" by President Uribe made the exercise of freedom of association even more difficult.

While there were signs of stabilization of the economic crisis in Argentina, the situation had a severe impact on employment and trade union rights throughout the country. In a number of other countries, governments used the crisis in Argentina as an excuse to place further obstacles in the way of trade union organising and collective bargaining activities.

Legislative restrictions, violating ILO freedom of association Conventions, remained a feature throughout the region, often accompanied by ineffective or prejudicial implementation of legal



provisions intended to protect workers' rights. In Bolivia, Brazil, several Caribbean countries and elsewhere, excessively broad definitions of "essential services" deprived workers of their legitimate rights to union representation and participation in industrial action. In the United States, legal restrictions continued to deprive millions of workers of collective bargaining rights, and employers around the country used legislative deficiencies in efforts to prevent union organising, in many cases dismissing workers involved in union activities. In Canada, laws in several provinces imposed heavy restrictions on trade union rights, in particular in the public sector.

In export processing zones (Maquilas), particularly in Central America, the phenomenon of attracting foreign investment through comprehensive denial of trade union rights continued, and while there were some successes in trade union organising within the zones, the vast majority of maquila workers throughout the region were denied the most basic rights, frequently working under appalling conditions for poverty wages.

In Venezuela, the government of President Chavez intervened systematically in the internal affairs of the main trade union confederation CTV, as the economic and political climate in the country deteriorated. Workers in the oil sector resorted to an indefinite strike in protest at the government's actions in the state oil company PDVSA, and in April street demonstrations 19 people were killed and 40 injured. The CTV distanced itself from an abortive coup attempt in April, demanding that the authorities fully comply with the country's Constitution and human rights provisions. A further general

strike called later in 2002 to protest against the Chavez government's policies, during which the government dismissed 16,000 oil sector workers, affected a range of economic sectors. Efforts to mediate a resolution to the crisis continued through the end of 2002, without any significant breakthrough.

Across the region, violations of trade union rights were frequently associated with privatisation of public services. In Peru, severe restrictions dating from the time of the Fujimori government and previous administrations remained in force, and the government failed to ensure that the rights of workers at the privatized Telefonica telephone company were protected. Nearly 10,000 Telefonica employees were dismissed in a bitter dispute with the new management.

In Brazil, widespread repression of trade union rights continued, with workers across the economy affected. Violations were particularly present in the agriculture sector, with at least 16 workers killed and many others subjected to violence and death threats. The election of President Lula in October held out the prospect of real change after decades of anti-union repression by successive governments.

Some improvement was also seen in Chile, where amendments brought the labour code more into line with the provisions of ILO Conventions on Freedom of Association and Collective Bargaining, and several military officers believed to have been responsible for the killing and torture of trade unionists during the Pinochet dictatorship were finally brought to justice.



Americas

Argentina

POPULATION : 36,600,000 / CAPITAL : Buenos Aires / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Argentina was rocked by its biggest crisis ever in 2002. The level of social tension gradually reduced following the appointment of Senator Eduardo Duhalde as acting president in January 2002. Despite being hard hit by the general situation, trade unions and their members fought to recover the purchasing power of workers' wages. Resolute trade union action helped stem the exodus of members and prompted political support for trade union activities.

THE LEGISLATION

No significant changes were made to labour legislation. Under the Constitution, workers have the right to form free, democratic trade unions, which are then officially recognised by inscription in a special register. All workers – with the exception of military personnel – are free to join and form trade unions. However, there are certain legal restrictions on trade union freedoms, e.g. only one trade union in a given industrial sector and within a specific geographical region may negotiate wages, collect dues or call strikes.

Law 23551 (1988) established the system governing trade union organisations in Argentina. It also governs the principles underlying collective bargaining, calling strikes and other means of resolving industrial conflicts.

Law 25561 on postponing dismissals

Law 25561 was promulgated with a view to enhancing job protection. Under this law, no unjustified dismissals were allowed for a period of 180 days. Employers who dismiss anyone in contravention of this law must pay the wrongfully dismissed worker double the compensation to which he/she would normally be entitled.

13% wage reduction to be refunded

The government yielded partly to demands to refund the 13% cut in the pay of government workers and pensioners that it had imposed in July 2001 as part of its economic adjustment policy. Decree 1813 stipulates that the refund will take effect starting in January 2003.

RIGHTS IN PRACTICE

The political and economic crisis was so vast that the country was virtually paralysed, leading to a de facto freeze in the system of collective agreements. However, the General Confederation of Labour (CGT) developed a policy of social consultation that was well received and led to the readjustment of wages for all private sector workers. Numerous measures were taken to mitigate the economic and social impact of the crisis on the Argentinean people. These include the Head of Household Plan and efforts to gradually recover the purchasing power of wages affected by inflation.

The CGT said that in the last five months this has led to an abrupt slowdown in dismissals, with layoffs hitting their lowest point in the last four years. More than 500,000 new jobs were created.

Social protest

While the economy lurched towards stable ground, social protest by the unemployed, by students and by piqueteros (picketers) and cacerolazos (protesters who bang on pots and pans) kept up the pressure on the government. Levels of social conflict were very high. In the wake of the brutal and violent repression of demonstrations in December 2001, which led to 30 deaths and 4,500 arrests, the trade unions feared that social protest would be made a crime. They were also afraid that social protest would disintegrate over time as the economy began to recover.

Although there was no systematic or organised policy of breaking up demonstrations or clashing with demonstrators, there were isolated cases of police repression. These were considered an unpleasant remnant of the authoritarian tendencies of previous governments.

EVENTS IN 2002

Most protests were organised during the first half of the year, a time of great uncertainty and social instability. It was during this same period that the dire warnings issued by the international financial institutions – especially the International Monetary Fund – predicted an economic cataclysm if the government did not accept its conditions for a financial agreement. These protests eased up significantly in the second half of the year.

Appalling unemployment

Unemployment rose from 17% to 25% since December 2001, meaning that there are 6 million unemployed and underemployed people, out of a wage-earning population of 12 million.

Action to release and drop charges against the ATE-Neuquén leadership

On January 11 a warrant was issued for the arrest of 40 workers at the Neuquén Social Security Institute. Four union leaders were arrested: Julio Fuentes, Horacio Fernández, Miguel Peralta and Hilda Locatti, all officials from the Association of Government Workers (ATE) in Neuquén, Patagonia. Three of the detainees were released 12 days later. Miguel Peralta was released on February 22 and the criminal proceedings were dropped.

Demonstration by teachers and government workers crushed

On April 26, a group of teachers and government workers was dispersed with tear gas and pellets in Río Negro when they tried to enter the Provincial Education Council to protest against the late payment of their salaries. Two leaders from the Union of Education Workers of Río Negro (UNTER) were arrested and two demonstrators were injured.

Demonstration by picketers broken up

On June 26 the police used undue force to break up a demonstration of piqueteros in Buenos Aires. Darío Santillán and Maximiliano Kosteki were killed and more than 20 other people injured during the clash. The press filmed two police officers shooting one of the piqueteros, and they were subsequently prosecuted.

Trade union offices attacked

On June 21, the police raided the offices of the ATE and CTA in San Salvador de Jujuy, damaging property and seizing flags and banners, along with documents and other items.

The CTA offices in the Florencio Varela district were raided on July 19, and the computers containing the organisation's data were seized.

Attempt to sell a blacklist of trade union activists condemned

In August, the Association of Labour Lawyers (AAL) lodged a complaint against www.verazlaboral.com, a website claiming to sell a list naming workers who initiate lawsuits against their employers. The CGT forwarded the AAL's complaint to the Ministry of Labour, which took immediate action to have the website removed.

Trade unionist assaulted

Early in the morning of October 11, a group of unidentified people attacked the home of Edgardo Massarotti, the CTA general secretary for the Entre Ríos district, throwing a petrol bomb and firing guns. The attack took place the day after the police broke up a demonstration of government workers protesting opposite the Ministry of Health.

Bahamas

POPULATION : 300,000 / CAPITAL : Nassau / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Draft legislation could make workers involved in industrial disputes liable to prosecution.

THE LEGISLATION

Private sector and most public sector workers may form or join unions without prior approval. Members of the police force, defence force, fire brigade and prison guards may not organise or join a union. The right to strike and collective bargaining are recognised. The Bahamas ratified Convention 87 in 2001.

Threat of prosecution for trade union action

Bills tabled in 2000 by the government would allow trade unionists to be prosecuted for acts resulting from their trade union activities. They would also undermine other rights, by repealing the right to strike in support of an industrial dispute as well as the right to hold wildcat strikes. The government has since revised some of these proposals, but the final outcome remains to be seen.

RIGHTS IN PRACTICE

Failure to honour agreements

While unions do exercise their rights widely, there have been cases over the years of the government frustrating unions, notably by failing to honour industrial agreements.

Employers discourage unions in the Freeport export processing zone.

Belize

POPULATION : 230,000 / CAPITAL : Belmopan / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Trade union rights are not respected in the legislation.

THE LEGISLATION

By law workers are free to establish and join trade unions, and members are free to elect officers from the membership at large. Unions do have the right to strike but this is limited for public sector workers in areas designated as "essential services". The Essential Service Act empowers the authorities to refer a dispute to compulsory arbitration to prohibit or terminate a strike. Such services are broadly defined, extending to postal, monetary and transport services and even services in which petroleum products are sold.

The law provides for collective bargaining, but does not require employers to recognise a union as a bargaining agent.

The Labour Code applies in the country's export processing zones (EPZs).

RIGHTS IN PRACTICE

In practice, some employers block union activity by dismissing union activists. New legislation should make it easier for sacked workers to seek redress, but the fines imposed on employers in cases of anti-union discrimination have proved too low to be dissuasive.

Employers in the EPZs do not recognise any unions.

Bolivia

POPULATION : 8,445,134 / CAPITAL : La Paz / ILO CORE CONVENTIONS RATIFIED : 87-98-100-105-111-138



The country's legislation is obsolete, discriminatory and restrictive

Despite the intense social unrest and agitation that shook the country, there were no improvements in legislation for workers, in particular for union rights and freedoms. Social protest continued to be repressed.

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THE LEGISLATION

In the Constitution there are no specific provisions on freedom of association and no guarantee of the right to strike.

Workers may form and join organisations of their choosing and bargain collectively. However, the law contains many restrictions on these rights. The General Labour Act, dating back to 1942, requires prior government authorisation to establish a union and allows only one union per enterprise. It denies public servants the right to organise, with the exception of workers in the health, education and oil sectors. The ILO has demanded that civil servants not involved in the State administration be given the right to join unions, however the government has ignored the request. Peasant farmers are also denied freedom of association. Company or branch unions can only be formed with a minimum of 20 workers, while industrial unions can only be established with the support of at least 50% of the work force. The General Labour Act entitles labour inspectors to attend union meetings and monitor union activities. Members of trade union executive boards must be Bolivian by birth, which clearly discriminates against foreigners and other workers who have acquired Bolivian nationality. Trade union officials must work for the same company. A decree on the application of the Labour Act also enables the government to dissolve a union by administrative decree.

The right to strike is subject to strict conditions. In order for a strike to be declared legal within a company, the strike must be supported by three-quarters of the workers. General strikes and sympathy strikes are prohibited and violators are punished. Compulsory arbitration, which the ILO accepts only for essential services, may be imposed in order to put an end to a strike in sectors that are not always essential. Public service workers are denied the right to strike, as are employees in the banking sector. Workers who disagree with a strike call may continue their normal duties and may even ask for police assistance. Where a strike is declared illegal those who took part in it may be sentenced to prison terms of one to five years, with forced labour as an additional punishment, in line with the Bolivian Criminal Code (art. 234).

There are no measures to protect unions from interference by employers. The law does not allow unions to join international organisations. Despite repeated criticism from the ILO, the government has persistently delayed the modernisation of its labour legislation. In a year that has seen little legislation (only 15 laws in 2002), the Congress has not concerned itself with social affairs, thereby impeding the ratification of various ILO core conventions.

RIGHTS IN PRACTICE

The sluggishness of labour law proceedings is typified by the National Industrial Tribunal, where cases usually take more than one year to complete. This means that rulings on cases of discrimination against union leaders and members are frequently inapplicable.

Although the government has used the law to declare strikes illegal and crack down on them with undue force, there have been some strikes in recent years.

Although not recognised in law as trade unions, peasant farmers have formed their own associations to protect their interests, which have been threatened following the crackdown on coca leaf production, their only

form of livelihood. Union action and peasant farmers' protests are often closely linked. The national trade union centre, the Central Obrera Boliviana (COB), the Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB = peasant workers' federation) and lorry drivers' unions joined forces in many demonstrations and road-blocking exercises throughout the country in 2002. Strikes and social protests were almost always met with harsh repression.

EVENTS IN 2002

Social unrest continued in the country, with marches, demonstrations and road-blocking campaigns, in protest at the neo-liberal policies of the government of Hugo Banzer and the effect of the war on coca leaf production. Official repression continues. On August 6 Gonzalo Sánchez de Lozada became President, having defeated the leader of the "cocaleros" (coca leaf workers), Evo Morales.

Repression of "cocaleros" protests

The CSUTCB carried out a nationwide road-blocking campaign in support of its members, following clashes with the security forces that had led to a total of seven dead and 46 injured police and demonstrators.

On January 19 the police violently raided the head office of the Federación Especial del Trópico de Cochabamba (FETC), causing considerable damage and removing documents and office equipment.

A group of cocaleros were brutally attacked, injured and then transferred as detainees – in vehicles belonging to the Cochabamba Prefecture but with disguised official plaques and number plates – to buildings belonging to the Transit Unit of the Department for Public Safety and Order. Uniformed officers prevented the press from entering the union buildings, blocking adjacent streets. The police assaulted a number of journalists, photographers and camera operators.

Similarly, the police assaulted cocaleros trying to re-open a coca leaf market in Sacaba that had been closed for two weeks. Five policemen and three peasant farmers were killed in the ensuing violence. Various media workers were also attacked.

In early February the road blocks and protests ended when the government lifted the ban on the sale of coca leaves.

Labour Day postponed

For the first time in the country's history, May 1 was not celebrated as a holiday. The government decided to postpone the holiday, which happened to fall on a Wednesday, arguing that it would be better for internal tourism if the holiday were joined onto a weekend. The Central Obrera Boliviana (COB), which was not consulted, protested against the government's decision, and decided not to respect the measure.

Strike following non-respect of collective agreement

On November 11, workers in the health sector held a strike in protest at the government's failure to reinstate hundreds of sacked workers and to honour the collective agreement, according to which wages should be paid on the 10th day of each month. In practice this provision has only been applied in three provinces.

Brazil

POPULATION : 168,200,2000 / CAPITAL : Brasilia / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



The outgoing government of President Fernando Henrique Cardoso continued its policy of reforming labour rights. The reign of impunity and violence against rural workers continued. The election of former union leader Luis Ignacio Lula da Silva to the presidency in October prompted high expectations of significant improvements in workers' rights.

THE LEGISLATION

The central component of Brazilian labour legislation is the 1943 Compendium of Labour Laws (CLL). The CLL is, to a large extent, a codification of the laws of Getulio Vargas' 'New State' as well as the standards

provided for under Article 7 of the Federal Constitution. Since that time the policy has been to revise individual articles or sections of the CLL to bring them in line with prevailing political trends.

The Constitution and the Labour Code provide for the union representation of all workers, with the exception of the military, uniformed police and firemen. However, the "unicidade" system, which has not yet been repealed despite promises of change, stipulates that there can only be one trade union per economic or occupational category in each territorial area. Despite representation based on the 'single-union system', various federal laws have recognised the legitimacy of trade union confederations created since the early 1980s. A trade union framework system - still in place owing to its recognition by the Federal High Court - has led to a situation in which sectoral unions prevail. By law, each worker and each company must pay a compulsory trade union tax, which is then distributed, to the unions, federations and confederations, as well as to the Ministry of Labour's employment and wage fund. The funds are distributed in proportion to the number of workers or companies legally represented (based on single-union obligatory representation), not in proportion to the number of workers or companies actually affiliated. This tax, together with the 'single-city system', accentuates competition between trade unions. Collective bargaining is only allowed on a small number of issues, owing to the extremely detailed provisions found in the CLL.

In a move that would further undermine labour rights, a bill was put forward that would allow enterprises to negotiate conditions below standards set by law, by giving collective agreements precedence over labour legislation. Although the Chamber of Deputies approved it on December 4 2001 the Senate did not debate in 2002. It will be debated by the new incoming parliament.

Collective agreements have immediate, erga omnes effect. Despite this, the previous government increased its demands that legal documents be submitted to the Ministry of Labour. The right to strike is enshrined in the Constitution, but under the legislation passed in 1989 strikes in essential services are subject to tighter restrictions than those recognised by the ILO. It is commonplace for the courts to interfere in industrial disputes, e.g. by ordering the end of a strike or, where essential services are concerned, stipulating that such high minimum service levels must be maintained that, in many cases, a strike simply cannot be called. According to the Federal Constitution, the National Congress is supposed to regulate civil servants' right to strike. As this has still not been approved by the National Congress, the Federal High Court has ruled that strikes in this sector are illegal.

Labour law applies equally in the export processing zones, although enforcement is weak owing to a number of factors, e.g. weak local courts or shortages of ministerial staff supposed to be monitoring it.

Partial revision of the CLL

The government of outgoing President Fernando Henrique Cardoso amended some components of labour legislation. This involved promoting a reform of the CLL in order to restrict workers' rights.

Despite the fact that law 7783/89 (better known as the 'strike law') governs the right to strike and does not stipulate fines for striking, the High Labour Tribunal has ordered the payment of high fines that could jeopardise the survival of unions that go on strike. The Trade Union Committee on Freedom of Association issued a recommendation to ignore the fines imposed on trade unions representing the country's oil workers. These fines were imposed in connection with a 1996 ruling by the High Labour Tribunal. Despite the Committee's recommendation, the government of Fernando Henrique Cardoso presented a bill under which these high fines would be incorporated into law.

Bill 5483/01, which amended Article 618 of the CLL and imposed the primacy of "bargaining over legislation", led to a national demonstration involving more than one million people. The ILO has also condemned the Bill.

RIGHTS IN PRACTICE

In practice, some of the legal limitations are ignored. At the same time however, employers blatantly violate union rights.

Both the Força Sindical (FS) and the Central Unica dos Trabalhadores (CUT) are recognised in practice, and take part in tri-partite bodies. They want to see the law changed to bring it in line with reality. As it stands, the government could technically remove them from tripartite discussions.

Generally speaking, workers are not organised at company level, except in the most modern sectors of the economy. The trade unions asked for the law to be updated to formally recognise the right to trade union representation at shop floor level and to enforce the application of ILO Convention 135, which Brazil has ratified.

According to the Inter-Union Department for Statistics and Socio-economic Research (DIEESE), just 59% of collective agreements in 2002 were expected to include wage increases that kept pace with inflation. There are wide wage disparities across the country between workers holding similar jobs. The trade union confederations want to see this changed.

The authorities have proved incapable of applying the anti-union discrimination laws. Trade unionists are frequently dismissed in total violation of their trade union immunity. The courts operate very slowly, and are unable to deal with the two million or more complaints filed every year. Union officials estimate that 95% of such cases take five to 10 years to resolve, and a huge backlog has built up.

Brazilian trade union confederations officially complained to the ILO about blacklists created using information taken from industrial tribunal websites. The blacklists reveal the names of workers who have lodged complaints against companies. The Public Prosecutor's Office for Labour Affairs opened an investigation involving 182 companies in 20 Brazilian states, including an oil company, Petrobras. However, no conclusions had been reached by the end of the year.

EVENTS IN 2002

Impunity and violence against workers in the countryside

The documentation service of the Pastoral Commission of the Earth (PCE) carried out a study into killings in the Brazilian countryside from 1988 to 2002, when 1,548 rural workers, lawyers, technicians, religious personnel, and 71 trade union leaders, involved in the fight to protect the land, were murdered. Some 243 rural workers were killed during Fernando Henrique Cardoso's time in power. In 2002 alone, at least 16 rural workers were killed and 73 received death threats. The reign of impunity in Brazil continued as out of 1,237 murders, just 102 cases were brought to court. On June 12, a jury in Pará unanimously acquitted the 124 military police officers accused of involvement in the Eldorado dos Carajás massacre on 17 April 1996, in which 19 rural workers involved in the Sem Terra (landless rural workers') Movement were killed.

CUT headquarters ransacked

The headquarters of the Workers' Confederation (CUT) in São Paulo were ransacked during the night of February 1. A man dressed as a policeman ordered the night-shift security guard at the CUT building in São Paulo to open the door, and then locked him a room. A truck was brought into the car park, from which nine men emerged, carrying machine guns and other weapons, and spent the night ransacking the premises. Numerous computers and safes were stolen from the building, which is also home to many of the federations affiliated to the CUT.

Workers' demonstrations broken up Ford Brazil workers assaulted

On April 12, workers and trade unionists were assaulted in Camaçari (Bahía) by the Bahía military police, both outside and inside the Ford Brazil plant. The workers had been planning to meet at the gates of the plant to discuss their wage campaign for 2002. However, the police stopped a union vehicle fitted with loudspeakers as well as buses carrying workers going to the meeting. The police charged the workers with truncheons and tear gas, injuring 16. The president of the Union of Metalworkers of Bahía was knocked unconscious and another worker was nearly blinded.

Teachers' strike in Belem dispersed

The police used tear gas and truncheons, injuring 20 people, to prevent striking teachers from entering the Education Ministry building in Pará. The teachers had gone on strike on March 26 to demand pay rises.

Trade unionist arrested

Mauro Salles, director of the Banking Union of Porto Alegre and the surrounding region, was arrested as police tried to disperse protestors at a demonstration at the HSBC bank in Moinhos de Vento (Rio Grande Do Sul) on April 12. The workers were protesting against non-payment of the second instalment in the profit sharing scheme, in violation of a management-union agreement.

Trade union representative tortured and murdered in Pará

On July 22, Bartolomeu Morais da Silva, a trade union representative of the Union of Rural Workers of Altamira (Pará), was tortured and executed in Castelo dos Sonhos. He had been ambushed at a hotel and kidnapped, and the next day, his body – riddled with 12 bullet holes – was found alongside a road. He had been compiling a file on corruption in the process of obtaining ownership rights in the region and had been planning to submit the file to the Security Ministry in Pará.

Trade unionists fired

On 3 April, Compañía Telefónica Telemar dismissed 17 leaders and three members of the Union of Telecommunications Workers in Amazonas (SINTELL/AM). SINTELL believes that the workers were dismissed as punishment for their rejection of Telemar's 'zero pay rise' proposal. SINTELL also condemned the company for exerting pressure at meetings with Telemar officers to ensure that they did not question management's proposal. At a meeting attended by Telemar representatives, the trade unionists had highlighted other problems within the company, such as racial discrimination, insulting behaviour and sexual harassment.

On July 24, Otis, a lift-making company located in Recife, fired 31 of its 38 workers when they demanded a pay rise. Those fired included members of the Internal Accident Prevention Committee (CIPA), who enjoyed union immunity.

On August 13, Dako, a domestic appliances manufacturer in Campinas, laid off 51 workers. The company said the redundancies were justified because the workers had called a strike in June to protest against deadlocked negotiations on the profit-sharing scheme and had then entered the premises to try to win over those who had not taken part in the strike. However, the president of the Campinas metalworkers' organisation said that the vast majority of those made redundant were CIPA members.

Varig counters strike

When the Association of Pilots of Varig Airlines (APVAR) decided to go on strike in mid-October, Varig – then in the midst of a financial crisis – countered with a court ruling against the pilots and a demand for damages. There were allegations that Association members had been photographed wearing company uniforms while distributing pamphlets about the strike in airports. The pilots were protesting against the company's violation of collective bargaining agreements when it dismissed 62 pilots in February.

Canada

POPULATION : 30,500,000 / CAPITAL : Ottawa / ILO CORE CONVENTIONS RATIFIED : 87-100-105-111-182



Provincial legislation containing restrictions on trade union rights remained in place and employers continued to take advantage of this. In British Columbia, legislation affecting health and education workers, which imposed terms of collective agreements favourable to the employers, was introduced unilaterally and without consultation.

THE LEGISLATION

Workers in both the public and private sectors have the right to associate freely. Trade union rights are officially guaranteed in federal legislation, although each province also has its own legislation, setting limita-

tions on these rights. All workers have the right to strike, except for those in the public sector who provide essential services.

Public and private sector workers have the right to organise and bargain collectively. The law protects collective bargaining but again there are limitations which vary from province to province. The law prohibits anti-union discrimination.

Alberta: exclusion and denial of the right to strike

Several categories of workers, including agricultural and horticultural workers, are excluded from the application of labour relations legislation and therefore from the protection this provides. For universities, the law authorises the Board of Governors to say which staff members may or may not form a trade union.

The law on labour relations in the civil service bans strikes by all hospital workers including a whole series of workers who do not fall into the category of essential services. Strikers involved in illegal strikes are liable to heavy fines and even prison sentences.

The law authorises extensive intervention by the authorities in collective bargaining and allows the employer to bypass the trade union as a bargaining agent, and to use replacement workers in a strike.

British Columbia: new limitations in the education and health sectors

In 2001, nurses lost their right to strike, with the Health Care Services Continuation Act, and the Health Care Services Collective Agreement Act, which imposed a collective "agreement". Education was designated an "essential service" under the "Skills Development and Labour Statutes Amendment Act". This made union organising among teachers and education support workers much more difficult and gave the authorities the power to deny them the right to strike.

Further limitations were introduced in 2002, with the adoption of the following three bills: the Education Service Collective Agreement Act (Bill 27), the Public Education Flexibility and Choice Act (Bill 28) and the Health and Social Services Delivery Improvement Act (Bill 29). This new legislation was described by the Canadian Labour Congress (CLC) as "a dramatic and unprecedented assault on the rights of workers in Canada". The legislation imposes unilaterally and without consultation terms of collective agreements favourable to the government as employer and to other employers primarily or exclusively financed by the government. The bills completely eliminate or rewrite provisions in current collective agreements previously negotiated which afforded substantial protection for workers in the province. Health care and other employers are given the right to avoid the terms of binding collective agreements by "contracting out" to related employers who are not covered by such agreements. The legislation also permits the government as employer and funding agency for various non-government employers to initiate action that could result in bargaining rights being cancelled. The case was laid before the ILO Committee on Freedom of Association.

Ontario: many restrictions

Ontario's labour legislation excludes agricultural and horticultural workers, as well as domestic workers, architects, dentists, land surveyors, lawyers and doctors. People taking part in community activities are also prevented by law from joining a trade union. A ruling by the Supreme Court of Canada in December 2001 declared the Ontario law prohibiting the unionisation of agricultural workers as unconstitutional.

Collective bargaining rights are heavily restricted in education under the terms of a 1997 law. This excludes school principals and assistant principals from taking part in the teachers' negotiating unit, which can only negotiate working conditions on an informal basis. The Ontario Education Act also establishes a de facto trade union monopoly, by designating the trade union recognised as the bargaining agent by name. If a dispute leads to strike action, arbitration can be imposed after three weeks.

A recent act actively discourages collective bargaining. The Labour Relations Amendment Act 2000, which became law on December 31 2000, requires employers to post and distribute documents in the workplace prepared by the Minister of Labour, setting out the process to terminate trade union bargaining rights. The Ontario Federation of Labour pointed out that as a signatory to Convention 87, the government should promote and protect employees' rights to collective bargaining, while this act does the exact opposite.

New Brunswick: certain categories of workers excluded	Agricultural and horticultural workers are excluded from the protection provided by labour relations legislation. Casual workers in the public sector cannot affiliate to organisations of their choice and therefore cannot enjoy the corresponding rights such as collective bargaining.
Quebec: limitations on the right to strike	The right to strike is limited by two acts which give a very broad definition of essential services.
Manitoba	The law stipulates that if a dispute lasts for more than 60 days, one of the parties may ask the Manitoba Labour Board to determine the content of a new collective agreement. Another law bans teachers from going on strike and foresees heavy fines for breaches of this law. It also provides for compulsory arbitration at the request of one of the parties if a dispute lasts more than 90 days.
Prince Edward Island and Nova Scotia	Like Ontario, the law effectively imposes a trade union monopoly by naming a bargaining agent in the Civil Service Act in the case of Prince Edward Island, and in the Education Act in the case of Nova Scotia. A new Act was passed by the Nova Scotia legislature in June 2001 which applied to certain categories of healthcare workers. The Healthcare Services Continuation (2001) Act prohibits these workers going on strike until April 31, 2004 and empowers the Governor in Council to determine any collective agreement or provision of a collective agreement where he is satisfied that an employer and a union are unable to conclude a collective agreement. This gives precedence to such orders over any contrary collective agreement. Where a union infringes the provisions of the Act, it is liable to a maximum CAN\$50,000 fine, and CAN\$10,000 for each day the offence continues. The provisions of the Act had, however, not been used at the time of writing.
Newfoundland	The Public Service Act confers broad powers on the employer with regard to the procedure for the designation of "essential employees". Strikes are banned in the fishing sector under new collective bargaining laws.

RIGHTS IN PRACTICE

While the law is widely respected in practice, both private sector employers and public authorities take advantage of the many limitations it provides.

Provincial governments have used the law to order strikers back to work, while private employers have brought in temporary workers to replace strikers.

EVENTS IN 2002

The year 2002 saw the creation of 560,000 new jobs, but the CLC expressed its concern about the quality of many of these. Forty percent of them were part-time, and 17% of them fell into the category of self-employment. On the other hand, heavy job losses occurred in the power sector in Ontario, and in the health, education and justice sectors in British Columbia. Overall, the national unemployment rate fell from 8.0% to 7.5% during the year. However, real wages for working people have continued to fall. The average hourly wage rose by just 36 cents per hour, a 2.1% increase, and the average weekly wage rose by \$10 per week, or by 1.6%, while consumer prices rose much faster, by 4.3% (between November 2001 and November 2002). The unionised work force grew by 100,000 over the year.

On March 22, over 1,200 Radio Canada journalists in Quebec and New Brunswick were locked out, after the management decided to stop them from going back to work following what was originally to be a 24-hour stoppage. The conflict, which lasted several weeks, originated in three main claims: equity between men and women, equity between French-speakers and English-speakers (the latter have higher wages), and the precarious working conditions of a certain number of employees. Working conditions in the public services have constantly deteriorated since the 1980's.

In May, 11 typographers of the Gazette, a Montreal daily, went back to work after a nine year struggle with their employer, ending what the unions described as one of the longest social conflicts in North America's history. Since May 17 1993, the management had locked them out and stopped paying their wages. The discussions on the renewal of the collective agreement had come to a stumbling block over the question of job security (the previous agreements secured employment up to 65 years of age). The management had decided on the lock out, expecting the typographers either to give up their claims or to leave with an allowance. The Supreme Court of Canada decided in favour of the workers in 2000, leading the way to an agreement receiving judicial confirmation in May 2002.

On June 1, 600 members of the Canadian Auto Workers' union (CAW) at Navistar (International Truck) in Chatham went on a six-week strike following a dispute over how to reduce operating costs. Navistar had threatened to close the plant if workers refused to accept pay cuts and other concessions in working conditions. During the strike, trade unionists turned away police escorted busloads of replacement workers. One striker was critically injured on June 24, when a van driven by security guards hit six picketers. On July 15, the CAW signed an agreement ending the strike, fighting off the management's claims concerning wages, benefits, time off the job and hours of work. In addition, the union obtained pension gains and a guarantee that the plant would not be closed before June 1, 2003.

During the year, 4 complaints were brought to the ILO Committee on Freedom of Association:

- On February 18, the CLC, the ICFTU and the Education International (EI), filed a complaint for legislative restrictions to the right to bargain collectively and restrictions to the right to strike;
- On March 1, the CLC, the ICFTU and Public Services International (PSI), filed a complaint for legislative restrictions to the right to bargain collectively in the education sector and social and health services;
- On March 9, the CLC and the ICFTU filed a complaint for legislative violation to the right of collective bargaining and the authorities' interference in trade union activities;
- On May 14, the Canadian Association of University Teachers (CAUT) filed a complaint for legislative violation to the right of collective bargaining in the teaching sector.

Chile

POPULATION : 15,000,000 / CAPITAL : Santiago / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The Labour Reform came into force after some problems with its endorsement; it was not totally satisfactory in terms of trade union rights. The unions protested against the imposition of higher levels of labour flexibility. For the first time in Chile's history, ten army officers were convicted for their role in the assassination of a trade unionist under the Pinochet dictatorship.

THE LEGISLATION

The repressive legislation inherited from the Pinochet era, which contained heavy restrictions on organising and bargaining rights, was finally replaced when the Senate adopted a new trade union rights bill on September 11 2001. It came into force in December, nearly two years after socialist President Ricardo Lagos came to power. The final bill was a compromise solution, watering down the initial measures to strengthen trade union rights in the face of strong employer-led right wing pressure. Rather than introduce compulsory national collective bargaining as promised, it provides for 'voluntary' collective bargaining, meaning that trade unions can negotiate national deals, outside of a particular plant or factory, only if the employer agrees. Instead of outlawing the practice of sacking strikers, the new law makes it 'prohibitively expensive' to lay off workers who have been involved in industrial action. Nor does it ban companies from

employing workers to break picket lines during an industrial dispute, one of the main union demands. Employers also succeeded in getting the inclusion of "flexibility" measures such as the introduction of short-term contracts and looser regulations for employing young workers.

Improvements

The new law does strengthen workers' rights in some ways however, notably:

- An employee has the right to sue for unfair dismissal within 60 days. If she or he is found to have been unfairly dismissed, a 30% surcharge will be added to the redundancy package.
- If a judge finds that an employee has been dismissed for trade union activities, he or she has the right to return to work or receive compensation. Some categories of employees are excluded from this clause.
- Companies may be penalised for breaking labour laws.
- Every six months, the government will publish a list of companies that have breached labour laws.

RIGHTS IN PRACTICE

Collective bargaining

The ILO's collective bargaining provisions intended that bargaining should be conducted with trade union organisations. The Labour Reform restricts bargaining to company level, however, so this is not in line with international legislation.

Slow justice for workers

Workers do not enjoy full rights, since they abandon 70% of disputes because of the excessively long and costly legal proceedings.

EVENTS IN 2002

Employers used the spectre of the Argentinean economic crisis to block wage demands and undermine the improvements introduced in the new labour legislation. Workers mobilised against measures aimed at weakening and loosening up trade union rights.

At the end of the year, Chile signed an Association Agreement with the European Union, which included provision for establishing an Economic and Social Committee, which will have seats for trade unionists who will be able to defend social rights. The country also signed a Free Trade Agreement with the USA that included, at the unions' insistence, an explicit recognition of the ILO conventions.

Detention of union leaders

On August 14, three union officials from the Compañía de Transportes were arrested and accused of serious breaches of state security, for having called a strike that paralysed Santiago's bus system for two days. In all, more than 700 drivers were detained. They had been protesting against the government's plans to modernise the transport system and feared these would lead to job losses.

10 army officers sentenced for the assassination of a trade unionist

On August 8 a Chilean court convicted 10 former army officers for their involvement in the assassination of the union leader Tucapel Jiménez under the Pinochet dictatorship. The ten received sentences ranging from 800 days to life imprisonment. The conviction was historic since it was the first time that high-ranking members of the armed forces had been tried and convicted. Nonetheless, the sentences themselves were a disappointment to the relatives and friends of Tucapel Jiménez.

Former general tried for the disappearance of a trade unionist

A former air force general and three former army generals were convicted on October 4 for their role in the kidnapping and disappearance of Juan Rivas Matus, under the dictatorship of General Pinochet.

Colombia

POPULATION : 41,000,000 / CAPITAL : Bogota / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



2002 was another tragic year for Colombian trade union organisations, with 184 killings of trade unionists. Following the breakdown of peace negotiations the country returned to a situation of open violence. On August 7, Alvaro Uribe Vélez took over the Presidency and proceeded to declare a 'State of Internal Unrest', which merely served to make the exercise of freedom of association even more difficult.

THE LEGISLATION

Limited right to strike

The Colombian Constitution recognises freedom of association and the right to strike for all workers, except for members of the armed forces, the police and workers providing essential services as defined by law. Nonetheless, via its Committee of Experts the ILO has criticised the fact that too many workers are being deprived of their legitimate right to strike.

Furthermore, the law prohibits federations and confederations from calling strikes, and the Ministry of Labour can still impose mandatory arbitration on a conflict when the strike goes on for more than 60 days.

In February 2000 the government drafted several bills designed to change these restrictions, but by the end of 2002 these bills had still not been passed because of the failure of the talks between the social partners.

Collective bargaining

Although the Colombian government recently signed ILO Convention 151 which provides for the right to collective bargaining with a few exceptions, and which includes the provisions of Convention 98 on the right to collective bargaining, public sector workers are still being deprived of their right to engage in collective bargaining.

Labour and pensions reform

The new government led by President Álvaro Uribe is pushing for the approval of a labour and pensions reform to increase working hours, raise the retirement age, and undermine workers' rights. The reform would threaten basic rights, such as the right to work, organise and collective bargaining, by reducing job security and promoting 'flexibility' in the workplace.

RIGHTS IN PRACTICE

The violence perpetrated against trade union activists is preventing any effective exercise of freedom of association in Colombia. As a result, for several years now the number of unionised workers in Colombia has been declining. The violence and the impunity enjoyed by its perpetrators have made Colombia the most dangerous place in the world to be a trade union activist. The situation has not improved at all, despite the vast number of observations, recommendations and declarations repeatedly made in recent years by the various monitoring bodies of the ILO. Respect of freedom of association is continuing to decline.

Flagrant impunity

The impunity enjoyed by the majority of the perpetrators of assassinations and assaults contributes to the further deterioration of trade unions rights and the perpetuation of violence. The State not only fails to prevent such crimes, but also fails to ensure that the perpetrators are brought to justice.

None of the investigations opened following the attempts on trade unionists' lives reported to the ILO in 2002 have resulted in the effective sentencing of those responsible. Moreover, numerous investigations opened in previous years have been suspended, dismissed or are blocked by an 'inhibitory decision' whereby the case is closed before the guilty parties are found.

According to the government, the violations of trade union activists' rights are a direct consequence of the armed conflict ravaging the country, and only 5 to 10% of the murders actually resulted from union activi-

ties. This warped view of the situation was challenged by an ILO mission which visited Colombia in February 2000, concluding that "even if most murders are committed in regions where the conflict is intense, (...) that in itself could not be regarded as a general indication that the killings have nothing to do with the fact that the victims are union leaders or involved in union activities...".

According to a report by the Escuela Nacional Sindical, an NGO based in Medellín (Antioquia), most of these violations are directly linked to the carrying out of trade union activities. They occurred at times when unionised workers are involved in resolving an industrial dispute or taking industrial action, when attempting to exercise their right to collective bargaining or to organise a union, or when peacefully and lawfully responding to the loss of their rights and benefits.

In cases where it is not clear who has ordered the assassination, the situation can only be clarified by identifying and trying the perpetrators. However, such cases are rarely resolved, and on some occasions the public officials dealing with the cases act as accomplices. The UN High Commissioner for Human Rights, in her report on Colombia, on 13 March 2002, expressed her concern at "the changes that have occurred since the appointment of the new Attorney General, particularly as regards the approaches of his Office and the dismissal of certain officials, have raised serious fears as to the prospects for strengthening the institution and its commitment to combating impunity. Several events have called into question the independence and autonomy of prosecutors in their investigations into human rights violations, particularly those involving paramilitary groups and public officials."

Lack of protection from the Colombian authorities

2002 was similar to 2001 in terms of assassinations of trade unionists, despite the efforts reported by the ILO to combat the country's various paramilitary organisations, the main perpetrators of these crimes. Despite these efforts, many unionists are complaining about the inadequacy of the protection programmes set up in 1999 to put an end to this scourge. Many individuals who received threats were killed or narrowly escaped with their lives.

STATISTICS AND TRENDS IN 2002

Context

For several years now, Colombia has been rated the world's most dangerous country. The entire country is in a state of civil war, with government forces, guerrillas and paramilitaries constantly clashing. This infernal triangle - which comprises the guerrillas, i.e. the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), the paramilitaries, i.e. the United Self-Defence Forces of Colombia (AUC), and the public authorities, i.e. the government - is affecting all sectors of civil society, which is already hard-hit by poverty and destitution. Caught in the middle, unionists are often wrongly labelled as guerrillas by the three groups.

The eradication of many public institutions and the privatisation of others, the massive staff cuts made through voluntary retirement plans, the practical impossibility of exercising the right to strike, restrictions on collective bargaining rights have led to the gradual weakening of trade unions. Added to this are the attempts to prevent the unionisation of new workers, the reduction or withdrawal of trade union permits, State repression of disputes, and the recent decrees revoking the rights acquired by public sector employees.

An overview of the situation

During the course of 2002, 184 trade union leaders and members were assassinated, and 189 trade unionists received death threats.

Nine trade unionists 'disappeared' and another 27 were abducted. There were attempts on the lives of 17 people and another 19 were persecuted. In addition, 80 trade unionists went into exile and 139 were the victims of arbitrary arrests.

**Who? By whom?
Where?**

The selective violations of trade unionists' human rights continued in 2002, and were aimed mainly at trade union leaders and activists in strong negotiating positions and those with the greatest power to exert public and political pressure on both the State and important economic sectors. Fifty of the 184 trade unionists assassinated were trade union leaders. In addition, it was the trade union leaders who received 59% of the threats and were the victims of 70% of the physical assaults, showing that trade unionists are targeted because of their activities.

In most cases the perpetrators of the human rights violations against trade unionists remain unidentified, owing to fear or awareness of the futility of reporting those responsible. Numerous trade unions are afraid to supply any kind of information about the perpetrators. However, when the perpetrator is discovered, it appears that most cases of homicide and death threats can be attributed to the paramilitary groups (58% and 98%, respectively). The year 2002 was marked by an increase in the cases attributed to the guerrilla organisations, which were responsible for 40% of the homicides for which the perpetrator was identified, and 66% of the abductions. Collective assassinations are also re-emerging, such as the massacre of seven SIN-TRAINAGRO members, carried out by the FARC in April.

The entire country has been swept by this anti-union violence. Although once again most incidents have occurred in the department of Antioquia (near Medellín), there has been an increase in the number of assassinations in the provinces of Santander, Northern Santander, Magdalena, Valle del Cauca, Putumayo, Arauca, Atlántico, Caquetá and Nariño. Trade unionist in the public sector, teachers and health workers are often the most affected, accounting for approximately 70% of the assassinations registered in 2002. This may be because of their active role in the debate on fiscal adjustment policies and privatisations.

The new government's efforts to centralise power and establish law and order translate in practice as ever-growing restrictions on rights and political freedoms. The 'State of Internal Unrest' serves as a pretext to increase the attacks on trade unionists, and there has been a marked increase in arbitrary arrests, which went from five in 2001 to 132 in 2002.

EVENTS IN 2002**January**

On January 3, Daniel Orlando Gutierrez Ramos, coordinator of the Human Rights Department of the National Drivers' Union (SINDINALCH) affiliated to the General Confederation of Democratic Workers (CGTD), was attacked whilst driving a public transport vehicle; the perpetrator fired two shots from a privately owned car before fleeing.

On January 5, Leonardo Avendaño "disappeared" on the road between Puerto Berrío and Yondo in Antioquia. Avendaño is a trade union activist in the Yondo branch of the Colombian Union of Workers and Employees in the Autonomous Public Service and Decentralised Bodies (SINTRAEMSDDES) affiliated to the General Workers' Confederation (CUT).

On the same day, Carlos Alberto Florez Loaiza, a member of the National Executive Committee of SIN-TRAEMSDDES, received a series of calls on his son's mobile phone, together with strange visits to his father's house by people trying to find out his whereabouts. Finally, his brother was told to inform him that plans had been made to kill him.

On January 8, Carlos Alberto Bastidas Coral was assassinated near the town of Aldana in the province of Nariño; he was a member of the Teachers' Union (SIMANA-CUT) in Nariño.

On January 10, an explosive device was thrown and detonated on the patio behind the home of Sigilfredo Grueso, placing his whole family in serious danger. Grueso is a strong union activist and known for his unfailing participation in all the protests held by the Cali Union of Municipal Workers (SINTRAEMCALI-CUT).

On 10 January, José Homer Moreno Valencia, a member of the Palmira branch of the National Executive

Committee of SINTRAEMSDES, received a written death threat at his home in Palmira (Valle del Cauca).

On January 11, Luis Alfonso Jaramillo Palacios was assassinated in Medellín (Antioquia). He was working on the aqueduct being constructed by public building enterprises in Medellín. Luis Jaramillo was a union delegate in the Medellín branch of SINTRAEMSDES.

On January 12, Carlos Arturo Alarcón Vera, a member of the Antioquia Association of Teachers (ADIDA-CUT), was abducted on his way from Medellín to the Atlantic Coast. On the same day, Enoc Samboni, leader of the CUT-CAUCA was assassinated in La Chorrera (Cauca).

On January 16, María Roperó was assassinated by paramilitaries in Cúcuta (Northern Santander). She was President of the Union of "Madres Comunitarias" (SINDIMACO-CUT) and was recognised for her untiring work in support of human rights, workers, and children. She had previously received several death threats.

On January 29, Carmen Helena García Rodríguez was assassinated after finishing her shift at the Hospital Arredondo Daza, in Valledupar (Cesar). She was Organising Secretary of the Trade Union of Health Workers of Cesar (SIDESC), affiliated to the General Confederation of Workers (CGTD). Her colleague Walter Oñate was killed at the same time.

February

On February 4, Oscar Jaime Delgado Valencia was killed by a shot in the head. He was a member of the FECODE teachers' federation and a teacher at the Colegio Camilo Torres de Armenia (Quindío).

On February 12, teacher Angela María Rodríguez Jaimes was assassinated. She was a member of the Santander teachers' union (SES-CUT).

On February 14, an unidentified armed man fired a shot at the building of the head office of the National Union of Food Workers (SINTRAINAL), in Cali (Valle del Cauca).

On February 21, as the CUT was holding its 31st Executive Committee meeting, the members attending it were intimidated by four men and one woman, who entered the meeting with communication, video and photographic equipment. They identified themselves as members of the military intelligence forces belonging to a brigade based in Bogotá.

On February 25, at 6pm, Gilberto Torres Martínez, General Secretary of the Pipeline branch (SUO) of the Union of Petroleum Workers (USO-CUT), was abducted by paramilitaries, in Monterrey (Casanare).

On the same day, Cecilia Gallego, Women's Secretary on the Executive Committee of "Acción Campesina Colombiana" (ACC), an affiliate of the General Confederation of Democratic Workers (CGTD) was assassinated in La Macarena (Meta).

March

On March 7, Juan Montiel and Emilio Villeras Durán were assassinated. They worked on the Ceiba and Circasia farms and were members of the Ciénaga branch of the National Union of Farming and Fisheries Workers (SINTRAINAGRO), in the province of Magdalena.

On March 11, Eduardo Chinchilla Padilla was assassinated in Puerto Wilches (Santander). He was an activist in the Union of Workers in Palm Oil and Related Industries (SINTRAPALMA-CUT) and worked at the Monterrey palm oil company.

On March 20, Luis Omar Castillo and Juan Bautista Cevallos, members of the Electricity Workers' Union (SINTRAEECOL-CUT), were killed, presumably by paramilitaries, on the road leading to the Electricity Generating Plant of Río Bobo, in Nariño province.

On 22 March, Ernesto Alfonso Giraldo Martínez was assassinated on the road leading from the Río Negro to Medellín (Antioquia). He was an executive member of the ADIDA teachers' association. It is presumed that the crime was perpetrated by the FARC operating in this region.

On the following day, José Orlando Céspedes García, head of the Arauca teachers' association ASEDAR, was

abducted in Pueblo Nuevo on the road to Tame (Arauca). There was still no indication as to his whereabouts at the end of the year.

On March 25, José Pérez and Hernando Silva of the USO were abducted by paramilitaries when on their way to work. They were intercepted in Quebrada La Nata, in Araguaey (Casanare). There was still no indication as to their whereabouts at the end of the year.

April

On April 3, Alfredo Zapata Herrera, a leader of the General Union of Workers from the Construction Materials Industry (SUTIMAC-CUT), Santa Bárbara branch (Antioquia), was abducted by paramilitaries.

On April 5, Arturo Vásquez Galeano, an activist of the Union of Workers and Employees of Antioquia and a popular leader in the province, was abducted when travelling from his workplace in Abejorral to Medellín.

On April 6, Miguel Ángel Rendón Graciano was abducted when travelling from Itsmina to Quibdo City (Chocó). Rendón Graciano is the Vice-President of the Chocó branch of the Sena Public Workers' Union (SINDESENA-CUT). There was no indication as to his whereabouts at the end of the year.

On April 7, Freddy Armando Giron Burbano, an activist of the Cauca Teachers' Association (ASOINCA-CUT), was assassinated on public transport, in el Estanquillo on the Pan-American Highway, leading to El Patía (Cauca).

On April 8, Diofanol Sierra, a leader of SINTRAINAL-CUT and a member of the Popular Women's Organisation (OFP) was assassinated.

On April 9, Oscar Alfonso Jurado, leader of the Yumbo branch of the National Union of Chemical Industry Workers, was assassinated in Cali (Valle del Cauca).

On April 16, Tito Libio Hernández Ordóñez was assassinated in his workplace (Nariño University), in Pasto. He was the President of the Pasto branch of the Union of University Workers and Employees (SINTRAUNICOL-CUT) and a community leader in the La Libertad neighbourhood of Pasto.

On the same day, the Bolívar branch of SINTRAELECOL held a peaceful protest in Cartagena, in front of the administrative head office of the electricity company, Empresa Electricadora de Bolívar. The company's security guards fired shots, injuring Gaspar Guzmán, a member of the National Demands Commission and Ruben Castro Quitana, President of the Bolívar branch of SINTRAELECOL.

On April 26, nine unarmed and defenceless people were barbarically and inhumanely massacred at the Villa Lucía farm in Apartadó (Antioquia). Seven of them were members of SINTRAINAGRO. This crime in the Uraba area was perpetrated by the Fifth Front of the FARC.

May

The march called by the workers of Cali to commemorate May Day was brutally repressed by the police. Jesús Antonio González Luna, a member of the CUT Executive Committee and coordinator of the Rights Department was severely beaten. At the May Day demonstrations in Yumbo (Valle del Cauca), Henry Alberto Mosquera and Ricardo Valvuená, members of the Yumbo Municipal Workers' Union were also injured.

On the same day, unidentified gunmen assassinated Aicardo Eliecer Ruiz, President of the Workers' Union of Bello Municipality in Antioquia province.

On May 6, Froilan Pelaez Zapata of the ADIDA teachers' association was assassinated in Medellín. He was also a member of the Executive Committee of the CUT-Antioquia branch.

On May 21, posters were distributed in some universities and at the Public Prosecutors Office denouncing the "José Alvear Restrepo" Lawyers' Collective for its handling of the case surrounding the attempted assassination of trade union leader Wilson Borja, which took place in December 2000. A series of false accusations were made, threatening the integrity and security of the Collective. Among the accusations were claims that the Collective was the legal arm of the ELN and was linked to drug trafficking, that it bribed legal bodies, and was waging an international campaign to discredit the Armed Forces and the image of the Colombian

State. The Lawyers' Collective is a recognised human rights organisation that plays an important role at national and international level, including in the area of trade union rights.

Since May 30, Hernando Hernández Pardo, President of the USO (Oil Workers Union), has been receiving almost daily death threats directed at him and his family. The threats started after a meeting at which the workers approved the strike call to protest against the labour and pensions reform.

June

On June 1, in Tuquerres (Nariño), Jairo Ramos, a member of the Tuquerres branch of SINTRAELECOL and an employee at the Empresa Centrales Eléctricas de Nariño (CENENAR-ESP) power plant was assassinated by a group of men who identified themselves as members of the AUC.

On the same day, in Villavicencio (Meta), Adalberto Tukamoto Palomino, an activist of the Meta branch of SINTRAELECOL was assassinated with his brother and a female friend. He worked at the Electrificadora power plant in Meta and had previously served on the union's Executive Committee.

On June 4, Isaías Gómez Jaramillo, a member of the ADIDA teachers' association, was found dead in Medellín.

Also on June 4, Eduardo Vasquez, Treasurer of the Magdalena branch of SINTRAELECOL, was assassinated by men on a motorbike in Santa Marta (Magdalena).

The following day, Jhon Jairo Alvarez Cardona, member of the National Executive Committee of the Textile Workers' Union (SINTRATEXTIL-CUT), was shot in Rionegro (Antioquia), while he was with his family. He was seriously wounded and taken to the San Juan de Dios regional hospital, where he died the following day.

On June 9, a letter bomb was sent to the office of the Yumbo Municipal Workers' Union. The bomb was deactivated.

On the night of June 12, Elias Mejía Villareal was assassinated in Puerto Wilches (Santander) by a group of men who came to his home and shot him several times. Elias Mejía Villareal was an executive member of SINTRAPALMA. The same night, the same men went to Roberto Rodríguez' house to kill him. As he was not there, they left a message threatening to kill him if he did not leave the region immediately. Rodríguez is the General Secretary of SINTRAPALMA which had gone on strike on March 1 after the period of direct negotiations and the 45-day extension on negotiations had expired.

On June 12, Carlos Julio Gómez, a leader of the Municipal Association of the Joint Action Committee of La Plata (Huila), and a member of the CGTD, was killed on the way to his farm in La Plata. On the same day, Helio Rodríguez Ruíz was assassinated. He was a leader of the National Union of Restaurant, Hotel Trade and Associated Workers (HOCAR-CGTD), Barrancabermeja branch (Santander).

On June 14, Victor Veleño Barrera was abducted by the ELN in El Playón (Santander). He is the district attorney of El Banco (Magdalena), and a member of the National Association of Legal Officers and Employees (ASONAL-CUT).

On June 17, Cesar Blanco Moreno was assassinated in Bucaramanga (Santander). He was the leader of the Bucaramanga branch of the USO. He had received a death threat from the AUC and had been the victim of an assassination attempt in 1998.

On June 18, three men tried to abduct the 4-year-old daughter of William Mendoza, President of the National Union of Food Industry Workers (SINALTRAINAL), Barrancabermeja branch.

On June 20, Luis Enrique Coiran was assassinated in Tame. He was the President of the Tame branch of the National Health Workers' Union, ANTHOC (CUT). Luis Enrique Coirán was with his eldest son and another trade union leader. He had been receiving death threats since the civic strike held in Tame in February. He was also involved in various activities in defence of human rights.

July

On June 26, Roberto Rojas Pinzón, also a member of ANTHOC, was assassinated in front of the La Prevención farm, on the road leading to Arauca (Arauca).

On June 29, Manuel Antonio Fuertes Arévalo, former Vice President of the Tuquerres branch of SINTRA-ELECOL-CUT, was assassinated in Tuquerres.

On July 2, José González Barros, an activist of the Public Officers and Employees of the Sabanagrande Local Authorities Union (SINTRAOPUSA-CUT), was murdered by unknown assassins in Sabanagrande (Atlántico).

On July 4, Alberto Herrera, Pedro Barrios, Eleazar Becerra and Salvador Vásquez, all members of SINTRA-ELECOL and workers at TRASELCA S.A. E.S.P. in Barranquilla (Atlántico), were abducted in Fundación (Magdalena).

On July 7, the AUC issued a death threat to SINTRA-ELECOL members. The threat was sent by e-mail to the Electricidad de Colombia company.

On July 8, the head office of SINTRA-ELECOL in Bogotá was attacked when several people fired shots at one of the armoured windows.

On July 9, Jorge Amiro Genecco Martínez, a member of ANTHOC, was abducted by a group of unknown people in front of the La Samaritana Hospital, in Bogotá.

On July 30, Gonzalo Ramírez Triana, an employee of ECOPETROL and a member of USO was abducted on the way to Villeta station in the town of Villeta (Cundinamarca). On the same day, Rodrigo Gamboa Coy, President of the Cesar branch of the INCORA Workers' Union (SINTRADIN-CUT) was assassinated in Valledupar (Cesar).

On the following day, at 7 a.m., Wilches Wilfredo Camargo Aroca was assassinated in Puerto. He was the Secretary SINTRAINAGRO's Demands Committee. On the same day, Alonso Pamplona, of the USO Demands Committee was abducted in Sabana de Torres (Santander). He was released the following day with four gunshot wounds.

August

On August 7, Edinson de Jesús Toro Gaviria of the ADIDA teachers' association was assassinated in Ituango (Antioquia).

On 13 August, trade union leader Omar Romero Díaz, head of Legal Affairs and a member of the Human Rights Collective of the General Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), was attacked in Cali. He was injured and later hospitalised. The following day, Delio Gómez, was assassinated in Cali. He was a member of UNIMOTOR (car workers' union) and served on the union's Demands Committee.

On August 15, Felipe Santiago Mendoza Navarro was assassinated in Tibu (Santander). He was a member of USO. On the same day, Amparo Figueroa was also assassinated in Miranda (Cauca). She was a member of ANTHOC. She worked at the Miranda Hospital, where she had been transferred 10 months earlier, to protect her from the constant death threats received from paramilitary groups. Also on August 15, Francisco Mendez Díaz was assassinated by paramilitaries on the road leading from the town of Chalán to Sincelejo (Sucre). He was a member Sucre Teachers' Association (ADES). On the same day, Blanca Ludivia Hernández, Vice-President of the National Health and Social Security Union (SINDES) was found dead in Córdoba (Quindío). She had been abducted the week before. Her body showed signs of torture.

On August 16, the house of Jesús Antonio González Luna, head of CUT's Human Rights Department, was searched by army troops from the Third Brigade, who claimed to be looking for subversive propaganda and arms.

In the morning of August 20, 27 people were abducted in a district of Valle de Bahía Solano (Chocó). They included various retired and current workers of the Cali Workers' Union, STMC, as well as their friends and relatives.

On August 21, the Risaralda branch of SINTRAESMEDES received a death threat by registered post from the Calarcá Cacique Bloc of the AUC. It referred to various trade unionists by name, including Gerardo Santibañez Potes, former President of the Risaralda branch and current Secretary of Education and Culture. On August 24, the Risaralda Teachers' union (SER) received a pamphlet by fax signed by the same paramilitary group, ordering them to leave the region within 15 days. The following trade unionists received direct threats: Diego Osorio, President of the Risaralda branch of CUT; Carlos Valencia, Treasurer of Risaralda branch of CUT; Aidé Trujillo, President of SER; Rodrigo López, Vice-President of SER; Vicente Villada, Treasurer of SER, and other human rights defenders. The threats against the trade unionists came as their organisations were preparing to present their case against the labour and social security reforms.

On August 31, Adolfo de Jesús Munera López, leader of SINALTRAINAL and former Vice-President of the CUT–Atlántico branch was assassinated in Barranquilla.

At the end of August, paramilitary groups issued death threats to one of the historic leaders of the Colombian rural communities, Gerardo González Muñoz, who is a member of FENSUAGRO-CUT and the National Board of Campesino Organisations (CNC).

September

On September 5, Cesar Gómez, President of the Pamplona branch of SINTRAUNICOL was assassinated in Pamplona (Northern Santander). His wife, who was with him at the time, was seriously injured.

On September 6, Oscar de Jesús Payares, a member of the Atlántico Teachers' Association (ADEA) was assassinated in Barranquilla. An attempt was also made on the life of Antonio Pérez, a member of the same union, by a group of men on two motorbikes. In the evening, the same group attacked four teachers who had just come out of their classes in El Bosque neighbourhood. One of them was killed, another seriously injured, and two escaped without injury.

On September 7, Alfonso Morelly Zárate, a member of the Magdalena branch of the University Professors Union (ASPU) was assassinated in Santa Marta (Magdalena). On the same day, Luis Eduardo Velez Arboleda of the ADIDA teachers' association was assassinated in Caldas (Antioquia). Paramilitaries from the "Calima" Front sent a communiqué to the media declaring that the leaders of a trade union and social movement in the southwest of Colombia were also military targets. They stated that they were not prepared to allow the communities to take part in the action organised by the movement, and that if they did so, they would also be declared military targets.

On September 9, Gema Lucía Jaramillo, a teacher and a member of ADIDA, was assassinated in San Andrés de Cuerquia (Antioquia). On the same day, Miguel Lora Gómez, a member of the Executive Committee of the Colombian Workers' Confederation (CTC), was found at his home with knife wounds. Also on the same day, Domingo Tovar Arrieta received a death threat by telephone at his office in Bogotá.

On September 11, the AUC paramilitary group issued death threats against workers and trade unionists of the ENELAR ESP power plant in Arauca, under the pretext that some trade union members and leaders are linked to subversive groups. Prior to these threats, on July 6, the AUC had already issued death threats against 150 workers.

On September 12, Raul Herrera, a trade union leader from the Sumapaz region was detained by the army in Fusagasuga (Cundinamarca) for backing the strike held on September 16.

On September 15, Ruben Robles, General Secretary of the Departmental Sugar and Agriculture Union, and a leader of FENSUAGRO were detained by the army in Chalán (Sucre).

The government severely criticised a strike called for September 16 and prohibited workers' marches on that day. The Labour Minister stated that the marches were being prohibited as they had information that guerrilla groups had infiltrated the workers' movement. The Minister of Defence added to these statements, reaffirming that guerrilla groups were behind the strike. Members of the police force and national army violently attacked the demonstrators and arrested the numerous people participating in the events held throughout the country. In addition, paramilitaries issued a series of death threats, such as that sent to the Cauca branch of the CUT threatening the leaders in Cauca Valley. Mauricio Rubiano, Secretary of the Youth section of the Human Rights Department of the CUT, was detained in Bogotá. He was released after being subjected to mistreatment and moved to various different places, just as the judicial authorities were about to open proceedings.

On September 17, Henry Ocampo, President of the Caldas Workers' Federation (FEDECALDAS) and Branch Secretary of CUT–Caldas, was approached in Manizales (Caldas) by unknown men reiterating the death threats against him and the other trade union leaders who are on a list of the people to be killed by the paramilitaries.

On September 19, the Cartagena branch of SINALTRAINAL received a telephone threat from the AUC. A few days prior to the threat, a meeting had been held to elect the rapporteurs and negotiating committee for the list of demands to be presented to the management of EMBOROMAN S.A. Coca Cola-Costa Norte.

On September 20, Otoniel Ramírez, President of the Valle del Cauca branch of CUT, Oscar Figueroa and Angel Tovar, leaders of SINTRAEMCALI were illegally detained in a military lockup of the National Army and the National Police in Santander de Quilichao (Cauca). They had been carrying out solidarity work in the area, providing the rural and indigenous communities with food.

October

On October 7, Helmer de Ávila Arias, was assassinated by unknown assailants close to the school where he taught in the Carrizal neighbourhood in Barranquilla. He was a member of the ADEA teachers' association. On the same day, in Medellín, Jorge Humberto Marín Henao, President of the Medellín Municipal Workers' Association (ADEM) was assaulted. He had been receiving threats by telephone at the trade union office for approximately two months. On October 2, he was given 20 days to leave the city.

On October 10, teachers Eduardo Jose Iglesias and Jose Mena Álvarez, activists from ADEA, were attacked with firearms in Barranquilla (Atlántico).

On October 15, Ramón Urrea, Horacio Zuluaga, both members of SINTRAEMSDDES, and Mary Cielo Pérez Arbelaez, of ADIDA, were assassinated in San Carlos (Antioquia).

On October 22, Victor Manuel Jiménez Fruto, Vice-President of the Agricultural Workers' Union of Atlántico province (SINTRAGRICOLAS), disappeared in Ponedera (Atlántico).

On October 28, Oscar David Polo Charis, a member of the Magdalena Teachers' Union (EDUMAG), was assassinated in Pivijay (Magdalena).

November

On November 1, Carlos Peralta, Treasurer of the Guajira branch of SINDESENA, was assassinated close to his home in Riohacha (Guajira).

On November 7, Hermes Daniel Mercado, a member of ADEA, was assassinated in Barranquilla (Atlántico).

On November 23, Jairo Vera Arias, a member of SINTRADIN, was assassinated in Bucaramanga. One week earlier, Vera Arias had told his wife that he had been involved in a dispute with a farm owner in the Barrancabermeja area.

December

On December 18, five people in civilian dress and bearing arms attacked USO trade union leader Nicodemus Luna while he was at the 'Sur Centro' shopping centre in Cali. Without saying a word, they threw him to the ground, kicking him and verbally abusing him. The perpetrators of the assault identified themselves as mem-

Repression of SINTRAEMCALI workers

bers of the GAULA (Anti-Extortion Unit) of the Army's Third Brigade and arrested him. There was no news of his whereabouts for several hours in spite of the numerous calls his family made to GAULA, human rights organisations, and the citizens' defence bureau. A few hours later, the Army's Third Brigade finally admitted that Luna was being held in their premises.

During the 36 days' defence of the Municipal Enterprises of Cali (EMCALI EICE), various threats were sent to the trade union head office and three armed individuals were arrested who were watching the EMCALI building where the workers were meeting. The attacks on members of this trade union have been particularly severe since the start of the privatisation process.

On February 11, Julio Galeano, a community leader and former worker at EMCALI EICE, was assassinated as he left his house accompanied by his wife. The two of them were assaulted by three men who detained Galeano and shot him several times, leaving him dead. His wife, who is also a union activist, managed to escape.

On the night of May 18, two men tried to abduct Orlando Arenas Marín while he was in a public building in the town of Florida. When he resisted, he was murdered.

On the night of June 16, Luis Enrique Imbachi, acting President of SINTRAEMCALI, received a death threat from a person on a motorbike as he was travelling in the car allocated to him by the Protection Programme of the Interior Ministry.

On September 3, various trade union members were attacked at a meeting. A highly destructive bomb, causing serious damage, exploded on the premises of the publicly owned company Bodega Navarro de la Gerencia de Acueducto y Alcantarillado, where trade unionists regularly hold meetings. The trade union leaders were filmed and photographed by a man as they inspected the damage caused by the explosion.

On October 1, several members of the trade union were injured by tear gas bombs and explosives thrown by the police and army. The workers of the three EMCALI plants were brutally assaulted by government forces during the Permanent Assembly held to address the new privatisation plans threatening Cali's municipal companies and the government's breach of the agreements signed on January 29. A group combining forces of the National Police and Army entered the meeting throwing tear gas bombs and explosives that wounded two workers. Three others had to receive medical treatment after suffering from asphyxia. Workers protesting in various parts of the city met with extreme violence from the state security forces.

Costa Rica

POPULATION : 3,900,000 / CAPITAL : San José / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Restrictions and political pressure on trade unions have continued in Costa Rica. Private-sector employers are extremely hostile towards trade unions, particularly in the banana plantations. Collective bargaining is virtually non-existent in the public sector. The ILO's Technical Assistance Task Force confirmed the complaints from workers about the lack of any real freedom of association.

THE LEGISLATION

The law specifies the right of workers to join unions of their choosing without prior authorisation.

Only a very limited group of trade union representatives are protected from dismissal. There is no legal obligation on an employer to prove grounds for the dismissal of workers covered by trade union immunity.

The law sets out complicated administrative procedures for the reinstatement of trade unionists claiming unfair dismissal. The national labour inspectorate (DNIT) has to examine the case and certify a violation. If the violation is not certified, a preliminary hearing has to take place before the case can go to the judicial authorities. The labour inspectorate certifies the wrongdoing and brings charges. There are no guarantees of reparation for any damages caused, and there is no legal mechanism to oblige an employer to comply with a court order to reinstate a worker.

Foreign nationals are prohibited from holding office or exercising authority in trade unions. Agricultural and stock-raising enterprises which employ no more than five workers on permanent contracts are excluded from the scope of the Labour Code.

Unions may form federations and confederations and affiliate internationally.

Strikes are permitted in the private sector, provided that strict requirements are met. At least 60% of workers at the enterprise must support the strike. The unions have to draw up lists of names to prove this which, they fear, could be used for dismissals in the event that the percentage falls below 60%. Furthermore, lengthy legal procedures must be followed. Strikes are banned in railway, maritime and air transport as well as in animal husbandry and forestry.

The Constitution and the Labour Code restrict the right of public sector workers to strike. In March 2000, the Constitutional Chamber of the Supreme Court ruled that public sector strikes may be allowed only if a judge approves them beforehand and finds that "services necessary to the well-being of the public" are not jeopardised.

Collective bargaining is also restricted in the public sector. A Constitutional Court ruling of May 2000 declared collective agreements concluded in certain public bodies and institutions unconstitutional.

Specifically, workers from 52 municipalities, universities, the highways department, Education Ministry teachers and all administrative employees, refuse collectors etc. were deprived of the right to bargain collectively.

Through its Ministerial Directive No. 54 of February 25 2002, the government required enterprises employed by the State to respect labour legislation fully, reserving the right to cancel contracts where they failed to do so.

On March 12 2002, the government submitted a draft Labour Reform Act for approval by the Upper Chamber (Consejo Superior), which proposed amendments to collective bargaining in the public sector and measures to promote increased labour flexibility. The proposal, which is currently still under discussion, was strongly criticised by union organisations since it violated previous agreements and failed to include reforms recommended by the ILO's Technical Assistance Task Force at the end of 2001.

RIGHTS IN PRACTICE

Various reports have confirmed the continued serious extent of anti-union practices in 2002 and the lack of interest on the government's part towards meeting its international obligations, particularly vis-à-vis the ILO.

The effective exercise of trade union rights is made very difficult in practice. The citizens' hearing on the quality of democracy in Costa Rica, under the 2001 State of the Nation Project, demonstrated that the country was failing to ensure freedom of association in various areas, particularly in the private sector and, above all, in the banana industry and the free trade zones. The hearing came up against proof of systematic limitations on freedom of association and constant complaints to the Ministry of Labour regarding anti-union harassment. At the end of 2001 an ILO Technical Assistance Task Force carried out a thorough investigation of freedom of association in Costa Rica. The task force concluded that there were considerable deficiencies with respect to effective protection of labour legislation, both on freedom of association and collective bargaining and in the public as well as the private sector.

The trade unions have long complained that private sector employers refuse to recognise them and dismiss workers who seek to join a trade union. Such behaviour, although illegal, is tolerated by the authorities and sanctions are too mild to be dissuasive. Given the complex procedures involved, seeking the reinstatement of workers who have been unfairly dismissed takes an average of three years, long enough to remove a trade union. The DNIT usually takes longer than the maximum two month period foreseen by the Constitutional Court to certify a violation. When a trial eventually takes place, it can be several years before a verdict is reached.

Collective agreements in the public sector

Some collective agreements are tolerated and considered constitutional, but there are cases where certain clauses have been eliminated because they were considered too advantageous for the workers. The Ombudsman presented a complaint on the grounds of unconstitutionality to the Constitutional Court against five articles of the collective agreement negotiated between Costa Rica's national oil refinery RECOPE and the oil, chemical and allied workers' union, SITRAPEQUIA. The court ruled on August 30 2000 that the clauses provided advantages that were disproportionate in terms of equity and the standards and duties of the public service. This was a collective agreement that had been signed in 1969 and regularly renewed without problem. Similarly, articles from the collective agreement covering workers at the National Bank were withdrawn. The unions have pointed out that this decision set a dangerous precedent which could be applied to other existing collective agreements in the public sector, further weakening collective bargaining rights.

The ILO Task Force came to the conclusion that the Constitutional Court rulings excluding collective bargaining rights for public sector employees were in breach of ILO Convention 98. It considered that the Court has exceeded its competence by declaring certain clauses in the RECOPE Collective Agreement unconstitutional. Subsequently, the ILO's Committee on Freedom of Association expressed its "deep concern at the current situation with respect to collective bargaining rights in the public sector, which are in serious breach of Convention 98", when responding in March 2002 to the complaint about collective bargaining restrictions and anti-union practices submitted by the Association of Employees of the University of Costa Rica (SINDEU), the Union of Medical Professionals of the Costa Rica Social Insurance Fund and Allied Institutions (SIPROCIMECA) and the Union of Education workers of Costa Rica (SEC).

Solidarist associations

One of the biggest obstacles to the free exercise of trade union rights is the deeply-embedded culture of "solidarismo". Created initially in the 1940s to counter the success workers' organisations were then enjoying, the associations provided workers with certain advantages. In exchange, they promised not to strike and to avoid other forms of confrontation. Theoretically, these associations should not carry out activities that are the sole prerogative of trade unions, and membership is voluntary. The reality is very different. Claiming to uphold a national ideology that is opposed to the "foreign" concept of trade unionism, employers try to dismantle the unions to set up the more malleable solidarity associations. Reports from previous years have shown that the Ministry of Labour and Social Security divulged information to employers about trade unions that had just been created, allowing employers to set up solidarist associations to counter them.

Collective bargaining virtually non-existent in the private sector...

In the private sector, collective bargaining has been reduced to a bare minimum. The low level of union membership in the wake of employer repression is partly responsible for this, compounded by the employers' preference for negotiating with solidarist associations. A 1993 law was supposed to have limited the ability of these associations to undermine unions' bargaining rights, but it does not go far enough. The courts can be very slow when dealing with the cancellation or non-respect of collective agreements.

Instead of collective agreements there are many 'direct arrangements' with non-unionised workers who are grouped together in "permanent workers' committees". The legislation allows for the creation of such committees provided there is a minimum of three workers, whereas for a union to be recognised as a bargaining unit it must have a minimum of 12 workers. The unions have been critical of the fact that in most cases

these 'direct arrangements' are favoured by employers as a means of avoiding the creation of trade unions and promoting solidarismo.

Banana industry

The banana industry is one of the worst violators of trade union rights. In recent years there have been many cases in which falling prices on the banana market have been used as a pretext for the widespread dismissal of unionised workers, who have been harassed and blacklisted.

Export processing zones

Unionised workers in export processing zones also face harassment and unfair dismissal. The ratio of one labour inspector to 30,000 workers in 1999 has improved to one for every 9,000 today, but that is still insufficient to tackle the number of unfair dismissal cases.

EVENTS IN 2002

Conflict in the banana industry

350 employees of the banana multinational Chiquita went on strike in August in protest at changes in working conditions that had been introduced arbitrarily by the company. The company asked for strike calls to be declared illegal and considered sacking the workers.

Persecution of trade union leader

On September 26 disciplinary proceedings were launched against José Luis Vargas Arias, local branch leader of the National Bank and Social Security Employees' Union (UNDECA) at the Dr. Carlos Luis Valverde Vega Hospital in San Ramón. José Luis Vargas Arias was threatened with dismissal. He had testified before the city council about various administrative irregularities at the hospital, particularly relating to the disappearance of the specialist team responsible for providing health services to local citizens. The hospital management initiated a disciplinary procedure to intimidate the trade union leaders and silence complaints of administrative irregularities.

Agreement on labour cooperation between Costa Rica and Canada

On November 1 the labour cooperation agreement between Costa Rica and Canada came into force. It aims to protect workers' rights, monitor the application of international legislation on freedom of association and collective bargaining, and eradicate forced and child labour. This agreement forms part of the free trade agreements with Canada.

Cuba

POPULATION : 11,224,321 / CAPITAL : Havana / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



The Cuban government has continued to persecute independent trade unionists. The long promised reform of the island's labour legislation has still not materialised.

THE LEGISLATION

A single union

The Cuban authorities only recognise a single national trade union centre, the Central de Trabajadores Cubanos (CTC). This is heavily controlled by the State and the Communist Party, which appoints its leaders. The government explicitly prohibits independent trade unions.

Collective bargaining

The Labour Code requires that in order to be valid legally, collective agreements must be discussed and approved in workers' meetings and be formally declared in writing and signed by the parties. Any modifications or additions must be approved in workers' meetings and signed by the parties, i.e. by the employing body as well as the trade union organisation.

The State controls the employment market and decides pay and working conditions in the state sector. In the private sector, the 1995 Foreign Investment Law requires foreign investors to contract workers through state employment agencies. The investors pay the agencies in dollars, but the agencies pay the workers the equivalent figure in pesos, pocketing up to 95% of their salaries. Workers have to undergo a political investigation by the State before they can be hired.

The right to strike is not authorised by law and is totally non-existent.

The government has still failed to act on promises to reform the Labour Code.

RIGHTS IN PRACTICE

Legislation and actual practice in Cuba fail to comply with international labour standards in many areas, despite the fact that the government is required to promote and comply with such standards. While unemployment stands at just 3.3%, the reality of the labour situation in Cuba is totally at odds with standards guaranteeing minimum trade union freedoms and rights.

Trade unions persecuted

While independent trade unions do exist, the government obstructs their activities, chiefly via the restrictions set out in the 'Associations Act' (Ley de Asociaciones). Anyone who joins an independent union runs the risk of being persecuted and losing their job. Independent labour activists are periodically arrested, harassed, threatened with prosecution and pressured to go into exile.

EVENTS IN 2002

Independent trade unionist arrested

On February 12, Luis Torres Cardosa, a union activist and representative of the National Independent Workers Confederation of Cuba (CONIC), was arrested by three police officers at his home in Guantánamo province and taken to Unit 1 of the National Revolutionary Police (PNR), where he was interrogated.

The arrest came in response to Luis Torres Cardosa's activities on February 5, when, along with more than 60 other people, he protested against the government-sponsored eviction of a family from their home.

Trade union meeting disrupted

On September 6 CONIC held its second national assembly amidst reprisals by the regime. The political police organised a brutal operation to prevent CONIC from holding the meeting, threatening to charge CONIC's leaders with instigating revolt if any demonstrations were held in the area around the meeting venue. The police also stopped anyone trying to enter the building, demanded their ID and asked the purpose of their visit. They also prevented unionists from gaining access to the meeting, in some cases using violence to expel them from the area around the building.

Hospital in Havana closed following report by independent trade union

On December 15, following a report by workers in the Independent Health Union (a CONIC member), the provincial directorate of the Ministry of Public Health ordered the immediate closure of the Lebrado Maternity and Children's Hospital, located next to the Julio Trigo General Teaching Hospital in Havana.

On December 4-5 the union's executive committee held a meeting with workers at the hospital. They signed a document in which they blamed the government for the potential consequences of a major industrial accident caused by the critically deteriorating condition of the hospital.

Dominican Republic

POPULATION : 8,721,594 / CAPITAL : Santo Domingo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



There were no improvements in the trade union rights' situation in the export processing zones or on the sugar plantations. The legal system is so corrupt that recognised workers' rights are flouted.

THE LEGISLATION

Legislation applying to trade unions

All workers are free to organise. Unions are legal once they have been registered by the Labour Ministry. If the government fails to act on a registration application within 30 days, the applicants may declare it in default over the next three days and the following day the union is automatically recognised. Unions may form federations, which may in turn form confederations, but both processes require the support of two-thirds of their members in a general meeting. There are some restrictions, however. Civil servants may, for instance, only form a union if at least 60% of the employees of a given governmental body agree to join. Employees of independent and municipal state bodies are also excluded from the Labour Code. The laws and regulations governing these bodies contain no provision on trade union freedoms. The minimum number of members of a union is 20.

Restrictions on the right to strike

Strikes can only be called if a majority of employees, whether or not they are trade union members, vote in favour of action. There must have been a prior attempt to resolve the conflict through mediation, written notification to the Ministry of Labour and a 10-day waiting period following notification before going ahead with the strike.

People working in key public services and state-employed civil servants are not allowed to strike. Once a strike has been declared illegal, the employer can terminate the contracts of those workers involved without any further responsibilities, unless the illegality ruling was for procedural reasons or the workers return to their posts within the 24 hours following the ruling.

RIGHTS IN PRACTICE

While labour legislation is extensive, its practical application is inadequate for various reasons. Most importantly, because justice is administered by judges and magistrates who are political appointees and tend to be in league with employers, who themselves enjoy impunity when violating workers' rights because of ineffective sanctions.

The country has 16.1% unemployment and approximately 32% of the population are living below the poverty line. Over half of all workers are unable to join unions because they are peasant farmers, "independent" workers, unpaid employees of family businesses, employees of micro-firms, illegal immigrants, sub-contracted workers or employees in the informal economy.

In addition, since over 58% of officially employed workers are working for the state, the right to strike is very limited.

Export processing zones

Although the Labour Code does apply in the EPZs, the government has made no real effort to ensure that labour legislation is enforced. Employers refuse to recognise trade unions and in some cases, such as the Santiago EPZ, distribute blacklists of union activists to prevent them finding a job. Workers are often reluctant to form trade unions for fear of physical harassment and dismissal. Working conditions in the EPZs are frequently deplorable, with unpaid overtime and the need to ask for permission to go to the rest room. Employers only rarely comply with the decisions of the industrial tribunal when it rules against them.

In the Santiago EPZ storm-troops were used regularly to dissuade workers wishing to join a union. They are paid and protected by some employers to quell any workplace organisation initiatives, as part of a method termed "buying and selling of union protection" ("venta y compra del fuero sindical").

Appalling conditions in the sugar plantations

The privatisation of former state-run sugar companies has heavily undermined trade union rights, as private employers are usually reluctant to recognise unions, and in the past union leaders have been unfairly dismissed. Working conditions are often appalling, with low pay, long hours and deplorable sanitary conditions.

Haitian workers

Many workers in the sugar cane fields and elsewhere are Haitians. They are often in the country illegally, and therefore cannot join unions. This cheap source of labour is exploited by employers in conditions of near slavery. Such exploitation also applies to Dominicans of Haitian descent, many of whom are expelled from the country by the police authorities regardless of their dual nationality. Those expelled are not even allowed to claim any unpaid wages they are due.

EVENTS IN 2002

Violations in export processing zones

In December, the Federación Nacional de Trabajadores de Zonas Francas (FENATRAZONAS = National Federation of EPZ Workers) denounced the failure of the Asociación Dominicana de Zonas Francas (ADO-ZONA) to honour an agreement providing for the "well-being of the workers" in the EPZs and the "adaptation of working time", signed in October 2001. Amongst other things, the agreement provided for the re-launching of the Tripartite Commission, respect of freedom of association and free collective bargaining, the banning of the organised gangs in Santiago from negotiating the prevention of workplace organisation, and many other social benefits.

Santiago export processing zone

On September 10, the firm Ramsa C POR A in the Santiago EPZ sacked all the officials and members of the union, including three pregnant women, while the union was preparing for collective bargaining. Various managers from the company threatened the workers, including with firearms. When action was taken to get the trade unionists reinstated, the firm hired people to visit the workers' homes on daily basis and offer money in return for giving up their demands.

The Industrias Femar company, which also has its site in the Santiago export processing zone, sacked all the officials and members of the union, and constantly threatened those expressing sympathy with the union.

Other export processing zones

The firms K&S and SDC, located in San Pedro de Marcorís, sacked a number of workers who had joined a union, in order to reduce the union's recruitment figures so that it would not meet the requirements of the Labour Code. HIJ S.A., another firm in the EPZ, preferred to close down its activities in order to avoid its obligations and destroy the union.

Similarly, the company Bibong Apparel, Corp., from the Bonaó EPZ, decided to close down, in order to annul the collective agreement and try to get rid of the union.

The firm Saradona Manufacturing sacked a group of workers, when it learnt that they were setting up a union and had denounced certain violations of the rights of minors and some cases of sexual harassment in the company.

Ecuador

POPULATION : 12,400,000 / CAPITAL : Quito / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



While the right to form unions is protected by law, enforcement is weak. Anti-unionism is rife, notably in the banana sector, where trade unionists were violently attacked in May.

THE LEGISLATION

The Constitution and Labour Code provide most workers with the right to form trade unions, with the exception of the police and public sector employees in non-revenue producing entities.

Obstacles to forming a trade union

Workers in State institutions can only be represented by a single trade union organisation. The Civil Service and Administrative Careers Act prohibits civil servants and public service workers from forming trade unions.

A minimum of 30 workers is required to form a union. As 60% of enterprises in Ecuador employ less than 30 workers, one million workers are effectively excluded from organising. Unions are recognised once they have notified the employer that the union has been formed with the signatures of at least 30 founding members. Union members pay 0.5% of their salary to the union – but only from the time that a collective agreement is signed. To form a works council, 50% plus one of the workforce is needed. A works council can be dissolved if the affiliates represent less than 25% of the workforce. Furthermore, workers have to be of Ecuadorian nationality to sit on a union executive.

Right to strike virtually non-existent

The right to strike is virtually non-existent in the civil service. The Constitution stipulates that it is prohibited to paralyse activities in the public sector and in particular health, education, justice, social security, transport, the water service, the electricity supply and fuel distribution. Those breaching this rule are liable to between two and five years in prison.

In the private sector strikes can only be called at enterprise or factory level. The law further restricts this right for a whole range of sectors by prohibiting the paralysis of the enterprise for a period of 20 days from the day the strike is called. During this time, workers and employers have to agree on how many workers must ensure a minimum service, which must not be less than 20% of the workforce. If after this period the employers and trade unions have not reached agreement, the General Directorate of Labour takes the final decision. Before calling a strike, 50% of workers in the enterprise, including non-union members, must vote in favour.

The law prohibits federations and confederations from calling strikes. Solidarity strikes and boycotts are restricted to a maximum of three days.

Limitations on collective bargaining rights

The Civil Service and Administrative Career Act prohibits collective bargaining for public service workers. While teachers can bargain at the national level, the act prohibits them from negotiating locally or at the work place, although in reality they do. For all other workers, they are only allowed to belong to a union if they manage to form an ad hoc committee representing more than half the workforce.

When collective bargaining takes place in the public sector, the government may be both negotiator and decision-maker, since if the two sides do not reach consensus on the content of a new collective agreement, the decision goes to the Conciliation and Arbitration Tribunal. This court consists of two representatives of the employer, two of the government and two of the workers. Its decision is final.

RIGHTS IN PRACTICE

Management practices used to impede organising

The national trade union centre CEOSL reports that in over 90% of private enterprises where trade unions exist, management seeks to reduce the unions' influence by setting up solidarismo-style associations.

The unions also complain of the Labour Ministry's slowness in registering trade unions' statutes, thereby giving the employers time to get rid of the union.

When a union is set up on the basis of about 30 members, but those 30 members represent less than half the workforce, they need to set up a works council immediately, (representing a majority of the workforce). Otherwise, the employer may take the initiative and encourage the workers to join a "works council" loyal to the employer. If this works council has more members than the union, the union will have no power in the workplace.

It is also common practice for employers to fail to declare employees to the social security authorities, thereby avoiding having to pay their social security contributions – even if they have deducted them from the employee's pay packet. Not only are the employees deprived of social security cover, they are not officially recognised as permanent employees and are therefore denied their organising and collective bargaining rights.

Another very common practice in Ecuador consists of sub-contracting. Employers implement a roster system for the workers in a series of sub-contracting firms, enabling them to exploit the workers more easily without offering them any job security. Workers may be dismissed without compensation. It is therefore difficult for the workers to fight for their rights, as they do not know their direct employer.

Other practices, such as the extensive use of short term contracts, and the fact that the penalties provided by the law against employers who violate the labour legislation are insufficiently dissuasive, impede the workers from enjoying their legally protected right to organise.

EVENTS IN 2002

Presidential elections were held on November 24, resulting in victory for the left-wing candidate and former putschist Colonel Lucio Gutierrez. During the election campaign Gutierrez had promised labour reforms and the enforcement of constitutionally guaranteed workers' rights. He was due to take office on January 15 2003.

Union members dismissed following strike

On February 25, about 1,500 workers of the La Teresa, Rey Rancho 1 and 2, Yanayacu 1 and 2, La Nueva, and Zapotal banana plantations, properties of the Division Agrícola Industrial Bananera Alamos S.A., owned by Alvaro Noboa Pontón, engaged in a one day strike. They were protesting against the non-payment of overtime rates, the fact that the employer had not sent their social security contributions to the Ecuadorian National Insurance Institute (Instituto Ecuatoriano de Seguridad Social – IESS) although these had been deducted from their salaries, unfair dismissals, ill-treatment, and the non-respect of labour rights. They also called for their new union, the General Union of Plantation Workers, to be recognised. The management's immediate response was to fire eight union leaders. Union supporters subsequently began signing up to the union in their 100s, and filed for legal registration of the union. On March 8, management retaliated with further dismissals, sacking a total of 124 workers and replacing them with workers on short-term contracts.

New banana workers' trade unions officially recognised

On April 26, three unions – representing 1,000 workers – one for each of the contracting companies that manage the Los Alamos banana plantations, namely the Cliadi, Beducorp, and Nenro companies, were legally recognised by the Ministry of Labour. The first application for legal recognition of a single union of Noboa employees (the above-mentioned General Union of Plantation Workers) was turned down in March on the grounds that they were not directly employed by the Noboa Corporation, even though it owned the land and was the Los Alamos plantations' sole customer. (The Noboa Corporation – the company behind the

Banana workers subjected to violence and intimidation following strike

“Bonita” brand – is the fourth biggest banana producer in the world). When the unions applied for recognition under the three contracting companies, legal recognition was granted. These were the first new banana workers’ trade unions to be established in about twenty years.

On May 6, some 1,200 workers went on strike at the Los Alamos ranch, in protest against firings and harassment of unionists and to demand the reinstatement of the 124 workers dismissed as a consequence of the previous strike for union recognition.

At 2 am on May 16, about 400 hooded men, many of them armed, some with automatic pistols, attacked the striking workers and their families living at the Los Alamos ranch. The workers and their families were dragged from their beds, beaten, robbed of their few belongings, and threatened. Between 60 and 80 workers were taken to the radio station, where they were subject to further attacks. They were then locked in a truck and told they would be taken far away and killed. A dozen workers were injured, including some who received gunshot wounds. Two were seriously wounded, including Mauro Romero, who later had his leg amputated as a result of his injuries. There were also reports of women being abused. Eyewitnesses claimed that a Noboa company vehicle accompanied the attackers. Alvaro Noboa subsequently admitted to the authorities that the attackers worked for him. During the attacks, the authorities did nothing to protect the workers and stop the aggression, although the unions alerted them to what was happening. Sixteen security guards and two policemen were nevertheless apprehended and were taken into custody.

On December 30th 75 union leaders were fired at the Los Alamos plantation.

Complaint filed with the ILO Committee on Freedom of Association

On May 27 and June 17, respectively, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), on behalf of its affiliated organisation in Ecuador, the National Federation of Free Peasants’ and Indigenous’ Peoples’ Associations of Ecuador (Federación Nacional de Campesinos e Indígenas Libres del Ecuador – FENACLE), and the CEOSL, the ICFTU’s affiliate in Ecuador, filed a formal complaint with the ILO Committee on Freedom of Association. This concerned the Ecuadorian government’s failure to ensure the rights of workers to freedom of association and collective bargaining. In November, the Committee recognised the gravity of the allegations of the violence and intimidation in response to a strike. It urged the competent authorities to ensure that an investigation and legal proceedings be instituted immediately to find out what happened, define responsibilities, punish the guilty parties, and award compensation and prevent such incidents happening again.

Difficult working conditions of the banana worker

Ecuadorian trade unions have constantly denounced the terrible working conditions of the banana plantations workers. The workers are paid very low wages and are exposed to various chemical substances when working during aerial pesticide fumigation. Any attempt to organise is systematically suppressed. Child labour is widespread.

Labour Tribunals ruled against the workers

The Labour Tribunals set up to deal with the Los Alamos case ruled against the workers on September 19, claiming that the unions were not the legitimate representatives of the workers, despite the fact that the unions had been considered to be so since April and that the Tribunals had already made decisions in their favour. The Labour Inspectors and the company representatives claimed that the Special Committees of the Workers’ Union, which submitted the dispute to the Labour Ministry, did not represent the majority of the workers at each of the three subsidiary companies, and therefore could not continue with the conflict. FENACLE referred to documents contained in the Tribunals’ files – such as the Social Security lists of all the workers on the payroll in January 2002 – which proved that the Special Committees represented a majority of all the workers. The workers suspect that corruption was involved.

The workers voted to return to work from November 20. The plantation owner, the Noboa Corporation, offered the workers their original jobs back with the promise of increased rates of pay.

Agreement in the banana sector

The company also agreed to pay \$7,000 towards medical costs, including an artificial leg for Mauro Romero. He and another seriously injured worker were offered jobs that did not require them to be mobile. The company also promised an improved health centre and an increase in the lunch allowance.

However, the company made no offer to guarantee the freedom of unions to operate.

On November 26, management at the Los Alamos plantations met with FENACLE representatives. The Beducorp, Cliadi and Nenro managements agreed to reinstate some of the fired workers, and register them to receive government health benefits. According to the deal, workers were to be reinstated pending their joint approval by the union and respective management. Workers who did not wish to return would receive their severance pay. It was further agreed that Los Alamos employees would receive health benefits through the Ecuadorian Social Security Institute, which was a key demand in the workers' struggle.

El Salvador

POPULATION : 6,200,000 / CAPITAL : San Salvador / ILO CORE CONVENTIONS RATIFIED : 29-100-105-111-138-182



There are still considerable restrictions on workers' rights, including on the right to strike and on collective bargaining for state employees. There is insufficient protection against anti-union discrimination, particularly for workers in the export processing zones, who are not able to exercise their right to collective bargaining.

THE LEGISLATION

By law, only private sector workers and some employees of autonomous public agencies have the right to form unions. The government still refuses to ratify Convention 87. It claims that by granting civil servants the right to form trade unions the Convention is in breach of the Constitution of El Salvador which excludes them from that right on the grounds that they provide essential services.

To be legally registered, trade unions must follow complex procedures, including the requirement to obtain prior authorisation to form a workers' organisation. They must have a minimum of 35 members in the workplace and members of unions' leadership bodies must be Salvadorian by birth. Trade unions cannot take part in political activities.

There are restrictions on the right to strike, including the requirement that 51% of workers, whether or not they are members of a union, must support a strike in an enterprise. A strike can only be called if it concerns a change or renewal of a collective agreement or the defence of the workers' professional interests.

The Labour Code does not require the reinstatement of illegally sacked workers, only that employers give the worker a severance payment. The ban on civil servants forming unions also prevents them from bargaining collectively.

RIGHTS IN PRACTICE

Respect of trade union and other human rights has deteriorated in El Salvador as a result of the government's failure to protect workers effectively against anti-union discrimination, which is preventing them from engaging in collective bargaining or using the right to strike. Anti-union discrimination remains common in EPZs and in the public sector.

Freedom of association and the right to join a trade union are being undermined because employers have impunity to pressurise, intimidate and sack workers because of their union activities or sympathies.

EVENTS IN 2002

SITEAIES: The El Salvador International Airport Workers' Union

On January 7, the Attorney-General responsible for Protection of Human Rights delivered a report on the case of the 154 workers dismissed during the military takeover of the International Airport in September 2001. The report stated that there had been a violation of the "human right to work, resulting from illegal or arbitrary actions undermining labour stability to the detriment of the workers concerned". Furthermore, there had been a "violation of the union rights of the workers affiliated to SITEAIES" owing to the "illegal obstruction of union activities".

The Attorney-General recommended the immediate reinstatement of the sacked workers and also asked the Ministry of Labour to monitor "the effective application of labour legislation" with respect to employment terms and contracts. However, not a single worker had been reinstated by the end of the year.

Dismissals, threats and arrests of trade unionists combating privatisation:

In the course of the year, various members of the Health Union (STISS) were dismissed. Ricardo Monge, STISS General Secretary, received death threats against himself and his family. The public sector unions are regarded as a serious threat to the government's liberalisation agenda, since they are leading the battle against the privatisation of public services, against the FTA with Central America and the Plan Puebla Panamá, which will facilitate the implementation of the FTAA.

Many union leaders from the El Salvador Social Security Institute have been sanctioned, dismissed or detained since September 2002, as part of a large-scale persecution campaign against trade unionist opposed to privatising the health system. The government has promoted a smear campaign against workers, doctors and trade unions in the health sector, in order to justify the repression and privatisation. As early as February 2, the main offices of the largest hospital workers union in El Salvador were closed down within the El Salvador Social Security Institute where they were located. The STISS viewed this action as heralding the privatisation of public hospitals.

More dismissals

In February, the National Union of Port Workers (Sindicato de Industria Portuaria de El Salvador, or SIPES) was dissolved after the forced resignation of 800 affiliated workers from the port of Acajutla, including all the union leaders.

Ban on public sector unions remains state policy:

The Association of Workers from the Ministry of Education (ATRAMEC) reiterated its request for legal registration. And again the government refused the request citing the ban on establishing unions in the public sector.

On March 12, ATRAMEC lodged a new complaint with the ILO Committee on Freedom of Association, alleging that the Ministry of Labour had refused to approve their union constitution and to register them legally. The government, in its Communication of April 29, stated that the Constitution and the Labour Code only recognised the right to organise for private sector workers and employers, and for employees of official institutions. It said that these were "sovereign decisions" made in the "interests of the country".

The Committee on Freedom of Association asked the Governing Body to approve, inter alia, the following recommendations: that it press the government to amend the country's labour legislation, so as to recognise the right to organise of state employees, with the possible exception of the armed forces and the police, and expressed its desire that the ATRAMEC union be recognised, since it had been established on March 24 2000.

Dismissals in the electricity sector

Between April and December, the hydroelectric company Compañía Hidroeléctrica de Río Lempa CEL illegally sacked 33 members and leaders of the electricity sector trade union STSEL.

Refusal of collective bargaining rights

In May, the company Sociedad LIDO S.A. used a bargaining session with the trade union to announce its intention to reduce wages and restrict the workers' medical checks. The union called a work stoppage on 6 May in protest. The company's response was to lock out 41 workers, including 11 union committee members and a further 25 union members.

Maquilas (export processing companies)**A victory for the union movement:**

There is still no trade union protection in the EPZs and the working conditions are insecure.

On April 26 2002, the management of the company Tainan, which produces clothes for major US labels, suspended and laid off workers, claiming a shortage of orders. The union produced evidence that the company was lying and was continuing its production with sub-contracted, non-unionised staff. Following a long and tough battle the employees had managed, on July 12 2001, to obtain recognition of their textile workers' union, STIT. The mobilisation and international condemnation forced Tainan to re-open its plant in El Salvador, on November 21 2002, and to negotiate reinstatement terms with the union. Tainan was obliged to set up a compensation fund for those workers involved in the dispute. This victory for the labour movement has strengthened the determination of other workers in maquilas to fight for union representation.

Dismissals of workers:

On July 8, at the Hoon's Apparel factory in the Olocuilta EPZ, the workers complained of nausea. The Vice-President of El Salvador and the Association of Maquila Owners accused the STIT of sabotage, however the union refuted the slanderous accusation which it maintained was merely intended to mask the harsh working conditions facing thousands of workers in maquilas.

On 31 July 2002, the management of the Sociedad Industrias Sintéticas de Centroamérica INSINCA S.A. arbitrarily suspended the employment contracts of 640 STIT workers, promising to re-engage them and forcing them, upon receipt of their severance, to sign a letter discharging the company from all responsibility. The workers who were union members were not reinstated, including seven union leaders from the local section and five officials from the STIT head office.

Guatemala

POPULATION : 11,100,000 / CAPITAL : Guatemala City / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The labour reforms introduced in 2001 had virtually no real impact on freedom of association. Intimidation and aggression against trade unionists continued against a general background of corruption, immunity and disparaging the legal system. The maquila sector was able to totally disregard labour legislation, thanks to government complacency.

THE LEGISLATION

The Constitution and the Labour Code recognise workers' freedom of association and all workers have the right to form and join trade unions, including public sector employees, with the exception of members of the security forces. The law provides for a system of labour and social welfare courts to rule on violations of the Labour Code. Workers have the right to strike. This has been restricted by cumbersome procedures in the Labour Code, some of which were repealed in 2001. Workers have the right to organise and bargain collectively. Again there were many legal restrictions of this, some of which were repealed in the 2001 reforms.

Reform

The partial reforms to the labour code were adopted on April 25 and May 14 2001. The following provisions remove some of the legal restrictions on rights:

- the strict supervision of trade unions by the Executive Authorities has been abolished;
- the requirement that a prospective member of a trade union executive body must have no criminal record and be able to read and write has been abolished;
- the requirement to obtain a two-thirds majority of the union membership for a strike to be called within a union has been abolished and replaced with a provision that for a strike to be approved one half of the quorum of the respective assembly plus one member must vote in favour;

- the requirement that at least two-thirds of workers at an enterprise must vote in favour for strike action to be legal has been abolished. The new requirement is for one half of the votes of the workers at the enterprise plus one vote;
- the prohibition of strikes or stoppages during harvests and strikes by workers in enterprises or services whose interruption would in the government's view seriously affect the national economy has been repealed. The President can only suspend a strike if it seriously affects essential public services;
- the provision allowing the arrest and trial of persons publicly inciting others to illegal strikes or stoppages has been repealed;
- in the case of illegal strikes or stoppages, there is no longer an obligation for courts to order the National Police to ensure the continuity of work.

Other restrictions still remain however:

- the requirement to be of Guatemalan origin and to be actively employed by a company in order to be elected to union office;
- the sanction of one to five years' imprisonment for persons carrying out acts aimed at paralysing or disrupting enterprises that contribute to the country's economic development;
- the requirement for compulsory arbitration without the possibility of recourse to strike action in the public services which are not essential in the strict sense, such as health, the public transport services and services related to fuel, and the prohibition of solidarity strikes;
- the absence of a consultation procedure to allow trade unions to express their view to the financial authorities when drawing up the budget.

The Labour Code applies to the export processing zones.

Unions may become members of international confederations.

RIGHTS IN PRACTICE

Laws inapplicable

Hopes placed in the reforms of the Labour Code did not take long to evaporate. The changes failed to modify the basic problem of the government's anti-union attitudes and the use of the army and violence against workers increased.

Reports from 2002 confirm that the exercise of trade union rights remains severely hampered by hostility towards the trade unions and the failings of the legal system. Employer intimidation against trade unionists is common, and usually goes unpunished. Even where employers recognise the union and agree to bargaining, there is a tendency to ignore collective agreements.

Various reports from international bodies indignantly noted the calamitous state of the country's judicial system, which is on the verge of collapse. There have been numerous attacks on judges, some of whom have been forced into exile whilst others have simply been assassinated. Labour laws have been systematically ignored in this climate of injustice and impunity.

Although the legislation provides protection against acts of anti-union discrimination, it is ineffective because of the glaring weaknesses of the justice system. The labour courts are overrun with applications for the reinstatement of workers, and cases can drag on for up to five years. The majority of dismissals are groundless, which is why judges order reinstatement. Employers tend to ignore court rulings, however, and the courts do nothing to make sure that their own decisions are respected.

During its visit in 2001, the ILO direct contacts mission expressed its concern at the justice system's weakness in dealing with offences against trade unions. It recommended setting up a special unit in the Prosecutor General's Office dedicated to investigating such offences. The government later reported that this special investigation unit (Fiscalía Especial) had begun work on June 8. However by the end of 2002 the unit had produced few concrete results, shown by its failure to react to the anti-union dismissals that took place at the La Torre plantation.

Deficient labour inspection system

Labour inspections take place under very dubious circumstances. Far from ensuring the respect of workers' rights, the labour inspectors are generally more likely to persuade workers to renounce their rights. In some cases, when workers request a workplace inspection, the inspectors telephone the employers in advance to warn them of their visit.

Continuous anti-union discrimination

Anti-union discrimination takes different forms. In addition to the extremes of assassination, attempted assassination and imprisonment, it includes dismissals of workers attempting to set up unions, bargain collectively or carry out trade union actions; circulation of blacklists of union leaders and members and temporary plant closures. The International Textile, Garment & Leather Workers' Federation (ITGLWF) reported to the World Trade Organisation (WTO) in January that it was a very common practice for a company to close down a plant and transfer its operations shortly after a trade union had been established.

Export processing zones

Unions also have to compete with the "solidarismo" associations set up by employers as a more compliant alternative to trade unions. In the export processing zones, labour law enforcement is particularly weak, and there are still no collective bargaining agreements in Guatemala's maquiladoras. Workers are constantly harassed and their most basic rights are flouted. An investigation by the Ministry of Labour itself in August 2002, found that eight of the 10 firms examined in the EPZs were failing to comply with national standards on working conditions or to create a suitable working environment for their employees.

EVENTS IN 2002**Anti-union repression in the plantations**

On January 2, 67 employees, including 45 trade union members and the entire union leadership were unlawfully dismissed at La Torre plantation, despite the legal restrictions on dismissing trade union officials ('fuero sindical'). The workers were shocked and incensed at the response of the Public Ministry official when they reported the harassment and threats against union officials to the labour inspectorate. He referred to the difficulty of taking action against the owner of the plantations as he was a personal friend of the President. The owner had been pursuing a policy of abuses since 1993, none of which have yet been sanctioned.

On February 26, a band of gunmen from the San Luis Plantation, in the Malacatan district of San Marcos, opened fire on 500 members of SITRACAECO (Sindicato Independiente de Trabajadores Campesinos Ecológicos), in San Luis Malacatan, when they tried to occupy the plantation to claim their legitimate land rights. The gunmen opened fire using high calibre firearms. Various owners accused the labourers of maintaining links with guerrilla groups and pursuing criminal interests.

Murders, kidnappings and threats targeting union leaders

On February 14, Miguel Angel Ochoa González, an official of the professional drivers and heavy goods vehicle transport union (Unión de Pilotos Profesionales y de Transporte Pesado de Carga por Carretera) was kidnapped. He was attacked and dragged into a car by three kidnappers, who threatened him and severely beat him up, warning that they would kill him if he continued to "manipulate" the drivers. They then left him on the wayside several kilometres from where he was abducted. On February 15, Wilson Armelio Carreto López, President of the same union, received an anonymous letter issuing a death threat to him and his colleague, Ochoa González, if they did end their trade union activities with the drivers.

On October 19, the Organising Secretary of the Esquipulas Commercial and Associated Workers' Union (Sindicato de Comerciantes y Similares de Esquipulas), Catalino Ramirez Javier, was found dead on a riverbank in the district of Quezaltepeque, Chiquimula. His body showed signs of torture. He had been reported missing two days earlier when on his way to visit relatives. Catalino Ramirez was widely known for his involvement in the campaign in favour of 42 workers who had been dismissed in Esquipulas, as well as for his work against the possible eviction of the vendors from the municipal market. He was in the midst of preparing various protest campaigns at the time of his murder.

Union busting practices at Banco de Crédito Hipotecario

On December 5, security staff from the Finca Santa Cecilia threatened and intimidated union officials Emilio Burgos López and Domingo Rabanales Mejía. The security guard, Miguel Ángel Matías, threatened to kill them and fired a shot in the air for no apparent reason. He then proceeded to give a false report of the incident to the plantation manager, Mr. Luis Barrera. In a totally arbitrary move, the manager suspended the union leaders who had already been threatened with three days without pay.

In March 2002, the state-owned Banco de Crédito Hipotecario Nacional sacked 170 workers, claiming the move was part of a restructuring programme. Security officers took custody of the premises and disconnected the bank's phone lines to prevent any communication between the dismissed workers and the rest of the union leadership.

These lay-offs were accompanied by threats of jeopardising social security benefits, and were made even though the bank had been summoned to appear before Labour Court No.3, which meant that the workers could not be dismissed. In a meeting with union officials, the Bank's General Manager acknowledged that this constituted a violation of labour laws, but insisted that he was simply acting on the orders of the President of the Republic. Members of the President's General Security Staff also attended this meeting, a measure clearly designed to intimidate the union leadership.

The Bank continued with the lay-offs and by June 3, 200 employees had already been dismissed. At the same time, the Bank stepped up its pressure on employees to terminate their contracts and accept the compensation offered by the company. In July, in spite of formal opposition by the law courts and the labour inspectorate, the Bank sacked a further 100 employees and suspended the leaders' union licences. The conciliation drive led by the Public Ministry was limited to recovering the suspended union licences; none of the unfairly dismissed workers were reinstated.

Acts of intimidation and reprisals at a Coca Cola bottling plant

The STECSA (Sindicato de Trabajadores de Embotelladora Central Sociedad Anónima) denounced an intimidation and reprisals campaign against unionised workers, which had been underway since the collective negotiations opened in January 2001. EMBOCEN, a bottling facility servicing Coca Cola, submitted a proposal which would significantly curtail the rights and benefits negotiated under the various CBA's. It also took active steps to do away with the union altogether. From late December 2001 until September 2002, EMBOCEN suspended five union officials' wages. On May 28 2002, it filed a petition with the Labour Court requesting the Judge's authorisation to dismiss five members of the Executive Committee and three members of the union's Consultative Committee.

Although Coca Cola is among the world's 50 largest corporations, EMBOCEN and FESTRAS reached a settlement at the end of the year, resulting in a collective agreement that will remain in force until March 2005.

Anti-union activity in the Export Processing Zones

On June 3, UNSITRAGUA, the National Trade Union Centre, reported that the judicial authorities had not yet ruled on the case of the maquiladora TANPORT SA. It had closed down in February 2001 and moved its premises without consulting with the trade union beforehand, or paying the non-unionised workers their severance pay.

The Constitutional Court confirmed the ruling of the Supreme Court in favour of the maquiladora ACE International S.A. This case, dating back to 1999, was filed after anti-union discrimination and intimidation that led to union members being dismissed and harassed.

Choi & Shin workers fight on

For the workers of the Choi & Shin maquiladora, August 2002 marked the first anniversary of the violent attack on their trade union organisation. No real progress has been made since then in the negotiations with the Korean company.

The union request that notice be given to the plant's two managers, Willy Illescas and Luis Telleyon, who were responsible for orchestrating the harassment campaign against the trade union, was partly met. Yet the

promises made at the April negotiations with the backing of international organisations were not kept. The Korean-owned company, a producer for Liz Claiborne and Talbots, started spreading rumours regarding the imminent closure of its activities in Guatemala and failed to comply with the three basic union demands: reinstating the workers who were forced to resign, negotiating a collective agreement and removing the members of staff responsible for attacking union members.

At the end of last year, the Guatemalan government had still not made any progress in the criminal investigation into the violent attack on the workers.

Conclusion of SITRABI dispute

The long-standing and bitter dispute that started in September 2001 following the dismissal of 918 workers in three banana plantations on Guatemala's eastern coast, led by SITRABI (Sindicato de Trabajadores Bananeros de Izabal), was concluded on October 6 2002, with the signing of a collective agreement between the employers and the workers (see Annual Survey 2002).

The dispute arose when Bandegua, a subsidiary of multinational corporation Delmonte, based in the Lobos district of Izabal, announced it was unlawfully dismissing 918 workers. A court battle is pending against Bandegua because 200 armed men violently attacked SITRABI leaders, forcing them to resign from the company.

Victory for the workers in DYMEI case

On 21 October 2002, a group of 71 workers successfully brought a dispute with their former employer DYMEI, a coalmining company, to an end. The workers had been unfairly dismissed in 1999 after setting up a trade union. They managed to obtain between \$17,000 and \$20,000 each in severance pay. However, this was only 90% of the amount the Constitutional Court had ordered the company to pay in November 2001. The workers were not reinstated and were forced to drop all charges against DYMEI. By the end of 2002, there was no longer a trade union at DYMEI. To obtain redress, the workers camped in front of the presidential palace for over 100 days.

Guyana

POPULATION : 800,000 / CAPITAL : Georgetown / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The trade union movement suffered from increasing ethnic and political discrimination, exacerbated by the government's policy and its lack of respect for social dialogue. Restrictive strike legislation was still in place.

THE LEGISLATION

The Constitution recognises workers' rights to form and belong to trade unions, but there is no law prohibiting anti-union discrimination. The right to strike is recognised. Public employees providing essential services may strike if they provide the proper notice to the Ministry of Labour and leave a skeleton staff in place. However, all strikes in the public utilities are subject to binding arbitration. Both public and private sector employees can bargain collectively.

RIGHTS IN PRACTICE

The law on trade union recognition has not proved effective in practice, and employers take advantage of the lack of a law against anti-union discrimination. The Forestry Commission is a case in point, having fired workers on at least two occasions in recent years, in response to action by Guyana Public Service Union (GPSU). The government is being slow to amend its legislation to remove the requirement for binding arbitration in the event of a strike in non-essential services.

Ethnic/political discrimination

Political colour and ethnic membership weigh heavily on the trade union movement, and the authorities play on it, creating a very tense situation. Thus, unions are branded "pro-government or "opposition," "Afro-Black" or "Hindu." Hindu workers, for instance, were pressured not to vote for "Black Unions" to represent them in the Labour Relations Board. The government made sure that only "friendly unions" were elected to the Board. As a consequence, there is no trust between the government and the unions, and this affects the social dialogue. Collective bargaining agreements are ignored by the government and working conditions are imposed by means of circulars sent down by the administration.

There was a disagreement between the government and the union executive in the bauxite industry. The president of Guyana visited work locations, ignored the duly elected union leadership and entered into direct negotiations with the workers.

On the positive side, dialogue and contacts were maintained between employers in the private sector and the trade union movement, mostly with the ICFTU-affiliated Guyana Trades Union Congress (GTUC).

EVENTS IN 2002**Background**

Ethnic tensions, exacerbated by the government's discriminatory policies, intensified during the year and the crime rate was on the increase. Workers faced decreasing wages and their working conditions deteriorated as did their rights such as freedom of association and collective bargaining.

Refusal to bargain

Lincoln Lewis, the GTUC General Secretary, reported human and trade union rights violations by the government headed by President Bharrat Jagdeo. These included the refusal to continue negotiations on wages and salaries for public servants, the high number of extra judicial killings perpetrated by the Guyana Police Force and a serious decline in the social and economic situation of workers and citizens in general.

Trade unionists fired and intimidated

In the public sector the government has conducted a terror campaign against unions. Forty employees, including union leaders, were fired, while others were prodded into leaving the union.

Haiti

POPULATION : 8,000,000 / CAPITAL : Port-au-Prince / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111



The climate of violence and insecurity that prevails in the country, exacerbated by the criminal manoeuvres of the Lavalas Family (Fanmi Lavalas) leaders and groups close to the government, remained an insurmountable obstacle to trade union rights' recognition. Employers can act with complete impunity and groups acting on behalf of the ruling party have repeatedly attacked trade unionists.

THE LEGISLATION**Prior authorisation**

Despite the fact that the Constitution drawn up in 1987, after the fall of the Duvalier regime, recognises freedom of association in all sectors and the right to strike, the Labour Code dates back to the former dictatorship. Just 10 members are needed to form a union, however the Penal Code requires prior authorisation by the government for any association of over 20 people to be founded, if the latter is to enjoy the relevant tax benefits and obtain government recognition.

No protection

The law does not protect unions and their members against anti-union discrimination in recruitment procedures and does not provide for the reinstatement of unfairly-dismissed union members.

RIGHTS IN PRACTICE

Weak enforcement

The enforcement of labour legislation is very weak, if not totally ineffective. Despite a provision in the Labour Code, the government has never fined an employer for interfering in a union's internal affairs. As a result of the political chaos, the climate of violence and a record unemployment rate, employers are enjoying absolute freedom. Union rights, like collective bargaining, are in practice non-existent. The unions have complained of a slow and inefficient procedure when bringing disputes before industrial tribunals.

Intimidation and impunity

Those trying to organise workers in a union are subjected to constant threats. Those carrying out the many acts of violence throughout 2002 have enjoyed impunity, if they are close to those in power or if the victim is viewed as a government opponent.

EVENTS IN 2002

Political and economic background

The climate of political tension and violence continued during the year in the Western hemisphere's poorest country. Attempts at unionising and expressing any form of opposition to the government's policies were severely repressed. The so-called "Chimères" – a kind of "Tontons Macoutes" in the pay of the ruling Fanmi Lavalas party – terrorise everyone who criticises President Aristide's policies. They have politicians, journalists and trade unionists in their ranks.

More anti-union violence at Guacimal

Anti-union discrimination has continued in the plantation and factory of the Guacimal company, which produces bitter oranges for Cointreau. A new outburst of violence occurred in May, after the landowners at the Guacimal orange plantation announced that the recently unionised workers there would no longer be allowed to farm the land in the off-season. Since 1958, there had been an agreement between plantation workers and landowners in Haiti that workers could farm the land off-season to produce enough food for themselves between picking seasons.

On May 27, workers belonging to the St. Raphael Guacimal Workers' Union supported by Batay Ouvriye union members, assembled at the Guacimal company plantation, to stake their claims to plots. There, they were met by a group representing a local landowner, close to the Guacimal company management, and which included two Fanmi Lavalas officials from the local council. Without any provocation, the group attacked the workers and peasants with machetes, clubs and guns, and the workers and peasants threw stones in defence. Many people were seriously injured.

Union supporters murdered

Two elderly members of Batay Ouvriye, Francilien Exime and Ipharès Guerrier, who had come from a nearby village to show their solidarity, but who had not taken part in the fighting, were discovered hiding in a house. The attackers took them out of the house, tied them up and dragged them to the plantation. There, they mutilated them with knives, beheaded them and dumped their bodies in a hole.

Houses of union leaders burnt

In the days that followed, the houses of union leaders in the area were burnt to the ground, and arrest warrants for some 20 people associated with the union were issued by the local judge. All those connected with the union were obliged to leave the area, and seek sanctuary in the city of Cap-Haitien.

Arrests

Eleven people were arrested following the violence, including six Batay Ouvriye union members and two journalists covering the events. The Fanmi Lavalas mayor of St. Raphael claimed that the local police had detained the eleven on his advice because he knew them to be "terrorists". Mario Dupuy, the Secretary of State for Communications, announced that the violence had been caused by Batay Ouvriye and others who opposed the government's plan to create free trade zones in the border region.

Union members held without charge

On May 29, the eleven detainees were unlawfully transferred by helicopter to the National Penitentiary and to Fort National, two prisons in the capital city, Port-au-Prince, in violation of the local judiciary's preroga-

tives. Following a mobilisation campaign led by journalist and human rights protection organisations, the two journalists were released on June 8, while the others were kept imprisoned for nearly three months, without any charges being brought against them. Seven people were released on August 20, after a third picket organised by Batay Ouvryè and other organisations. Two unionists, Urbain Garçon and Jérémie Dorvil, were maintained in detention, and finally released on December 2, after the authorities gave in under union pressure, with support from the ICFTU.

By the end of the year however, no judicial proceedings had been instituted against the perpetrators of these serious incidents, including the deaths of the two trade unionists. On the contrary, they continued to move around freely, pressuring the unionists who showed up at the plantation at the beginning of the new harvest. Trade union rights were still flouted and the Guacimal company persistently refused to meet the enterprise union.

Political violence against trade unionists

On June 19, Pepe Jean Getro, General Secretary of a Haitian Teachers Union (Groupe d'Initiative des Enseignants des Lycées (GIEL)) and member of the Haitian Trade Union Coordination Group (CSH), was violently attacked by security guards of a local banking cooperative. They accused him of being a trade union activist aiming to destabilise the government by leading strikes. After they beat and knocked him to the floor, they placed a gun by his side and called the police to accuse him of attempted murder. He was eventually released from prison two days later when the crude attempted set-up came to light. During these two days in prison he was beaten and tortured so severely that he was forced to spend the next ten days in hospital recovering from internal lesions and a shattered eardrum. The Haitian government has done nothing to bring the culprits to justice.

On September 23, an armed group led by local officials, including the school headmaster and the mayor of Cabaret, burst into the Cabaret secondary school. Pepe Jean Getro and two other teachers were holding a meeting to readmit 37 pupils who had been thrown out for protesting against corporal punishment at school. The armed men dragged the teachers out into the schoolyard, slipped tyres around their necks, and tried to set them on fire. The teachers were saved just in time by the police, who had been alerted by a group of pupils. The teachers lodged a complaint against the aggressors, but the latter remained free. The teachers subsequently had to go into hiding after intensified death threats.

Another union leader, Josué Mérielien, General Coordinator of the Union Nationale des Normaliens d'Haïti (UNNOH), has been constantly harassed by the legal authorities after he criticised the government's authoritarian use of power, particularly in the education sector. He was accused of drug trafficking, after the police planted a quantity of narcotics inside his vehicle.

Rosemond Jean, another union leader, committed to the same struggle as Josué Mérielien, was punched and arrested illegally. He is still in prison, even after an 11-day hunger strike. An armed gang arrested, hit, humiliated and threatened his doctor with death. His family, wife and five children have had to leave their home, as they were being persecuted.

On December 3, a group of 10 members of the "OP Chimères Lavalas" reportedly severely beat up Fignolé Saint-Cyr, Secretary General of the Centrale Autonome des Travailleurs Haitiens (CATH), in front of the Foreign Office building, while he was participating in a demonstration to commemorate the first anniversary of the killing of journalist Brignol Lindor.

Honduras

POPULATION : 6,300,000 / CAPITAL : Tegucigalpa / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The considerable legislative restrictions on trade union rights remained in place.

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THE LEGISLATION

The law recognises the right to form and join trade unions, but imposes restrictions on it. At least 30 workers are needed to form a trade union, and there cannot be more than one union in a given enterprise or institution. At least 90% of the union's members must be Honduran nationals and foreigners cannot become trade union officials.

The right to strike is also recognised but limited. Federations and confederations may not call a strike. A two-thirds majority of the votes of the total union membership is required to call a strike. Civil servants may not strike. Employees of state-owned enterprises must give six month's notice and have the government's approval before striking.

The right to collective bargaining is protected by law, and retribution by employers for trade union activity is prohibited.

RIGHTS IN PRACTICE

In practice, workers are harassed and even sacked for trade union activities, and some unionised workers are blacklisted in the export processing zones.

Some companies have set up solidarismo-style organisations as a compliant alternative to trade unions, notably in the export processing zones.

EVENTS IN 2002

Honduras is still the least developed country in Central America. There remain serious economic disparities and the level of crime and violence has remained very high. President Ricardo Maduro launched an official "war on crime" in 2002. There was an increase in assassinations of minors by death squads.

Freedom of association denied

When the union at Corazón Apparel (SITRACOR) applied for recognition on August 9, four union members were immediately dismissed. Three were later reinstated in their posts, whilst the fourth agreed to accept severance pay.

The Ministry of Labour also tried to torpedo the procedure for registering the union. According to Honduran law, the Labour Ministry had until August 30 to notify the union if there was anything incorrect in, or missing from, its application. Although that deadline had already elapsed, labour inspectors turned up at the factory on September 1 and 2 to ask for a full list of SITRACOR members. They stated that the Ministry had received a second application for registration and needed to decide which one to endorse. According to the FITVCC, the second application had been made by a 'yellow union' close to management and there were doubts as to its legitimacy.

The Ministry's action was against the law, since presentation of a full membership list is not a requirement for union recognition. Added to this, the deadline for requesting additional information had passed.

In a further irregular step, the Ministry's representative in San Pedro Sula, Mr Echeverría, held meetings with representatives from the company and with the president of the 'yellow union' at the company offices.

Honduras coffee workers' demonstration repressed

On August 14, the police harshly repressed a demonstration by coffee workers in Tegucigalpa. At least 14 people were injured, when the police used rubber bullets and tear gas to disperse the demonstrators.

Jamaica

POPULATION : 2,600,000 / CAPITAL : Kingston / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111



Many public servants continue to be denied the right to strike, while collective bargaining restrictions remained.

THE LEGISLATION

The Labour Relations and Industrial Disputes Act (LRIDA) provides for the right to freedom of association and collective bargaining and applies to most workers. Collective bargaining is denied in a bargaining unit if no single union represents at least 40% of the workers or when the union seeking recognition for collective bargaining does not obtain 50% of the votes of the total number of workers.

The LRIDA prohibits anti-union discrimination such that employees may not be fired solely for trade union membership.

Extensive list of essential services

The right to strike is neither protected nor prohibited in law, except for workers in essential services who are banned from striking. The list of essential services is extensive, covering sectors that would not endanger the life, health and safety of the people in the event of interruption. The Ministry of Labour has wide-ranging powers to intervene in labour disputes.

The law applies to export processing zones.

RIGHTS IN PRACTICE

At times the government has designated certain areas as "essential" in order to end strikes, such as in the bauxite mines.

Some multinationals are hostile to trade unions, and so far none have been formed in the export processing zones.

Mexico

POPULATION : 103,400,165 / CAPITAL : Mexico City / ILO CORE CONVENTIONS RATIFIED : 29-87-100-105-111-182



Although the Constitution and the Labour Law recognise freedom of association and the right to strike, the full exercise of trade union rights is frustrated by restrictions on these freedoms, acts of repression, and the authorities' connivance in employers' violations. The situation is most dire for workers in the public sector and in the thousands of maquiladoras.

THE LEGISLATION

Registration of unions

No prior authorisation is required to create a trade union. To obtain legal status, however, the unions must be registered in the Register of Associations, an office of the Labour and Social Protection Secretariat. The authorities may decline to "take note" of a request if they consider that the union has breached or does not meet the requirements established in the Federal Employment Law (Ley Federal del Trabajo). That judgement

involves an inspection of trade union procedures. Although it is possible to appeal against an inspector's report, there is no legal recourse for changing it or requiring that a new inspection be carried out. An unregistered union cannot call a strike or participate in collective agreements, and is excluded from all tripartite committees.

Foreigners may not become members of trade union executive bodies.

Despite the ILO's request, the State has still not fulfilled its promise to ratify Convention 98.

Restrictions in the public sector

The law imposes a trade union monopoly on state employees, prohibiting the coexistence of two or more unions in the same state body. State employees may not leave the union of which he or she has become a member. Public sector trade union officials may not stand for re-election. A trade union monopoly is also imposed by law on bank workers, who may only belong to the National Federation of Banking Unions. The law also obliges workers to join unions affiliated to the public service union, the Federación de Sindicatos de Trabajadores al Servicio del Estado (FSTSE).

Restrictions on right to strike

The right to strike is recognised in law. Five to six days' advance notice must be given, however, and the Conciliation and Arbitration Boards (CABs), which are tripartite committees composed of representatives of the government, employers and workers have discretionary powers to declare a strike illegal. If they do so, workers must resume work within 24 hours or face dismissal.

Article 123 of the Mexican Constitution recognises the right to strike, but makes a distinction between State employees and private sector employees. The rights of State employees are governed by the Law on Workers in the Service of the State while those of private sector employees are governed by the Federal Labour Law.

According to the Federal Labour Law, the CABs can nullify a strike if it does not begin at the exact time stated in the request for permission to hold a strike, or if it does not have the support of the majority of the workers. The CABs can also declare a strike illegal when it involves acts of violence against people, material damage, or the illegal closure of the installations.

Employees in the public service may only call a strike if there has been general and systematic violation of their rights set out in the Constitution. They must have the support of two-thirds of workers in the public body concerned. The law also enables the government to requisition workers in a national emergency, including when this is caused by an industrial dispute.

RIGHTS IN PRACTICE

Trade union monopoly

The days of the trade union monopoly are coming to an end. The Supreme Court of Justice ruled in 1999 that the imposition of a trade union monopoly in the public sector was a violation of the freedom of association as set out in the Constitution. The government has yet to bring the law into line with this ruling.

Another very important Supreme Court ruling was made in April 2001, declaring the so-called "exclusion clause" illegal. This clause had been used since 1934 to ensure that only the members of the existing union at the workplace could be hired by the public or private enterprise concerned, and allowed for a clause to be included in collective agreements obliging employers to dismiss employees who left or were expelled from that union. This ruling needs to be transposed into federal labour law.

Precarious contracts

Many education, media, government agency, maquiladora workers and the Instituto Nacional de Antropología e Historia researchers are employed through 'civil contracts for providing professional services' and are obliged in some instances to sign a declaration to acknowledge that it is not an employment contract. Under these terms, they are not legally permitted to organise or join a union, but can only become members of civil associations, and do not have the right to take strike action or to negotiate collective agreements.

Maquiladora

There are frequent abuses in the country's 4000 or so maquiladoras. The government makes very little effort to apply legislation in the export processing zones where they operate, as it welcomes this massive influx of capital. Since the North American Free Trade Agreement (NAFTA) came into force, some 3000 assembly-for-export companies have set up business in Tijuana. According to a study by a Mexican NGO, over 1,300,000 workers are paid less than \$6 a day to work in often deplorable conditions and only 40% of them stay more than three months in their job. Unpaid overtime, sexual harassment, discrimination in employment, non-existent health and safety precautions and unfair dismissals are just a few examples of the daily lot of maquiladora workers.

Thousands of Mexican workers have had to take up employment in the maquiladoras. Many have been forced to forgo the legal provisions that usually apply, and to accept temporary and unwritten contracts, affecting their right to organise. Many maquiladoras use employment agencies to draw up temporary contracts to suit the needs of the clients and have no assets to meet their obligations as employers in case of strikes.

Government policy is generally to allow the maquiladoras to operate behind closed doors and protect them from collective action by the workers, even where dangerous operations are performed without the proper equipment, threatening the health and safety of the workers. Unfortunately, the Mexican authorities do not protest against such practices as they are more interested in attracting foreign investment.

Problems with registering unions

Establishing an independent trade union, in other words, a union that is not controlled by the employers, can resemble an obstacle course. The difficulties associated with obtaining legal status are used by the government to deny a union the right to register or to give preference to a particular union leader over another. Employers themselves sometimes set up a union, although workers may not even know there is one in their factory, because there are no meetings, no elections and no collective bargaining. In practice, deficiencies in the Federal Employment Law have been exploited to create false collective agreements called "Protection contracts". These contracts consist of an agreement whereby the company pays a monthly sum to the union. In exchange, the union guarantees social peace. Blacklists of trade unionists' names regularly circulate in the factories.

Ineffective strikes

Every year thousand of strikes are called, of which only 0.3% go ahead. The Labour Secretary claims that this is an indication of "industrial peace". In reality, it is because the mechanisms are so complex and because of the workers' lack of confidence that the State will fulfil its obligation to defend the right to strike. In addition, employers often turn to the CABs to request them to declare the strike illegal, accusing the organisers of violating their own union statutes.

To prevent strikes from being declared illegal, employees constantly have to ensure that the employers do not remove the machinery from the plants. The State or employers often deploy tactics to have a strike declared illegal, such as hiring strike breakers to provoke acts of violence and calling on government forces. Another ploy is to draw out the procedure for years by filing never-ending lawsuits to break the workers' resolve and make it impossible for them to cover their own and their families' needs. This is the case at the Lyx textile maquiladoras of Guadalajara, in Jalisco, where 400 workers have been on strike for two years.

The government has also resorted to "requisitioning", which in practice means calling on government forces or strike breakers to take over the workplace operations. According to Article 123 of the Constitution, requisition is only permitted in times of war.

EVENTS IN 2002**Euzkadi strike declared illegal**

In January, workers of the National Revolutionary Union of Euzkadi Workers (SNRTE) at the Continental Tire plant in Jalisco initiated a strike that the CAB subsequently declared "not in line with procedure" because the plant had been shut down. The management had been applying pressure to weaken the collective agreement since 1998. In December 2001, seeing that the pressure was having no effect, the company had

placed a notice announcing the plant's closure at the factory gates. Because there is a three-month waiting period before a strike aimed at changing a collective agreement can be held, the company's decision to shut down the plant was therefore taken after the request to take strike action had been filed.

The workers appealed against the CAB ruling, on the grounds that it contravened the Labour Law, but the court had still not delivered its verdict on the case by the end of the year. Meanwhile, the management has been harassing the workers in their homes, and has waged a media campaign to discredit the union's general secretary.

Blacklists in Ciudad Juárez

On February 21, the Maquiladoras Association of Ciudad Juárez announced in the national press that it had offered blacklists with the names of workers who have presented claims, to its members. Although this was a clear violation of Article 373 of the Federal Labour Law, the government did not take any action.

Four ANDTP oil workers killed in suspect road accident

On April 28, Armando Ruiz Villalón, Genaro Navarro and two other members of the ANDTP, the National Democratic Alliance of the National Oil Workers' Union (STPRM), were killed in a suspect car accident when returning from a meeting in San Luis de la Cruz, Tampico, in the province of Tamaulipas. The trade unionists were due to attend another meeting two days later at the Ministry of the Interior, to report the acts of repression against the union, and to file ANDTP's complaints about the violations of trade union rights. They had been dismissed under false pretences one month earlier, after fighting for greater union freedom when PEMEX instigated the division in the STPRM oil workers' union and initiated a wave of unfair dismissals.

Violence against AVIACSA pilots

On April 1, in Mexico City, just as AVIACSA employees, members of the pilots' union ASPA, were preparing for the ballot on the terms of collective bargaining they were confronted and brutally assaulted by some 50 vigilantes hired by the airline company. In Mexico, the elections to decide on trade union rights in the public sector are supervised by the Ministry of Justice's Federal Conciliation and Arbitration Tribunal. As the ballot is public, as soon as the first results came out in favour of the ASPA, AVIACSA's lawyers organised the attack, and one of the vigilantes snatched a video camera and attacked various ASPA members. The police had to intervene so that the trade unionists could leave the building safely. Three weeks earlier, when ASPA had already won 75% of the ballot across the country, the same group of aggressors assaulted trade unionists in Tijuana.

Workers claiming freedom of association dismissed

On April 30, 500 workers from Plant 2 of Alcoa Fujikura Ltd. signed a petition for the recognition of their new trade union, which the management and the local employment authorities opposed. Between March and October the workers were systematically denied their rights, dismissed, harassed, persecuted, and assaulted by private security guards. Independent activists were followed and filmed, in a further breach of their rights.

On October 4, 20 workers from Plants 1 and 2 of the company's works in Piedras Negras were dismissed for having organised a protest outside the factory gates in support of freedom of association. The workers were claiming the right to negotiate independently, going against the employers' interests.

Intimidation of trade unionists in the electricity sector

During May, June and July several members of the National Electricians' Union SUTERM and leaders of the National Steering Committee of Electricians, Jesús Navarrete Castellanos and Evangelina Navarrete and their families, were harassed and issued with death threats. As the Attorney General's failed to investigate the incidents, they were forced to request the Inter-American Commission on Human Rights to take preventative measures.

Another 16 trade unionists from the National Steering Committee and SUTERM were dismissed. One of them, Armando Manrique Velásquez, who was fired in August 2002, won his case, but the Federal

Electricity Commission (CFE) appealed against the ruling. Another trade unionist, Ignacio Roche Pérez, was dismissed in November 2002.

All those dismissed were actively involved in the campaign against privatising the national electricity sector and the fight for democracy and secret ballots in trade union elections. Some of them had stood as candidates in the trade union elections held in 2000, but were not allowed to enter the assembly hall. They have been harassed constantly ever since.

Arrest warrants issued against trade unionists

In November, members of branches 18 (Michoacán teaching staff) and 9 (Federal District primary teachers) of the National Education Workers' Union SNTE held a demonstration in front of the government palace in Mexico City to ask for 8% of the national budget to be earmarked for education. The demonstration coincided with a protest organised by agricultural workers, which erupted into violence. The authorities later used this as a pretext to issue arrest warrants against 12 leaders of the SNTE protest.

Nicaragua

POPULATION : 4,900,000 / CAPITAL : Managua / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although labour legislation also applies to export processing zones, in practice non-compliance is the rule. Maquiladoras are rife with cases of unfair dismissal, violations of trade union rights and privileges, sexual harassment and assaults. Working conditions are sub-human: they fail to guarantee job security or to meet minimum health and safety standards.

THE LEGISLATION

Freedom of association

The 1996 labour code removed many of the old restrictions on trade union rights, but not all. All public and private sector workers - with the exception of the armed forces and the police - may form trade unions and join the trade union of their choice. They are also free to create federations and confederations, and to join international organisations. At least 20 people are required to form a trade union; no prior authorisation is needed. Once created, it must be entered in the Register of Trade Union Associations, thereby endowing it with legal status. The members of the union's steering committee must be Nicaraguan. Union leaders have protected status, but this is limited to nine executive members per union and three branch members. The Labour Code allows enterprises to dismiss any employee, including union organisers, provided they have the permission of the Ministry of Labour and pay double the usual severance pay. Federations and confederations may only provide moral or economic support in the event of a dispute.

Strikes and collective bargaining

The right to strike is recognised, albeit with some limitations. To be considered officially approved, a strike must have the approval of at least 50% plus one of the total number of members of the trade union. Votes on strikes are held in an extraordinary general meeting. The trade union must receive the approval of the Ministry of Labour before engaging in strike action, after the mediation procedure involving the Ministry of Labour has been exhausted. Once a strike has been declared legal, the authorities have 30 days to exercise their right to demand compulsory arbitration in order to resolve the conflict. Labour law allows sympathy strikes in support of another legal strike in the same industry or business.

The Regulation on Trade Union Associations (Reglamento de Asociaciones Sindicales) also limits the right to strike by federations and confederations. In the event of a dispute, federations and confederations may only provide the workers in question with advice and moral or financial support.

The right to collective bargaining is recognised in the Labour Code, which stipulates that companies engaged in disputes with employees must negotiate with the union where there is one.

RIGHTS IN PRACTICE

The Labour Ministry recognises that it would take about six months for a union to go through the entire process to be permitted to hold a legal strike. As a result, there has only been one legal strike since the 1996 Labour Code came into effect. The worst violations occur, as is often the case, in the export processing zones (EPZs). There are 23 EPZ companies, or maquilas. Seven of them have unions and collective agreements, but only 3% of the workforce is unionised, largely due to the employers' hostility. Workers are not represented on the EPZ national committee.

In many cases, prevailing conditions are close to slavery. The workers, mostly women, often have to work unpaid overtime and are regularly bullied by their supervisors, who even go so far as to dock their salaries if they spend too much time in the toilets.

The few trade unions that do exist are prime targets for employers. There have been reports of blacklists including the names of some 800 union activists being distributed.

EVENTS IN 2002

Police fire on striking miners: 12 wounded, 50 arrested

On November 23, more than 100 riot police in Maipasillo fired shots and tear gas at miners from Tripton Minera, a Canadian-owned mining company. The striking workers were demanding pay rises and improved social protection. Twelve workers were injured and more than 50 arrested.

Founders of a recently created union at the Yun Jin maquiladora fired

On November 12, the management of Yun Jin Nicaragua SA, a maquiladora, fired a number of trade union leaders, claiming it was "not prepared to allow the existence of any union organisation". In the days that followed, the other workers who attended the constituent meeting of the union were also fired. The workers had submitted the union registration forms to the Ministry of Labour the very day they were fired.

Fired trade unionists reinstated

On July 12, a group of workers at Han Sae Nicaragua SA organised a protest against the management's decision to fire two leaders of the union that had just been created to secure better working conditions. The workers said that they were forced to work from Monday to Thursday from 7 am to 10 pm, and on Fridays from 7 am right through to Saturday at dawn. The fired workers were reinstated in their jobs following mediation by the Ministry of Labour.

Panama

POPULATION : 2,800,000 / CAPITAL : Panama / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Restrictions on trade union rights in the public sector remained in force. Banana workers faced retaliation for trade union action.

Limitations on organising...

Private sector workers have the right to form and join unions of their choice. There are limitations however. Only a single trade union is authorised per establishment, trade unions may only open one branch office per province and a minimum of 40 members are required to set up a branch union. All members of a trade union executive must be Panamanian.

...and the right to strike

For a strike to be legal, an absolute majority of workers in the enterprise concerned must vote in favour. Strikes can only be called to demand an improvement in working conditions, in relation to a collective agreement or to protest at the repeated violation of legal rights. Strikes cannot be called to protest at government policy, to demand an increase in the minimum wage or to demand union recognition.

Federations, confederations and national centres may not call a strike

The 1994 Civil Service Act grants civil servants the right to organise and bargain collectively. The government may put an end to strikes in the public sector, including services that are not considered strictly essential (such as transport) by imposing compulsory arbitration. It requires state employees to provide a minimum service, and can requisition at least 50% of employees for this purpose.

No public sector unions

Public sector workers do not have the right to form unions or to strike. They may form "associations", but only if they have a minimum of 50 members, and can only form one association per institution.

The law governing the autonomous Panama Canal Authority prohibits the right to strike for its employees, but does allow unions to organise and bargain collectively.

EPZs

In the export processing zones, all labour disputes are subject to compulsory arbitration. A strike is only considered legal after 36 working days of conciliation are exhausted. If this requirement is not met, striking workers may be fined or dismissed.

RIGHTS IN PRACTICE

The Civil Service Act provides little protection, given that in practice only about 10,000 people have civil service status. The remaining 140,000 public sector workers are effectively denied the right to organise, bargain collectively or strike.

In the private sector, employers often hire workers on temporary contracts to avoid labour code requirements.

By-passing the unions

Employers are being allowed to draw up collective agreements with non-organised groups of workers, thanks to the interpretation of the law by the administrative authorities and the courts. This happens, say the unions, even where a union exists, and even where a collective agreement already exists.

The administrative procedures that must be followed before a strike can take place are used to declare strikes illegal. A list of demands may, for example, be considered unacceptable if it involves changes to an existing collective agreement. The national trade union centres are seeking a simplification of conciliation procedures.

A 1998 decree concerning workers at sea and on navigable waterways makes collective agreements optional, rather than imposing an obligation, as is the case for other workers under the labour code. The national trade union confederations claim that this loophole is being used to deny workers in the sector the right to bargain collectively or strike in order to demand a collective agreement.

Failure to implement the Inter-American Court of Human Rights (IACHR) judgement

By the end of 2002, the government had still not implemented the IACHR sentence issued on February 13 2001, which called for the reinstatement of the workers involved in the Case of Baena Ricardo et al. and for moral and material compensation for all those whose employment rights had been violated. The failure to implement the judgement and the neglect towards the people effected is placing Panama in an embarrassing situation internationally, not only because of this blatant breach of the victims' human rights but also through its failure to obey the Organisation of American States (OAS)' highest human rights court.

Reinstatement of FENASEP union leader

The ILO Committee on Freedom of Association requested the government of Panama to reinstate 44 union leaders from the public servants' federation FENASEP – providing they met the legal requirements for serving in public administration – who had lost their jobs without prior legal proceedings. FENASEP denounced the fact that since assuming power on September 1 1999 the new government had dismissed over 19,000 public servants for party political reasons, including the 44 union leaders from the Federation.

EVENTS IN 2002

COLÓN: Strike against "Ingeniería de Vía"

The members of SONTRACT started a strike against the company Ingeniería De Vía. The Labour Ministry closed down the plant and a ballot was held in which the union received 45 votes for and 3 against the strike call. During the conciliation procedure the company adopted a totally intransigent stance, failing to reach any agreement at all with the union, so the strike eventually went ahead on June 14.

Sacking and arrest of public service workers

On September 30, 13 workers who had been sacked by the AGUASEO company were then arrested after they occupied the regional offices of the Employment Ministry in protest and to demand reinstatement. The workers criticised the mayor's and the Colón town council's irresponsible attitude. They also reported that the company had so far sacked more than 100 workers, claiming that it was by "mutual agreement".

Panama Canal trade unions set out terms for dialogue

The Coalition of Canal Unions issued a list of demands, in October, to the Panama Canal Authority (ACP), on the basis of which they would return to the joint committee (Consejo Obrero Patronal). They had walked out of the committee because the administration had been postponing meetings in order to avoid addressing the unions' demands. These included reviewing all disciplinary measures against union leaders and ACP guaranteeing that it would fully respect its contracted companies' employees' rights.

Paraguay

POPULATION : 5,700,000 / CAPITAL : Asuncion / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



There has been no progress in legislation. Employers continue to refuse to recognise union rights because the sanctions are inefficient, because of the failure to conclude the rare cases brought to court and because the police repress union leaders.

THE LEGISLATION

The Constitution allows both private and public sector workers to form and join unions. There are strong restrictions however. A minimum of 300 workers is required before a union can be established. Workers may not be members of more than one union. Candidates for trade union office must work in the enterprise and be an active member of the union. All unions must be registered with the Ministry of Justice and Labour, and the procedures are cumbersome. Employers can file a writ opposing the registration of a union.

Trade unions must comply with all requests for consultations or reports from the labour authorities.

The law provides for collective bargaining, and prohibits anti-union discrimination. There are few real sanctions to dissuade discrimination however, and labour courts are not obliged to reinstate unfairly dismissed trade unionists. Collective disputes must be submitted to compulsory arbitration.

The Constitution provides for the right to strike, but strikes can only be called for the sole purpose of the direct and exclusive protection of workers' occupational interests. A minimum service must be ensured in the event of a strike in essential public services.

Law being held up

A new bill was prepared in 2000 to amend legal provisions not in compliance with the conventions on freedom of association and collective bargaining, however the legal authorities have not yet approved it. Once it becomes law, it would reduce the minimum membership requirement to 50 and allow workers engaged in more than one occupation to join more than one union. Trade union statutes would be able to specify less stringent requirements for candidates for union office, while requests from the labour authorities would be limited to annual financial statements and complaints of violations of trade union law or union statutes. The

definition of the right to strike would be relaxed, while specifying that trade unions are prohibited from involvement in purely party political matters.

RIGHTS IN PRACTICE

Private sector employers have ignored anti-discrimination laws and have antagonised and sacked trade unionists. The industrial tribunals take a long time to respond to complaints and even where employees' reinstatement is required such legal decisions are often ignored with impunity.

Lack of protection

The situation is particularly serious, as over 2 million Paraguayans are living below the poverty threshold, with agriculture representing about 40% of total employment and the economy based essentially on agricultural exports. In addition, a large section of the work force is involved in sub-contracted or informal employment. Child labour is widely used in both the informal economy and agriculture. For those reasons and given the legal restrictions on union rights, over half the work force is unable to join unions or to combat the abuses of their rights by employers in all these sectors.

State negligence

Once again, this year the government has failed to act on the observations and recommendations issued by the ILO and other international bodies, like the Inter-American Commission on Human Rights (IACHR), on the country's employment policy and, more particularly, its provisions on trade union rights and freedoms. It did not even manage to deliver the reports required by international bodies on monitoring the implementation of international conventions.

EVENTS IN 2002

As in the previous year, 2002 started off with considerable agitation in all the economic sectors, with calls for wage rises in line with inflation. These were refused, which led to a loss of workers' purchasing power. As usual there were numerous complaints concerning non-payment of months of salary arrears, in both the private and public sectors. This year was also marked by the prosecution of President Luis González Macchi for corruption.

Mass dismissals

In March 2002, Ciudad del Este's municipal workers went on strike to defend their legitimate social and trade union rights. As a result, 400 of them were sacked, most of who were members of the Municipal Workers' Union (SITRAMUCDE).

The workers were sacked "en bloc", with no compensation or respect of their rights, even though many had 15 to 25 years' seniority. The dismissals represented a 90% loss of union membership, a loss of all its leaders and left virtually destroyed the union.

Repression of social unrest

On June 6 2002, unions of peasant farmers and other workers held a strike to protest against and to change Luis González Macchi's government's economic policy and to obtain the revocation of the law on privatisation.

Eduardo Ojeda, President of the Central Nacional de Trabajadores (CNT), added that the aim was also to reject the International Monetary Fund (IMF) and the World Bank policies.

The strike was declared illegal after violent clashes between peasant farmers and the police led to at least six people being injured and the death of a peasant farmer.

Repression of striking municipal workers

On June 18, the Asunción-based Municipal Workers' Union (SITRAMA) called a strike in protest at the municipal authorities' failure to honour the collective agreement and against unjustified dismissals and job changes. The police attacked the demonstrators, leaving eight people injured and making six arrests. Those detained were freed later that day.

The union held the City Hall human resources director responsible for the dispute. Mayor Enrique Riera asked the Ministry of Justice and Labour to declare the strike illegal and threatened to dismiss all the strikers. The dispute intensified when drivers tried to move some rubbish bins and the demonstrators tried to stop them. This led to police intervention, and the use of an anti-riot squad.

Political violence

Union organisations denounced a campaign aimed at silencing groups questioning the policies of President Luis González Macchi's government. This came to a head in October, when the social and political leaders, Arram Suhurt and Anuncio Martí were tortured and bullied for 14 days by the police, who accused them of being involved in a kidnapping incident.

Peru

POPULATION : 26,748,972 / CAPITAL : Lima / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Transition leader Valentín Paniagua and the new President Alejandro Toledo initiated a process to clean up the state. The Truth Commission was also set up to investigate serious human rights violations committed in Peru over the last twenty years, which cost many trade unionists their lives. Yet the return to democracy has not signalled any significant improvement in trade union rights. The year was marked by 64 strikes, as well as numerous demonstrations and protests. The campaign against privatisation was suppressed, sometimes with the use of military force.

THE LEGISLATION

Restrictions

The Constitution provides for the freedom of association, and recognises the right of public and private sector workers to organise and bargain collectively. Many restrictions on these rights, inherited from the repressive Fujimori regime, remain in force.

The law:

- Does not provide adequate protection from dismissal for union activity.
- Requires a minimum of 100 workers to form a professionally or occupationally based union.
- Restricts workers' eligibility for union membership, by prohibiting staff on probation periods from joining unions.
- Prohibits unions from taking part in political activities.
- Bans public servants' federations or confederations from joining organisations representing other categories of workers.
- Restricts who may run for election to union office, by requiring that in order to be eligible workers must be active members of the union and employed in the enterprise for at least one year.
- Requires a majority of all workers in the workplace to vote in favour of a strike (rather than all workers taking part in a ballot, as considered acceptable in international labour standards), and a full list of workers' names that attended the meeting to be submitted to management. This creates an atmosphere of intimidation that renders legal strikes particularly hard because many temporary workers are reluctant to participate even in secret ballots, due to fear of employer retaliation.
- Bans strikes over general economic and social policy issues.
- Contains an excessively broad definition of "essential" services, where arbitration is compulsory and strikes are virtually impossible.

Improvements in the legislation

In a country where 9.7 % of the urban population is unemployed and over half of the working population are employed in the informal economy without the protection of the law and trade union rights, the exercise and defence of such rights is an extremely difficult task.

On 27 July, thanks to trade union pressure, in particular from the Central Unitaria de Trabajadores (CUT), Law 27803 was approved, creating a Special Programme of Access to Benefits for the huge numbers of state employees who had been dismissed during the Fujimori dictatorship. They were given the right to reinstatement or job relocation, early retirement, financial compensation and retraining.

Outlook

During 2002, the Labour Commission of the Peruvian Congress was working on a bill to completely reform the General Employment Law by removing the restrictions on trade union rights, including organising rights. Among the reforms is the right to form a union with fewer members, in some cases only 10, in others 20. The maximum requirement is capped at 50 members. If the bill is passed, it will promote an increase in the number of trade unions, creating more opportunities for most workers to exercise their right to unionise, offering greater scope for them to defend their interests. The bill, due to be brought before the Congress during the early weeks of 2003, will give the trade unions greater independence in conducting their internal operations, facilitating collective bargaining and providing broad assurances on the right to strike.

The bill also seeks to fully re-establish the representative powers of trade unions at court trials, extending these to the defence of individual rights.

There are no restrictions on the unions' right to affiliate to international organisations.

RIGHTS IN PRACTICE

An ongoing history of serious violations

Over the last 12 years, there were general, chronic and systematic trade union rights' violations. Under Fujimori's government, it was increasingly easy for employers to fire workers involved in union activities, so many were reluctant to organise for fear of dismissal. Privatisation became an effective tool in anti-union discrimination, with privatised companies taking on the former employees on different conditions of employment, with lower pay and no union representation. These problems were exacerbated by the failings of the judicial system. Court procedures for reinstating workers sacked for union activities have been very slow and employers often ignore rulings in favour of workers. There have also been many cases of excessive use of force by the police and armed forces against workers engaged in legitimate trade union activity.

EVENTS IN 2002

The return to democracy has not led to the immediate exercise of trade union rights, nor for employers or the state to respect them.

The Spanish multinational Telefónica tramples on the union rights of workers and trade unionists are physically assaulted

Since Fujimori's government privatised the Peruvian telephone network, the Spanish multinational has fired 9000 workers, eliminating over 75% of its entire workforce and undermining the collective agreements. In June another 570 workers were sacked, in a clear breach of the collective agreement of April 2001. The 3000 remaining employees (most of whom are members of the Sindicato Unitario de Trabajadores de Telefónica del Perú and FETRATEL) staged a walkout.

The company tried to use the government's tercerización plan to force some workers to agree to work for sub-contracted companies, losing the rights they had built up over many years. The company has also pursued a policy of arbitrary dismissals, forced early retirement, and the arbitrary rotation and substitution of workers.

In addition, on August 7 the police illegally entered two trade union premises: afterwards a computer and a television were found to be missing. Three workers were injured in this incident. On August 9, three workers were arrested. They were released the next day.

On September 3, the national police's special forces violently attacked Telefonica workers who were demanding the reinstatement of 574 dismissed workers. They had already been on strike for 50 days, without any resolution of the dispute in sight. They finally called off the strike on September 11. Two days later, two trade unionists were injured and 18 arrested at a demonstration quashed by the police. They were accused of

attacking private property and disturbing the peace. They were released on parole the following day and ordered to report periodically to the court.

After the strike, Telefónica del Perú dismissed 53 workers under a variety of pretexts such as abandoning the workplace, misuse of company goods, vandalism and falsification of documents.

The striking workers had received strong support from Peru's Congress which, in a resolution adopted with an overwhelming majority on 23 August, strongly criticised the Spanish multinational and urged the Government to "immediately adopt measures aimed at implementing the agreements which had been signed". The Labour Minister had earlier stated the "need to give the company more time" to apply said agreements. However, at no point in time was the strike declared illegal by the Labour Ministry. The strike ended on 11 September, after a ruling by the Constitutional Court of the Republic which ordered the reinstatement of the 574 workers dismissed, whose sacking had been the cause of the strike. However, at no point in time was the strike declared illegal by the Labour Ministry.

**Unfair practices at
EDELNOR and CAM
Perú SRL**

Throughout 2002, the management of EDELNOR and CAM Perú SRL, both owned by ENDESA of Spain, refused to negotiate a new collective agreement with the General Electrical and Associated Workers' Union SUTREL, despite the expiry of the previous agreement on December 31 2001. EDELNOR refused to negotiate with what it termed a 'minority union' and called into question the trade unionists' mandates, following CAM Perú's refusal to recognise them. The companies alleged that there was already a collective agreement in force.

EDELNOR refused to go ahead with the deductions agreed to cover the cost of collective bargaining. Furthermore, it encouraged workers to leave the union by offering them money and a collective agreement drawn up by the management. It also threatened the shop stewards with reprisals and with withdrawing trade union protection rights (fuero sindical) if SUTREL carried out a media campaign.

The management of CAM Perú SRL also encouraged workers to leave the union by offering them substantial sums of money and a collective agreement drawn up by the management.

**Anti-unionism at U.S.
oil company**

On December 4, the Labour Ministry registered the PETRO-TECH PERUANA S.A. MAR Y TIERRA union formed at the company, in the Talara coastal areas of north Peru. This should have meant that, in accordance with the regulations, all union members and its executive committee had special legal protection (fuero sindical). Yet on the very same day, the company presented the union's general secretary Leonidas Campos Barranzuela, with written notice of dismissal, on charges of failing to "act in good faith" and other alleged breaches. He had already been sanctioned with a 15-day suspension from work on the same charges in the past.

**Trade unionists
dismissed**

On March 24, workers at the Embotelladora Latinoamericana (bottling plant), based in Lima, decided to form a union, and received Labour Ministry recognition on April 11. Not long after, the company, a subsidiary of Coca Cola, dismissed six union leaders whom the personal manager had instructed not to join the union. A few days prior to this, the company had sent them letters congratulating them on their good work.

Strike and military rule

In mid July, the government suspended basic rights and imposed military rule on the whole of the Arequipa region, placing trade union rights under threat. This abusive measure was in response to a general strike called by the provinces of Cuzco, Puno and Moquegua, in solidarity with Arequipa, where a state of emergency had been declared a few days earlier. Industrial action had been called as a strong show of protest against plans to privatise the electricity companies EGESA and EGESUR. The government's response was to suspend all basic freedoms and impose military rule on the entire region. Workers from Tacna and Arequipa held two marches a day with 'cacerolas' (banging of pots and pans) for several days.

Trinidad and Tobago

POPULATION : 1,300,000 / CAPITAL : Port-of-Spain / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111



There has been no improvement to the restrictions on collective bargaining or the right to strike in the public sector.

THE LEGISLATION

Essential services too broadly defined

The 1972 Industrial Relations Act allows all workers to form or join unions of their own choosing and establishes the right of collective bargaining. However, it also imposes limitations. Strikes are banned in essential services, which are broadly defined to include sectors such as teachers and bank workers. Strikes that are not declared by a majority union can also be prohibited.

Bargaining restricted

Collective bargaining is restricted by the requirement that to obtain bargaining rights a union must have the support of an absolute majority of workers.

The same labour laws apply in the export processing zones as in the rest of the country.

RIGHTS IN PRACTICE

The government is still unwilling to negotiate with public sector unions. It has consistently refused to amend its legislation on essential services and collective bargaining to bring them in line with ILO Conventions.

EVENTS IN 2002

Failure to use collective bargaining

Against a general background of economic crisis in the region, and especially in the sugar industry, the government implemented a restructuring programme in the main sugar company Caroni Limited, which employs over 10,000 workers, without holding any prior consultations with union representatives. The workers opposed the government plans to privatise the firm and demanded that the existing jobs be kept.

United States of America

POPULATION : 280,400,000 / CAPITAL : Washington / ILO CORE CONVENTIONS RATIFIED : 105-182



Legislative restrictions on trade union rights remained in place, excluding 32 million workers from collective bargaining. Private companies continued harassing trade unionists and discouraging all attempts to unionise. The unions responded in some cases by organising pressure campaigns for the recognition of trade union rights.

THE LEGISLATION

Many workers excluded

Federal and state laws guarantee the right to the freedom of association, the right to join trade unions and participate in collective bargaining. At the same time however, they impose many restrictions on those rights. National labour legislation does not cover agricultural or domestic workers, or certain categories of supervisory workers. Moreover, the concept of "employee" as used in the law does not accord protection to "independent contractors" even where they have no separate economic identity independent of a particular employer.

According to a General Accounting Office report released on October 15, 32 million civilian workers as of February 2001 did not have the right under any law for a designated agent to negotiate their wages, hours or

other employment terms with their employers. That group included 8.5 million independent contractors; 5.5 million employees in small businesses; 10.2 million people working as supervisors and managers; 6.9 million federal, state and local government employees; about 532,000 household workers; and 357,000 agricultural workers.

**Public sector –
collective bargaining
limited**

In the public sector, approximately 40% of all workers are still denied basic collective bargaining rights. At the national level only postal workers enjoy such rights. Over two million employees of the federal government are governed by the 1978 Federal Labor Relations Act, which outlaws strikes, proscribes collective bargaining over hours, wages and economic benefits and imposes extensive management rights further limiting the scope of collective bargaining.

At the state level, while the situation varies from one state to the next, in general public sector workers are prohibited from taking strike action. Thirteen states only allow collective bargaining for certain public employees and 14 states do not allow it at all.

**Private sector –
restrictions on
organising**

In the private sector, the law requires proof of majority status in order to establish a trade union. This is usually obtained through an election in which more than 50% of workers in any bargaining unit must vote in favour of forming a union in order for it to be recognised for the purposes of collective bargaining. Employers may not, by law, actively campaign against union representation, but the penalties for breaking the law are limited and ineffective.

**Restrictions on
workers' activity –
freedom for employers**

The law, and various administrative and judicial decisions, place limitations on the ability of workers to engage in "concerted activity" including restrictions on intermittent strikes, secondary boycotts and other forms of mutual aid as well as on various kinds of "on-the-job" activity.

At the same time, the law gives employers the "free play of economic forces". If employers cannot get what they want through collective bargaining, they can unilaterally impose their terms, lock out their employees, and transfer work to another location, or even to another legal entity.

The National Labor Relations Act requires the National Labor Relations Board (NLRB) to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices. There is no corresponding obligation when employers commit the unfair labour practices.

The law allows employers to hire replacement workers during an economic strike. Permanent replacement workers can vote in a de-certification election to eliminate union recognition.

In addition, foreign workers without documents, whose labour rights, not to mention their other rights, are already denied, have seen their situation worsen, since a ruling made in 2002 in the Hoffman Plastic case, in which the high court reversed the labour relations board's decision to award back pay to an undocumented foreign worker who was fired for union activity. The ruling said illegal aliens do not have the same rights as Americans when mistreated on the job.

RIGHTS IN PRACTICE

**Sacking of union
supporters
commonplace**

At least one in ten union supporters campaigning to form a union is illegally fired. For every 30 people who vote for a union in elections in any one year, one will be illegally fired. At least one worker will be illegally fired in over 30 % of all union-organising campaigns. Last year, the NLRB was estimated to have a backlog of almost 25,000 cases involving unfair labour practices committed by employers opposing trade union activity.

Aggressive anti-union campaigns

In nine out of ten union representation elections employers use mandatory closed-door meetings conducted on their own property during work to campaign aggressively against collective bargaining and trade unions. Supervisors not eligible to be represented by the trade union may have to participate in a vicious and intimidating campaign against the union. Employees who support trade unions are identified and often isolated from other workers. When faced with employees who want to join a trade union 80 % of employers engage consultants, detectives and security firms to assist in anti-union campaigns.

Often their activities include surveillance of union activists in order to discredit them. In some cases court, medical and credit records of union activists are obtained and the family lives of activists are studied for possible weaknesses. Except in rare circumstances, trade union representatives are denied access to the employer's property to meet employees during non-working time. During organising campaigns, union representatives are often threatened with arrest and expulsion from the employer's property. The government-conducted election used to determine if workers want union representation is usually held on the employer's premises – the place where most anti-union intimidation has occurred.

Lack of effective redress for workers

The procedures of the NLRB, the body that governs industrial relations in most of the private sector, do not provide workers with effective redress in the face of abuses by employers. Lengthy and ineffective legal procedures discourage many workers from using them - it takes an average of 557 days for the NLRB to resolve a case. One study found that, where employees are ordered to be reinstated, only 40 % actually return to work and only 20 % remain employed for more than two years. The workers that leave give unfair treatment as their main reason for leaving.

Should the NLRB determine that an employer's unfair labour practices have made fair trade union elections impossible, it may order a new election.

Closures in response to organising

Although illegal, employers threaten to close or move their plants in over half of all organising campaigns, according to a study released in 1996. In industries such as manufacturing where this threat is most credible this violation occurs in over 60 % of all campaigns. Where collective agreements are negotiated for the first time 18 % of employers threaten to close their facilities and 12 % of the employers actually follow through with their threats.

Employers regularly challenge the results when the union wins a representation vote, regardless of the margin of victory. The government will spend months, and sometimes years, examining what are often minor or frivolous charges before ordering a company to bargain with the union. In the meantime, union supporters quit or are fired, and new workers are hired, often after the employer has screened out what it deems to be potential union supporters, sometimes by using psychological and other tests.

Obstacles to bargaining

The options available to employers to discourage workers from exercising their trade union rights do not end if a union is certified. It is estimated that approximately one third of employers engaged in bad faith or "surface" bargaining with newly-certified unions. 40 % of negotiations for a first collective agreement fail. One study showed that in a quarter of the remaining cases where a first collective agreement was achieved, the union was unable to negotiate a subsequent agreement.

Extreme exploitation

An under-funded Labour Inspectorate and inadequate penalties for employers who violate the law mean that legally established labour standards covering wages and hours, child labour and workplace safety are inadequately enforced. This, together with the failure of US law to protect trade union rights, has led to an increasing number of instances of extreme exploitation.

Some of the most extreme exploitation takes place in territories under the control of the US Government. Since the 1980's the US Commonwealth of the Northern Mariana Islands has developed a garment industry based on the ability of these islands to ship products duty free and without quotas to the US. This status, together with local control of wage and immigration laws, has had the practical effect of introducing a sys-

tem of indentured servitude into the territory. Local authorities permit foreign-owned companies to recruit thousands of foreign workers, mainly young women from Thailand, China, the Philippines and Bangladesh. The workers are recruited by private agencies who demand exorbitant fees from these workers. Fees are either paid in advance or are deducted from pay in an arrangement that requires the workers to remain in the employ of the same manufacturer who in turn has a relationship with the recruiting agency.

In addition to the abuse of fee-charging, these foreign workers are routinely required to sign employment contracts where they agree to refrain from asking for wage increases, seeking other work and from joining a union. The workers are informed that contract violations will result in dismissal as well as deportation and that the workers concerned must pay the travel expenses to return to their home country.

More protection needed

A survey commissioned by the national trade union centre AFL-CIO carried out in July 2001 found that more than two thirds of working Americans believe that workplace rights need more protection. There was widespread dissatisfaction with employer behaviour, with the majority of employees saying they do not trust employers to treat workers fairly.

EVENTS IN 2002

Economic background

Although the US economy began growing again throughout the year, many companies continued to cut jobs, mainly in the technology sector (telecommunications, electronics, IT and electronic trade), the banking sector, the car industry, and air transport. On the whole, few companies created a significant number of new jobs.

Dockworkers locked out in attempt to force government intervention

On September 29, the Pacific Maritime Association (PMA), which represents shipping lines and terminal operators on the West coast, closed the 29 major Pacific ports and locked out 10,500 longshoremen, members of the International Longshore and Warehouse Union (ILWU), itself a member of the AFL-CIO. The PMA claimed that the workers had engaged in a slowdown, but the union saw the lockout as a way of allowing the federal government to intervene. Indeed, the PMA had decided the lockout less than 12 hours after dock workers had returned to work, following an initial lockout that began two days earlier. The Dockers had been working without a contract since July 1st. The dispute concerned terms for a new labour contract proposed by PMA. These terms would have introduced electronic container tracking systems in the ports, and thereby eliminated between 300 and 400 ILWU jobs, without guaranteeing the ILWU jurisdiction over all jobs created by introduction of new technology. The lockout paralysed sea transport between Asia and the West coast for 10 days, costing the U.S. economy between \$1 and \$2 billion a day.

On October 8, at the PMA's request, President Bush invoked the 1947 Taft-Hartley Act—which allows the president to seek court action to halt labour disputes that threaten “national health and safety”—and secured a court-ordered cooling-off period that sent the longshoremen back to work and dispatched federal mediators to oversee a new round of negotiations. This was the first time since 1978 that a U.S. president sought a Taft-Hartley injunction, and the first time ever that such an injunction was sought and issued in the context of a lockout, rather than a strike.

The ILWU, the AFL-CIO and other unions accused the PMA and the federal government of having orchestrated the port crisis to break the union's control over West coast docks, and criticised the administration efforts to quell the dispute as interfering with the collective-bargaining process. Indeed, early in negotiations, Bush administration officials had warned the ILWU that dire consequences could ensue if the union resorted to collective action in behalf of its bargaining demands. These included, not only a Taft-Hartley injunction, but also running the ports with U.S. Navy personnel and administration-supported legislation to break up the union's coast-wide bargaining unit or to restrict the union's ability to call a strike.

A tentative 6-year contract agreement was finally reached on November 24, following which ILWU president James Espinosa expressed his satisfaction that the union “succeeded in bringing new technology to

[the] ports while achieving vital pension and economic security, strong health care benefits, and safety protections for [the] workers and their families.” On December 13 the ILWU Alongshore Division Caucus overwhelmingly approved the agreement, and recommended that members accept the deal. On January 22, 2003, the ILWU announced that the membership had ratified the tentative agreement by a margin of almost 90%.

Union-busting at Brylane

In February, a team supervisor at Brylane in Indiana, who had been asked to contribute to an anti-union campaign, was sacked from the head office in Indianapolis where she had been employed for 15 years. Her superior said that “the company had lost all confidence in her”, which was an implicit reference to her involvement in the union. Threats of physical violence against trade unionists were also reported to have occurred in the company. The management of the two distribution centres in Indiana had adopted a series of measures – many illegal – to prevent union organising, since 1,200 workers had joined the trade union UNITE in October 2001, going as far as calling in Ice Miller, a company with a long experience of fighting trade unions. Brylane is the American subsidiary of the French multinational Pinault-Printemps-Redoute. The company markets and distributes clothes and household items shown in nine mail order catalogues – amongst them the French catalogue “La Redoute” – in the United States. It manages two distribution centres in Massachusetts, where UNITE has been organising workers for more than 15 years, and two further sites in Indiana, where no union had been set up previously.

Strikers threatened with dismissal

On September 30, Azteca Foods workers in Chicago, Illinois, staged a protest strike to demand that their employer obey the law and respect their right to a union and a decent contract. Negotiations had been dragging out between their newly formed union, a branch of the United, Electrical Radio and Machine Workers of America (EU), and the employer since May 14. The workers were seeking improvements in wages and working conditions, including union security. The company’s response was to seek concessions such as cuts in medical and maternity leave, the removal of seniority rights and, notably, a ban on all union newsletters from the company premises. When the strike began, the company threatened those workers who took part in the picket line with termination. The UE responded with an Unfair Labor Practices charge against Azteca for threats, interrogation and surveillance. The charges were upheld by the NLRB.

Wal-Mart faces charges of union harassment

In November Wal-Mart Stores Inc, the top US retailer, faced an unprecedented pressure campaign spear-headed by the United Food and Commercial Workers (UFCW) to allow its workers to join unions. The campaign, culminating in a day of action on November 21, served to draw widespread public attention to labour abuses committed by the Wal-Mart chain, many of which have been taken to the National Labor Relations Board (NLRB). By the end of the year a total of 43 complaints had been brought against Wal-Mart by the NLRB in 25 states. The corporation had been found guilty in 10 of those cases, had settled eight of them and the remainder were pending. The three most recent cases to be investigated by the NLRB resulted in charges of illegal surveillance, threats and intimidation against union members. They include the case in Denver, where the United Food and Commercial Workers Union Local 7 reported that Wal-Mart managers: told employees that their union activities were being monitored; asked employees to spy on co-workers on behalf of the company; verbally harassed union supporters and interrogated employees about their union activities. The other two cases, in Paris, Texas and Orland, Florida, relate to similar charges of illegal surveillance, threats and harassment against union supporters. The cases are due to go to court in 2003.

Trade unionists fired

On November 19, two trade unionists were fired from the Madison, Wisconsin Whole Foods Market, after leading the union organising drive at the local store.

Venezuela

POPULATION : 24,390,000 / CAPITAL : Caracas / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



Restriction of freedom of association in the LOT

This was a year characterised by a great deal of social and political conflict, with many situations culminating in confrontation that threatened the survival of the democratic system. The government maintained its confrontational stance and refused to recognise the main national trade union organisation, along with the other social partners.

THE LEGISLATION

The Constitution of 1999 and the "Ley Orgánica del Trabajo" (LOT, employment law) of 1990, promote freedom of association for all workers, apart from members of the armed forces. However certain legislative measures contradict the stated desire to respect trade union freedom.

For example, Article 404 of the LOT imposes a ten-year transitional period on foreign workers before they are entitled to stand for leadership of a union. Article 118 sets too high a threshold for the number of workers required to form a union of independent workers. The LOT assumes the right, quite unacceptably, to list the tasks and aims of workers' organisations.

The electoral commission charged with harmonising labour legislation in line with the new Constitution of 1999 has advised legal reforms which would make wholesale changes to the law. However by the end of 2001 no decision had been taken by the National Assembly, which the government says will probably open up the procedure for amending the legislation to nationwide consultations.

Interference in union affairs allowed by the Constitution

While the Constitution contains some innovative clauses on human rights, it also contains some contradictory provisions. For example, whilst purporting to safeguard political rights, such as voting rights, some provisions in effect undermine the freedom of association guaranteed in ILO conventions 87 and 98. Article 95 of the Constitution requires that trade union constitutions provide for their leaders' mandates to be non-renewable and submitted to a universal, direct and secret ballot, thereby constituting a clear interference in internal union affairs. The 8th provision of Article 293 compounds this interference by delegating the organisation and supervision of trade union elections to a national electoral council (CNE), until such time as new electoral laws contained in the Constitution are introduced.

In addition, a resolution by the Controller-General of the Republic requires trade union leaders to submit a sworn statement of union assets at the start and end of their terms of office.

Restriction on collective bargaining

According to paragraph 2 of Article 473 of the LOT, unions must represent the absolute majority of the workforce in order to be recognised as representative for collective bargaining purposes. The ILO has criticised this provision, on the grounds that it prevents minority organisations from carrying out joint bargaining where no single union organisation represents the absolute majority.

Legal attempts to disregard the rights of public sector workers

The package of 49 laws presented by the government for approval under the 'Enabling Law' (Ley Habilitante) granted to the Venezuelan president in November 2001 included the Decree Law on the Civil Service Statute, which includes provisions eliminating longstanding rights held by civil service workers. The strong reaction from trade union organisations prompted the National Assembly to amend the decree and agree to the unions' comments.

Some progress in labour justice and social security

In August, the National Assembly approved the Labour Process Code (CPT), which aims to resolve the problems of delayed legal processes and impunity in labour disputes. The Code introduced a substantial change in labour negotiations by incorporating dialogue as a key component in bargaining and by encouraging mediation as an alternative means of resolving conflicts. The CPT takes effect in July 2003. In addition, in

December the National Assembly approved the Law on the Social Security System (*Ley Orgánica del Sistema de Seguridad Social*), after nearly four years of *vacatio legis*. This law contains significant advances as it acknowledges the solidarity-based, universal nature of the system that supports this human right and the central government's responsibility in guaranteeing it. However, neither the leading national trade union confederation (CTV), nor the employers' organisations were involved in drafting, debating or analysing the law.

RIGHTS IN PRACTICE

The government's policies on freedom of association and collective bargaining have provoked a resurgence of social conflicts. The authorities' repeated attacks on unions opposing President Chavez' interventionist policies have, in practice, undermined trade union rights even further throughout the year. This is in stark contrast to the government's proud claims to respect human rights. For example, the authorities have reneged on agreements negotiated with workers, particularly in the public sector.

EVENTS IN 2002

Political context

Political and social conflict reached extreme levels in 2002. The union situation and the action by trade unions played an important role throughout the year. The government's policy of confrontation and refusal to recognise the most representative trade unions contrasted with the political action taken by trade unions, employers' organisations, political parties and other segments of Venezuelan civil society to demand the rectification of those government policies that ran counter to the rights enshrined in the Venezuelan constitution. The situation came to a head in two general strikes convened in early April and December by various social actors. CTV, the country's leading trade union organisation, played a leading role in these strikes.

Violence in April

The general strike in April was triggered by the unfair dismissal of the core executive staff at the state-owned company *Petróleos de Venezuela SA (PDVSA)*, who were demanding compliance with the 'meritocracy' system. The government had ignored this system which had been in use for more than 20 years and should have been used when appointing members to PDVSA's board of directors. The oil strike was joined by other social and economic groups who took to the streets to demand that the government's measures be corrected. The strike organisers decided to forge ahead, and on the second day declared that the strike was 'open-ended' – resulting in a more tense and difficult situation. On April 11, the government finally agreed to remove the PDVSA executives it had installed, but in Caracas a massive demonstration marched on Miraflores Palace, the government seat, to demand the resignation of President Hugo Chávez Frías. This led to street clashes, with 19 people killed and more than 40 injured.

In the wake of these events, and against a backdrop of widespread confusion, a number of high-ranking military officers called for the president's resignation, accusing him of committing criminal acts. In the early morning of April 12, President Chávez was removed from power by the officers, who installed Pedro Carmona Estanga - a businessman - as acting president. Until then, Pedro Carmona Estanga had been president of FEDECAMARAS, the employers' organisation. After taking office, he issued a series of unconstitutional decrees and measures, triggering a serious political and governmental crisis and leading to human rights' violations. Democratic political groups and various segments of the population rejected these moves, and took to the streets to demand the return of President Chávez. With the support of loyal officers, he was returned to power after 48 hours.

On April 12 the CTV Executive Committee distanced itself from the events and demanded that the authorities comply in full with the constitution and its human rights obligations, in line with its decision to demand full respect for trade union rights and democratic rights in general.

Threats against the trade union movement continue

On returning to power, President Chávez partially acknowledged his mistakes and promised a policy of reconciliation and rectification. He reinstates the PDVSA leaders in their jobs and introduces a policy of rapprochement between dissident groups. However, these reform-minded good intentions did not last long and a campaign of threats against, and confrontation with, these groups resumed.

The chief butt was the CTV's Executive Committee, whose members were denied recognition and told they would be prosecuted for their alleged involvement in the failed coup of April 11. While there was no concrete evidence of, and no criminal charges relating to the CTV leadership's involvement, since then the government has rejected the CTV's legitimacy, and has continued to accuse it of complicity in the coup.

ILO direct contacts mission

In May, an ILO direct contacts mission visited Venezuela, after it had been postponed a number of times by the government. The mission's objective was to gather information on the government's intervention in trade union affairs, especially in union elections and other issues related to legal restrictions on freedom of association. The decision to go ahead with the mission was taken at the International Labour Conference in June 2001.

The direct contacts mission, followed by meetings with government representatives, trade unions, employers' organisations and other social actors noted the highly polarised political situation, the many instances of interference and the total absence of social dialogue and consultation with the social partners. The mission said that the government could not refuse to recognise the CTV's Executive Committee elected in October 2001, unless the courts found the elections invalid. It added that the current Executive Committee should be empowered to represent its members, and that any further decisions on the matter lay with the CTV's member organisations. The mission asked the government to rectify the current situation, which runs counter to Convention 87.

The mission also said that despite its declared intention to promote a climate of national reconciliation, the government had excluded and sidelined the country's leading trade union confederation by refusing to recognise its elected officers. It noted that according to the principles of the Committee on Freedom of Association, no representative trade union group should be excluded from the dialogue process, and that Venezuela did not currently meet the conditions for the full exercise of freedom of association.

Supreme Court recognises CTV in connection with accreditation for the International Labour Conference

In late May, CTV President Carlos Ortega applied to the Ministry of Labour for accreditation as the official workers' representative at the 90th International Labour Conference (ILC) in June. The Labour Minister rejected Mr Ortega's application, but asked the Supreme Court for an opinion on the matter. In an unusual ruling, on May 30, the Supreme Court's Electoral Chamber found that Carlos Ortega should be given accreditation, as in the eyes of the media and the public in general the CTV was the country's most representative trade union federation and Ortega was its president.

Special paragraph

At the 90th ILC in June the intense debate on the status of freedom of association in Venezuela continued. The Expert Committee and the Committee on the Application of Standards commented on the scant progress made by the government to allow for the full exercise of freedom of association, despite its statements and commitments. The workers' and employers' groups used the evidence in the mission's report to suggest that Venezuela be cited as a serious case at the conference. They asked for it to be included in the director-general's report and given a special paragraph. This was agreed.

Workers' demonstrations broken up

The situation worsened throughout the rest of 2002 as industrial disputes kept workers out in the streets on a permanent basis. Although no union leaders were arrested, Provea (a non-governmental human rights organisations) reported that workers faced stronger repression than other social groups when trying to carry out peaceful demonstrations: 20 demonstrations were broken up, which was 44% of the total of those broken up, until September 2002.

Political efforts to resolve the crisis

In the meantime, the Organisation of American States (OAS), with the support of the UNDP and the Carter Centre, stepped up efforts to help find a peaceful, negotiated resolution to the country's crisis. The OAS Secretary-General, former Colombian President Cesar Gaviria, took up near permanent residence in Caracas in April to resolve the crisis. The Venezuelan government finally agreed to the OAS proposal, and in November, the Negotiation and Agreements Round Table was established between the government and the opposition. It sought an electoral solution to the crisis, promoted a Truth Commission to shed light on the events of April, drafted a proposal to disarm the population and establish an agreement against violence. Despite Mr Gaviria's efforts, little progress was made because of the government's intransigence and the radicalisation of parts of the opposition. The CTV is represented on the Round Table, along with the political parties, the employers and civil society organisations.

Second general strike

In early December, political, social and business groups - including the CTV - met in the Democratic Coordinating Committee and called a fresh general strike that lasted until mid-January 2003. The purpose of the strike was to bring the elections forward and force the president to leave. The strike effected vital economic sectors, such as oil, heavy industry, trade and services. The government declared the strike illegal and an act of insurrection. They promised to re-establish control of key economic activities by taking steps against businesses that shut down, and by firing workers involved in the strike.

PDVSA workers fired

The strike had a disastrous effect on the country's political, social and economic situation. The hardest hit sector was oil, which drives the entire Venezuelan economy. The government said that paralysing the oil sector constituted an act of terrorism and destabilised the country, and took steps to punish those responsible. More than 16,000 workers at the state-owned PDVSA were fired, most of them managers and executives, as they were accused of abandoning their posts and promoting the overthrow of the government. Those dismissed included pregnant women, workers on medical leave, workers on holiday and other cases, none of which are justified under Venezuelan law. The CTV promised to support those who had been fired and to help them to be reinstated. However, it is not clear what the final outcome will be at PDVSA.

Other cases

The ILO learned of the case of the Union of Revolutionary Workers of the New Millennium at the company INLACA which the Ministry of Labour had refused to register as a union. The union lodged a complaint with the Committee on Freedom of Association. In June 2002, the Committee on Freedom of Association found in favour of the workers, saying that the current conditions for registering the union were equivalent to asking the authorities ahead of time for permission to create or operate a trade union, which itself constitutes a violation of freedom of association. The Committee recommended that the workers be reinstated and asked the government to grant the union's registration. The workers were reinstated at their former wages, but, following a new resolution by the Ministry of Labour, they were once again dismissed and the registration application turned down. The union lodged an appeal with the Supreme Court against the Ministry of Labour's decision. At the time of writing, the situation remains as it was: the workers are still out of work and the union has not been recognised.

Another case involved managers and executives at PDVSA, who, on July 2, applied to the Ministry of Labour to register as a union. The Labour Inspectorate rejected the application on August 2 on the grounds that as the union organisers were still executive staff and therefore represented the employer, they were violating the principle of 'trade union purity', as established in Article 148 of the Employment Law regulations (LOT - Ley Orgánica del Trabajo). The union organisers lodged an appeal against the Ministry of Labour's decision with the Administrative Disputes Chamber of the Supreme Court. On December 17 the Ministry of Labour ordered the case to be moved to the date when the Labour Inspectorate was scheduled to give the details on the union's case for registration. However, at the time of writing this report, these comments had still not been forwarded to the union's organisers. The majority of those behind the application for union registration were fired from PDVSA in late 2002.

2002 saw few changes with regard to respect of trade union rights in the region. There has been no let-up in the devastating impact of globalisation on workers' rights. All the Asian countries that had been criticised last year reappear in this year's edition. The deterioration of trade union rights is tending to increase across the region, despite some positive developments.

Working conditions remain very precarious in most Asian countries and freedom of association is constantly being violated, especially in the export processing zones, where workers are exploited and often have to work in insalubrious conditions. In the worst cases, this has even cost workers their lives, e.g. in Bangladesh, which holds the depressing world record for deaths of workers owing to fires at their workplaces - the workers have no means of escape when fires break out since they are literally locked up in their factories.

Establishing a trade union can be a real obstacle course in many countries, owing to the formidable array of barriers in legislation. In Malaysia, the Director General of Trade Unions (DGTU) can refuse to register a trade union without giving any reason and there are no time limits on the DGTU's analysis of applications for registration. In the Philippines, the number of members needed to form a union is excessive according to ILO criteria. Often entire sectors are denied the right to form trade unions, as is the case in Cambodia, Taiwan and Thailand. In South Korea the government declared it was prepared to accept a civil servants' association, but it stated categorically that such a body would not be granted the rights enjoyed by a trade union. In March, Korean public service employees tried, nonetheless, to set up a union, but about one thousand police officers turned up at the organisation's founding congress and proceeded to arrest 178 delegates, 5 of whom were prosecuted.

Independent trade unions are strictly forbidden in all single-party states, particularly China, North Korea, Laos and Vietnam, and any hint of independent union activities can lead to imprisonment. The unions there are akin to political instruments for controlling workers and they have no negotiating rights. In North Korea, the penal code decrees the death penalty for anyone intentionally disrupting industry, commerce or the

Asia and the Pacific



transport system. In Burma, despite the release of opposition figure Daw Aung San Suu Kyi and the opening of an ILO liaison office, the regime has remained one of the most repressive in the world. Independent trade unionists, who are forced to live underground or in exile, are portrayed as terrorists. On 4 August 2002, U Saw Mya Than, a member of the FTUB, was shot in cold blood by soldiers, as a reprisal for an attack by rebel forces. As a victim of forced labour, which is very common in the country, Than had been designated as a porter (in reality, a human shield) for soldiers, despite the fact that he had just been elected head of his village, followed a training course on trade union rights and gained a fine reputation within the region for his commitment to protection of human rights. In China, 2002 saw a sharp increase in labour disputes, resulting from mass dismissals in public enterprises. Particularly strong measures were deployed in the oil town of Daqing and the town of Liaoyang, where the sacked workers' representatives were thrown into prison and beaten up.

In some countries, where the legislation is relatively good on respect of union rights, it has tended to be poorly applied, either owing to lack of resources or to lack of will on the part of the authorities. In Cambodia, despite improvements in respect of union rights, independent trade unionists are frequently sacked and labour inspectors have virtually no means at their disposal. In Fiji the government has failed in practice to apply the law on trade union protection. In the Philippines, the Labour Ministry is lax in ensuring respect of union rights. Azerbaijan, which can rightly claim to have some of the best legislation in the countries of the former USSR, nevertheless gives primacy to agreements reached, often without any transparency, between companies and the state. In Pakistan, the introduction of a new law was meant to take into account the conclusions of the Committee on Application of Standards of the International Labour Conference but failed to live up to its promises and actually reduced trade union protection. In Hong Kong, article 23 of a law expected to be adopted in 2003 might be used as a political ploy to block any legitimate trade union activities.

The right to strike is flouted throughout the region, both in law and in practice. Where it is not actually banned, this right is denied to whole sectors, either through the extension of definitions of what constitute essential services, as in Pakistan, or through the imposition of harsh sentences, as in India, where the state of Tamil Nadu adopted a law increasing prison sentences for organisers of strikes in key sectors. In Turkey, trade unions have to obtain permission from the authorities to hold their meetings and the police are allowed to record the proceedings.

Employers have no qualms in doing all they can to crush workers' movements, often with tacit government support. They use strike busters to intimidate workers and prevent them from engaging in normal union work. This happened on 3 May in Thailand, when 2 unknown persons beat up the former treasurer of the union at Gina Form Bra Ltd, a firm producing underwear, insisting that she leave the firm immediately. The same firm was denounced by the national Human Rights Committee for its numerous dismissals of trade unionists, but at the end of the year it was still refusing to reinstate the workers concerned. In Indonesia, a trade unionist was sentenced in August to a six-month jail term for his involvement in the organisation of strikes that January in support of a minimum wage for the sector.

In Nepal, trade unionists paid a high price for the internal armed conflict between government forces and Maoists guerrillas. 52 trade unionists were killed, many of whom were teachers.

Positive developments in the region include the final abrogation of a drastic Sri Lankan law on essential services, that severely restricted the right to strike, following a Memorandum of Understanding between the government and the (Tamil) armed rebel group, LTTE. Another highlight was the major trade union victory for Thai workers at the Light House company; the management had sacked hundreds of trade unionists, but international union solidarity campaigns led to their reinstatement and a promise by management to refrain in future from undermining trade union activities.

Asia and the Pacific



Asia and the Australia

POPULATION : 18,900,000 / CAPITAL : Canberra / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111



Legislation concerning trade union activities remained very restrictive. After a two-month struggle and a massive support campaign led by trade unions, sacked employees at Sydney's Hilton Hotel were offered a fair deal. In July, the Australian Industrial Relations Commission ruled that employees could not be forced to work unreasonable hours of work.

THE LEGISLATION

The law establishes freedom of association for workers, including in the public sector, and the right to bargain collectively.

Collective bargaining undermined

The 1996 Workplace Relations Act contains curbs on trade unions and restrictions on strikes. It provides for enforceable individual agreements, called Australian Workplace Agreements (AWAs). The content of AWAs is confidential, so they cannot be checked for breaches of minimum wages and employment conditions. AWAs have primacy over federal and state awards or agreements, and over certified collective agreements, unless the agreement is already in force. Once an AWA is in force, it cannot be displaced by a certified agreement. It is easier to make an AWA legally enforceable than a collective agreement.

The Act places union and non-union collective agreements on the same footing and gives preference to workplace- or enterprise-level bargaining over other levels. It directs the Industrial Relations Commission to encourage enterprise-level agreements over multi-business or sectoral agreements, and says that multi-business agreements can be certified only if they are in the "public interest".

The Act narrows the scope for legal strikes and increases the penalties for breaking the law. Strikers covered by multi-business collective agreements are not protected against dismissal or other sanctions. The restrictions on strikes include heavy fines for industrial action during the life of a collective agreement and tough secondary boycott provisions. Strike pay cannot be a subject for negotiation and a majority of the whole workforce must approve a collective agreement. The Act makes it much harder for union organisers to get into workplaces.

The Act establishes a new system for dealing with unfair dismissals. This further limits redress and compensation claims. The AWAs are also subject to far fewer government regulations than has been the case with collective agreements. The Act appears to allow an employer opening a new enterprise to choose which union to negotiate with before staff are employed.

One particularly damaging part of Australia's restrictive body of labour law is the section that justifies prohibiting industrial action by virtue of potential harmful effects on trade. International jurisprudence on the issue of the right to strike is very clear on the right of governments to prohibit strikes in essential services, carefully defined as those the interruption of which threatens the life or safety of part of the population. The Australian government has extended this prohibition to any action that disrupts the national economic or commercial activity. The ILO has very clearly recommended that the government rescind this link between trade and the violation of workers' rights.

Restrictions are also to be found in the jurisdiction of individual states. In Western Australia, the law on labour relations contains no provisions guaranteeing the protection of workers against anti-union discrimination. In Queensland, the 1999 law on labour relations states that an organisation's registration can be cancelled if its members participate in protest action that prevents or disrupts economic or commercial activity or the provision of a public service.

RIGHTS IN PRACTICE

Employers use the legislation on workplace agreements to undermine collective bargaining and promote individual agreements. Australian Bureau of Statistics figures show that most workers on AWAs are paid A\$100 to \$193 less a week than workers doing similar work under collective union agreements.

Australian Industrial Relations Commission rules against unreasonable overtime

On July 23, a Full Bench of the Australian Industrial Relations Commission gave an important ruling on the ACTU's Reasonable Hours Test Case, in deciding that employees could not be forced to work unreasonable hours. Since then, an employee can refuse to work overtime if it is unreasonable. Unreasonable overtime may be determined by considering an employee's family responsibility and their health and safety.

The ACTU claim to specify in detail a "standard of reasonableness" in awards was rejected by the Commission on the grounds that over-regulation would undermine the concept of "ordinary hours" (for example, 38 hours). The Commission argued that the individual circumstances of the employer and employee should be taken into account when deciding what constitutes reasonable hours.

The ACTU's Reasonable Hours case encompassed the first comprehensive review of working hours in Australia since the national eight-hour day cases in 1947. The union's push had come amid reports that at 42 hours a week, Australia had the second highest average hours of work in the OECD group of nations.

EVENTS IN 2002

Picket line broken

On June 12, a picket line was broken at Hastings' BHP steel plant. Over one hundred policemen dislodged union picketers from a gate to allow twenty trucks to pick up steel. This was urgently needed to avert stand-downs at all car manufacturers. BHP management also attempted to serve writs for contempt on twelve Electrical Trades Union and Australian Manufacturing Workers Union members, for defying a Federal Court order to allow trucks free access to the plant. Some of these union members were still on picket lines outside four gates into the compound. The workers were protesting against plans to outsource maintenance work at the rolling steel plant south-east of Melbourne. One picketer was slightly injured in the action.

Azerbaijan

POPULATION : 8,000,000 / CAPITAL : Baku / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



Limitations on the right to strike in public transport remain, as does the prohibition on political activities by the trade unions. The Labour Code prohibits strikes in sectors deemed vital to human health and safety, the list of which exceeds the ILO definition of essential services. There is still little respect for collective bargaining.

THE LEGISLATION

The constitution provides for freedom of association, including the right to form trade unions. Under the 1994 Act on Trade Unions, seven persons or more may form a trade union and adopt its rules. Persons performing their military service, and managerial staff, are however excluded. The Act also provides for the right of trade unions to conclude collective agreements and prohibits discrimination against trade unions. A 1996 law provides for collective bargaining agreements to set wages in state enterprises. According to the national legislation, all the labour laws cover all workers and enterprises operating in Azerbaijan. However, in the case of multinational enterprises (MNEs), these laws apply "if no others are applicable". These "others" are bilateral agreements between the State and MNEs, in which all the regulations are set out. The Parliament must ratify these agreements. However, they are not officially published and neither unions nor even Labour inspectorates have access to them. This anomaly is leading to the violation of labour rights in such enterprises.

Public transport strikes still banned

The constitution also provides for the right to strike, but there are limitations. The Labour Code states that employees of legislative authorities, relevant executive authorities, courts or law enforcement authorities

may not go on strike. Furthermore, it prohibits strikes in certain service sectors – namely hospitals, power generation, water supply, telephone communications, air traffic control and fire fighting facilities – which are vital to human health and safety. The list exceeds the ILO definition of essential services. Article 188-3 of the penal code bans collective action aimed at disrupting public transport, and failure to respect the ban carries a penalty of up to three years' imprisonment. The government said it was revising its legislation and would take ILO comments into account.

Restrictions on union activities

The state prohibits unions from exercising any political activities, from being associated with political parties, from carrying out joint activities with them, or receiving or providing them with any financial aid.

RIGHTS IN PRACTICE

Collective bargaining not respected

Most industries are still state-owned and are run by government-appointed boards and directors who set wages. Despite the law, an effective system of collective bargaining between unions and enterprise management has yet to be established. Unions rarely participate in determining wage levels. Where collective agreements exist, they are not always respected.

Dues not transferred to union

One of the most serious problems facing unions in Azerbaijan is that union dues are rarely transferred to them. As a consequence, the unions do not have the resources to carry out their activities effectively.

Bangladesh

POPULATION : 134,600,000 / CAPITAL : Dacca / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



The many legislative restrictions on trade union rights remained in place. A climate of political violence was still predominant, notably in January, when strikers were repressed by the police.

THE LEGISLATION

Many restrictions

The Constitution provides for the right to form or join unions. There are many restrictions, however. Before a union can be registered, 30% of workers in an enterprise have to be members. The union can be dissolved if membership falls below this level. No trade union action can be taken prior to registration. Managerial and administrative employees are excluded from the right of association under the Industrial Relations Ordinance. Candidates for union office have to be current or former employees of an establishment or group of establishments. The Registrar of Trade Unions has wide powers to interfere in internal union affairs. He can enter union premises and inspect documents.

The trade union movement is relatively weak in Bangladesh, due to low trade union density and to the multiplicity of trade unions. Only about 4% of the working class is organized, and the membership is spread among many national centres.

No unions in public sector

Workers in the public sector and State enterprises may not belong to a trade union, with the exception of railway, postal and telecommunications workers. No teachers may form trade unions, in either the public or private sector.

Right to strike not recognised

The right to strike is not recognised specifically in law. Three-quarters of union members must agree to a strike before it can go ahead. The government can ban any strike if it is considered a threat to national interest or involves a public service covered by the Essential Services Ordinance. Sentences of up to 14 years' forced labour can be passed for offences such as "obstruction of transport".

Collective bargaining limited

Only registered unions can engage in collective bargaining, and each union must nominate representatives to a Collective Bargaining Authority (CBA) committee, subject to approval by the Registrar of Trade Unions. Public sector workers' pay levels and other benefits are set by the National Pay and Wages Commission, whose recommendations are binding.

The Industrial Relations Ordinance gives considerable leeway for discrimination against union members and organisers by employers, such as allowing the arbitrary transfer or dismissal of workers suspected of union activities.

EPZs – exempted until 2004

The export processing zones (EPZs) are currently exempted from the major laws establishing freedom of association and the right to bargain collectively. This is due to change, however. Faced with the threat of losing trade preferences for its exports to the US and Canadian markets, the government has announced that unions will be allowed in the zones as from January 1, 2004.

RIGHTS IN PRACTICE**Employers take advantage of legal loopholes**

Workers who try to create a trade union are not protected before registration and are often persecuted by their employers, sometimes by violent means or with the help of the police. The names of workers who apply for union registration are frequently passed on to employers, who promptly dismiss them, particularly in the textile sector. Even after registration, workers suspected of carrying out trade union activities are regularly harassed. One popular ploy is to dismiss workers for misconduct, as they are then no longer entitled to become trade union officers. A complaint to the Labour Court is of little use, given the underlying corruption and the serious backlog of cases, which in some instances can stretch back more than ten years.

Export Processing Zones

The Chittagong and Dhaka zones employ 70,000 and 40,000 workers respectively, 90% of them women. They are engaged primarily in the textile, clothing, leather and electronics industries. Given the rapid growth of the zones, the government is setting up three more, at the Mongla sea port, in Comilla and in Ishurdi.

At the entrance to the Dada factory in the Dhaka zone, Nike and Tommy Hilfiger have posted codes of conduct proclaiming the companies' support for the workers' right to the freedom of association. But in an interview with a British newspaper in April 2001, the zone's general manager firmly asserted that "trade unions are banned here".

Many employers in the zones take advantage of the absence of trade unions to commit violations of international labour standards: sexual harassment, physical violence, unpaid overtime, child labour, non-compliance with minimum wage regulations, deplorable safety conditions etc.

Health and safety conditions, moreover, are a recurrent problem in Bangladesh, both in the export processing zones and elsewhere. There has been a spate of fatal accidents in recent years, particularly in textile factories, causing the deaths of hundreds of workers, the majority of whom were women. Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers' Federation (ITGLWF), reported that nowhere else in the world have more workers died in factory fires.

Welfare committees

Pending the creation of unions in the zones in 2004, the government has allowed the creation of "labour welfare committees". Workers are able to defend their rights, it says, but may not strike or organise demonstrations. Employers and investors from South Korea, Japan and other Asian countries have expressed their opposition to the creation of unions, predicting tension and conflict.

Textile industry – anti-union

Textile workers outside the zones fare no better. An estimated two million women workers make clothes for export in Bangladesh, working for 3,300 employers. Unions are registered in only 127 factories and fewer than a dozen employers actually negotiate with them. Workers are regularly sacked, beaten up or subjected to false charges by the police for being active in unions.

No progress on legislation

Despite promises some years ago to "examine the issue", the government has not brought its labour legislation into line with ILO Conventions. There has been no progress since it ratified Conventions 87 and 98 in 1972.

EVENTS IN 2002**Background**

Bangladesh's main garment exports have plummeted since the September 11 air attacks on New York and Washington. Some 1,200 factories have closed down, leaving over 300,000 workers, mostly women, jobless - in a country where half of the 130 million population live below the poverty line. The Adamjee Jute Mill, Asia's largest jute mill, employing 30,000 workers, was also closed down, under World Bank and IMF pressure, according to the Bangladesh Free Trade Union Congress (BFTUC).

Strikers repressed

In January, police using batons and teargas clashed with hundreds of strikers in Dhaka, leaving 20 people injured, including senior opposition leaders. Others were arrested. The strikers, taking part in a half-day stoppage called by the opposition Awami League, were protesting against increases in the prices of fuel oil, cooking gas and electricity. The increase was in keeping with an economic reform programme to qualify the country for IMF and World Bank aid. The government had raised fuel prices by 20%, electricity prices by 15% and cooking gas prices by 42% as from January 1.

Trade unionists harassed

On March 19, Public Services International (PSI), on behalf of its affiliated organisation, the Bangladesh Diploma Nurses Association (BDNA), filed a complaint with the ILO Committee on Freedom of Association, alleging that the President and ten members of the BDNA had been harassed and persecuted on account of their trade union activities.

On 7 October 2001, Ms. Taposhi, a senior staff nurse at the Shahid Sorwardi Hospital in Dhaka, was suspended from her post and from her leave of absence for allegedly participating, on 15 September 2001, in a political meeting, which is illegal under Bangladesh public service rules. Ms. Taposhi denied the allegations, submitting that she was never given an opportunity to present her case. The BDNA subsequently tried to resolve the case with the employer, the Ministry of Health, and other authorities. As a consequence of this, the Director of Nursing Services issued warnings against the General Secretary and nine other members of the BDNA, because they had written to protest against the suspension of Ms. Taposhi and requested that it be withdrawn. Ms. Taposhi was removed from service on 26 February 2002. Subsequently, the High Court Division of the Supreme Court issued a staying order against her dismissal notice, following which she was reinstated in her job.

The ILO Committee on Freedom of Association considered that the real motives behind Ms. Taposhi's dismissal might have been related to her status and activities as President of the BDNA. Noting that Ms. Taposhi had been reinstated in her functions pending the court decision, the Committee requested the Government to take all measures at its disposal to ensure that Ms. Taposhi be definitely reinstated in her job, should the court decide that her dismissal was due to her trade union activities. The Committee also urged the Government to give appropriate directions to the management of the Shahid Sorwardi Hospital, so that the warnings issued to the ten members of the trade union executive committee would be withdrawn from their personal files.

Brunei

POPULATION : 300,000 / CAPITAL : Bandar Seri Begawan / ILO CORE CONVENTIONS RATIFIED : --



Trade union rights are very limited in law, and those rights that are legally protected are not enjoyed in practice.

Very limited rights

THE LEGISLATION

The 1962 law on trade unions authorises the creation of trade unions. They must be registered with the government. There is no provision on collective bargaining. An individual contract is required between an employer and each employee, and legal trade union activities cannot be deemed to violate employee contracts.

The law does not recognise the right to strike. Unions are prohibited from affiliation to international trade union bodies.

RIGHTS IN PRACTICE

No trade union activity

There are only three trade unions, all in the oil sector, representing less than 5% of the workers. The absence of human rights and the strict political control imposed in the country means that even these unions do not exercise any independence, and there has been virtually no trade union activity.

Burma

POPULATION : 47,100,000 / CAPITAL : Rangoon / ILO CORE CONVENTIONS RATIFIED : 29-87



Trade unions are forbidden by law and no collective bargaining exists. Abuse of workers' rights is rampant, especially in export-oriented industries. Any attempt to protest leads to dismissal, detention and sometimes torture at the hands of the ruling military. Independent unions must work underground and their leaders, when captured, are given severe prison sentences. Despite very relative signs of an opening up last year, due to the economic isolation affecting the country, forced labour has continued on a massive scale.

THE LEGISLATION

The law prevents independent trade union activities

A "Trade Union Act", in existence since 1926, technically remains in effect, but it makes the formation of trade unions dependent on prior government authorisation. It is, however, completely ignored in practice and no trade unions are allowed to be established or to function. The trade unions that existed before the present military regime were put in place in 1988 have been dissolved. Freedom of association is further prevented under order 2/88 issued in 1988 by the (then) State Law and Order Restoration Council (name of the junta, which was changed to State Peace and Development Committee, SPDC, in 1997). The order prohibits any activity by five persons or more, such as "gathering, walking or marching in procession ... regardless of whether the act is with the intention of creating disturbances or of committing a crime or not". This order is further strengthened by the "Unlawful Associations Act." Under Art. 17.1 of the latter, "whoever is a member of an unlawful association, or takes part in meetings of or receives or solicits contributions for such association... shall be punished with imprisonment of not less than two years and not more than three years".

The ILO Committee of Experts on the Application of Conventions and Recommendations has calling on the government for over 40 years to amend its legislation and practice in order to bring them into conformity with ILO

Convention 87, which Burma has ratified. Since 1989, the ILO Conference Committee on the Application of Standards has, by way of special paragraphs on Burma in its final report, strongly criticised the government for its persistent failure to comply with these demands.

RIGHTS IN PRACTICE

Independent trade unions are forced to operate underground

The independent Federation of Trade Unions – Burma (FTUB) has been forced to operate clandestinely since its inception, in 1991. It maintains structures, organises migrant workers and runs workers' training activities inside Burma as well as in countries bordering on Burma. It maintains underground contacts with workers inside Burmese territory, where it actively collects evidence of violations of workers' rights, especially forced labour. It monitors the denial of collective bargaining rights in the industrial sector. The FTUB General Secretary, Maung Maung, is regularly attacked by the junta's media and diplomats, who portray him as a fugitive criminal. Lately, in 2002, the Burmese military intelligence (MI) attempted to discredit the FTUB and its leadership, including the President Hlo Oo and General Secretary Maung Maung, by accusing them of planting bombs. Intimidation included raids by Thai local military personnel on FTUB offices and processing centres located on the Thai-Burma border, as well as information-gathering by the security services about the FTUB's programmes, members and activities.

Trade union leaders in jail

Two members of the FTUB's Central Executive Committee (CEC) have been in jail for over six years (since 1997). U Myo Aung Thant, a member of the All Burma Petro-Chemical Corporation Union, was arrested with his wife and children on 13 June 1997 and sentenced to life imprisonment for "high treason" in August of the same year, on trumped-up charges of smuggling explosives into the country. His conviction rested on a confession obtained under torture; his trial was held in secret and he had no legal counsel. He also received ten additional years' imprisonment on other charges. At the end of 1998 he was moved from Rangoon's Insein prison to a remote prison in Myitkyina, Kachin State, in the far north of the country. The prison is too distant for his family to visit him. U Myo Aung Thant's wife who was sentenced in the same trial to ten years in prison as an accomplice to her husband was released and is under house detention.

U Kyin Kyaw, an official of the Seafarers' Union of Burma and FTUB CEC member, was also arrested with his wife in 1997. He had earlier been detained for trade union activities in 1993 and had been tortured in detention. The authorities have never stated the charges under which he is currently held but it is known that his case is related to that of U Myo Aung Thant. He is serving a 17-year prison sentence in Thayarwaddy prison in the Pegu division. His health is poor.

Trade union leader Than Naing was still in prison after being sentenced to life imprisonment in 1989 for playing a leading role in forming strike committees during the 1988 democracy uprising, which was crushed by the military.

Seafarers repressed even overseas

The Seafarers' Union of Burma (SUB), established by and affiliated to the FTUB, is also illegal in Burma. It seeks to protect Burmese seafarers sailing on foreign ships, mostly under flags of convenience (FOCs). Burmese seafarers typically have to pay three months' wages in advance to state-controlled or private shipping agents in Rangoon before they are allowed to take up their assignments on foreign ships. Their contracts are also subject to approval by the regime-controlled Seaman's Employment Control Division (SECD). Once aboard, they are prohibited from complaining about their working and living conditions, which are notoriously bad aboard FOC ships. In particular, they are strictly forbidden to seek or accept assistance from the London-based International Transport Workers' Federation (ITF), a Global Union Federation associated with the ICFTU. Burmese sailors who contacted the ITF in the past have, in some cases, been captured while abroad by the junta's MI and, once forcibly repatriated, sent to prison.

EVENTS IN 2002

Background

Some political dissidents have been released, including the National League for Democracy (NLD) leader Daw Aung San Suu Kyi. She was set free on May 6, after 19 months under house arrest. There were other apparent improvements in the political and human rights situation with the purported opening of dialogue between the Burmese regime

and opposition forces, and the appointment in September of an ILO Liaison Officer in the country. Forced labour continued to increase, however, as evidenced in a 350-page report released in by the ICFTU in October. The report revealed that, far from keeping its promise to eradicate the practice of forced labour, the military junta was continuing to use it on a massive scale, and was actually stepping up brutal operations against underground trade union structures. Trade union groups became the focus of violent army attacks. Foreign multinational investment helped to keep the junta afloat as the world's governments looked on. An estimated 1 million Burmese have fled to Thailand and Bangladesh because of forced labour, forced displacement and fear of the military regime.

Trade union premises and homes burnt down by junta

FTUB facilities were attacked by the military junta, which torched the Kawthoolei Education Workers' Union (KEWU) office in Kho-Kay, Papun district, and burnt down the houses of several KEWU members. The event occurred a few days after union members, led by the FTUB, celebrated May Day in Kho-Kay, and the building used for the May Day ceremony was also torched.

Trade unionist killed

On August 4, U Saw Mya Than, a member of the FTUB and of the KEWU, was shot dead by SPDC soldiers in retaliation for an ambush set by the democratic forces. The murdered FTUB official, U Saw Mya Than, who had been elected as Headman of his village, Kaleiktoat, in Ye Township (Mon State) was forced to work as a porter for the army's Light Infantry Battalion (LIB) n° 588, led by one Major Myo Hlaing. When the army column came under attack from elements of the ethnic independence movement, shortly before nightfall on August 4, 2002, U Saw Mya Than was killed in cold blood by the soldiers, in retaliation for the rebels' attack. It is common practice in the Burmese military to recruit forced labourers as porters and "human shields", who are often made to march at the front of battalions to "protect" soldiers against ambushes. U Saw Mya Than was playing that role when he was murdered. However, in his case, the ICFTU believes there is a direct link between Than's trade union role and his murder by the army. After being trained as a human and trade union rights specialist by the FTUB and FTUK last year, Than became well known in his area for his involvement with human rights and was thus elected as a headman. He was also widely known to be an official of the Kawthoolei Education Workers' Union (KEWU). The ICFTU considers that this was the reason why he was forcibly recruited as porter for LIB 588. Headmen, whose responsibility it is to satisfy the army's endless demands for porters and other forced labourers, are normally not forcibly recruited themselves.

Cambodia

POPULATION : 12,800,000 / CAPITAL : Phnom Penh / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



There were some improvements in respect for rights in the garment sector, following pressure from the US, but in general employers remain strongly anti-union. There were reports of trade unionists being fired and even imprisoned for their activities.

THE LEGISLATION

Workers are free to form and join trade unions, under the 1997 Labour Law. The Labour Law does not apply to civil servants, including teachers, judges, military personnel or household servants. Personnel working in air and maritime transportation are not fully subject to the law, but are free to form unions.

The legislation guarantees the right to strike and protects strikers against retaliation.

The right to bargain collectively is also protected by law, but it is not necessarily a trade union right. The law states that all companies must choose a "representative" regardless of whether a trade union has been formed there or not. Hence, employers can negotiate with a "workers' representative" who is not from the union, even where a union exists. In the civil service, salaries are set by the government.

The Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) is responsible for enforcement of the labour code and the application of ILO Conventions.

RIGHTS IN PRACTICE

Poor enforcement

Most workers have little or no knowledge of trade unions, or of their labour rights. Where unions do exist, in the garment and footwear industries, as well as the tourism and education sectors, it is difficult for them to negotiate with management on equal terms. Many of the garment workers are young women from the rural areas. Employers do not hesitate to use anti-union discriminatory practices to deal with trade union members, even going so far as to fire them. For its part, the government has never taken action against employers nor punished acts of anti-union discrimination. The Ministry of Labour, which has occasionally ruled in favour of workers, only rarely uses its legal power to sanction employers who disregard its decisions. More often than not, the Ministry of Labour's advice in such cases is for workers to take their case to court or accept cash settlements from employers. However, trade unions point out that such action is costly and ineffective.

Labour inspectors are poorly trained and, in view of their low pay, are open to bribery.

Strikes are frequent in the garment factories, with workers protesting against long hours, low pay and poor treatment. The government generally tolerates strikes and demonstrations, although the police are sometimes called in and have been known to use violence.

Collective bargaining is still in its infancy. Only two collective agreements have been registered with the government.

Outside pressure improves labour rights

There have been improvements in the respect of rights in the garment industry following a landmark agreement in 1999 with the United States, which agreed to increase its quotas for Cambodian textiles in return for positive evidence that Cambodia was complying with international labour standards. Textiles are Cambodia's biggest export earner and the US its biggest market. The US demands, further to union pressure, were made as a result of the history of poor conditions in the sector, including long hours, forced overtime and low pay. Pressure from unions and the US government has improved the legal protections for union leaders and the collective bargaining process.

EVENTS IN 2002

Trade unionists fired

Two trade union activists of the Goldfame Enterprises factory in Phnom Penh, Nam Neuk and Choy Jantorn, were fired as a result of their trade union activities, in January and April respectively. Other workers in the factory were intimidated for helping to build the union. Neuk and Jantorn were re-instated in January 2003 as the result of a campaign by the international trade union movement.

In May, 19 trade unionists and workers of the Cambodia Carton Factory in Kandal province were intimidated and fired because of their union activity or because they supported the fired workers.

At least 50 other union leaders in the garment and tourism sectors were fired for union activity in 2002. Of these, only two were re-instated by the government.

Trade unionists imprisoned

In July, Khum Samoun and Sok Bona, president and secretary, respectively, of the Cambodian Federation of Independent Trade Unions (CFITU) at the Tommy Textile plant, were arrested and imprisoned in Phnom Penh, on charges of inciting violence during a strike at the factory in June 2001. No evidence was brought against them, however, and their role in the negotiation of an agreement with Tommy Textile's management concerning the working conditions at the plant, in addition to Sok Bona's election as shop steward at the factory, appeared to be the true reasons for their detention. Tommy Textile's management had threatened to move the factory to Vietnam if the workers elected Sok Bona. After the election, the management brought legal charges against the two CFITU leaders, accusing them of having started a riot at the factory in June 2001, over a year before. Samoun and Bona spent more than three months in prison on false charges and were released by the government in November 2002 under enormous pressure from the international free trade union movement, as well as the US government.

China

POPULATION : 1.264,800,000 / CAPITAL : Beijing / ILO CORE CONVENTIONS RATIFIED : 100-138



Trade union rights are not respected in China. Workers are prevented by law from organising outside the All-China Federation of Trade Unions (ACFTU), which is strictly controlled by the Chinese Communist Party (CCP). This was reaffirmed when the Trade Union Law was revised in October 2001.

Worker protests increased dramatically in 2002. In particular, March to May 2002 saw massive waves of workers' protest shake the country, especially in the north-eastern provinces of Heilongjiang and Liaoning, where workers demonstrated against wage arrears, growing unemployment and corruption, and in favour of independent trade unions.

THE LEGISLATION

China's Trade Union Law was adopted in 1950. It was most recently amended in 1992 and in October 2001. According to the revised version of the law, "the ACFTU and all organisations under it represent the interests of the workers and safeguard their legitimate rights". Trade unions must also "observe and safeguard the Constitution (...), take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory (...) and conduct their work independently in accordance with the Constitution of trade unions".

Among their basic duties and functions, trade unions shall "coordinate labour relations through consultation", "mobilise workers to strive to fulfil their tasks in production" and "educate them in the ideological, ethical, professional, scientific, cultural and other areas, as well as self-discipline and moral integrity". The law also gives trade unions ample prerogatives in various areas such as "democratic management and supervision", which includes removal of managers and major operational and management decisions.

Trade union monopoly

Article 10 of the law establishes the ACFTU as the "unified national organisation". Under Art.11, the establishment of any trade union organisation, whether local, national or industrial, "shall be submitted to the trade union organisation at the next higher level for approval". Trade union organisations at a higher level "shall exercise leadership" over those at lower level. The law also empowers the ACFTU to exercise financial control over all its constituents.

Right to strike not protected under the law

The right to strike was removed from China's Constitution in 1982 on the grounds that the political system in place had "eradicated problems between the proletariat and enterprise owners". But both the Trade Union Law and the Labour Law deal with labour disputes. Under the former, trade unions are to consult employers in case of "work-stoppages or go-slow actions" on behalf of the workers, present their demands and propose solutions. Employers have to try and satisfy the workers' "reasonable demands". At the same time, trade unions have to assist the employers in "restoring the normal order of production and other work". China's 1994 Labour Law assigns trade unions the roles of chairing "labour dispute mediation committees" and of taking parts as a member in tripartite "arbitration committees", the latter being chaired by the authorities.

International obligations

China has ratified neither of the two fundamental ILO Conventions on freedom of association, the right to organise and to bargain collectively (ILO Conventions n° 87 and 98). In February 2001, it ratified the International Covenant on Economic, Social and Cultural Rights, but announced at the same time that provisions guaranteed under Art. 8,1 (a) of the Covenant, namely the right to establish and join workers' organisations of one's own choosing, would be dealt with in accordance with Chinese law. In doing so, the government effectively entered a reservation concerning a fundamental element of the Covenant, thereby putting itself in breach of internationally recognised principles on

the law of treaties. It did not, however, enter any such reservation concerning Art. 8,1 (d) of the Covenant which, alone amongst international legal instruments, explicitly guarantees the right to strike.

RIGHTS IN PRACTICE

All attempts to establish trade unions repressed

All attempts at establishing independent workers' organisations are repressed. Organisers are arrested. Some are sentenced to forced labour (officially called "reform through labour", or "lao gai") after criminal trials in which their rights as defendants are systematically ignored. Others are sent to "rehabilitation through labour" ("Lao jiao", formerly translated by the authorities as "re-education through labour"), a form of administrative detention in principle not exceeding three years and imposed by public security authorities without trial or the right of appeal. In practice, these periods of forced labour can be extended at the authorities' will, as has been proven in many cases. As a result, organisers of independent unions or other collective action by workers, such as protest demonstrations and marches or strikes, mostly remain underground. Fearing arrest, workers protesting at non-payment of wages, corruption, embezzlement of company funds and faked bankruptcies are generally reluctant to send representatives to negotiations with the authorities or the employer.

Psychiatric detention

Incarceration in a psychiatric unit is another form of punishment meted out to labour activists. Wang Wanxing and Wang Miaogen, both involved in the Workers' Autonomous Federations (WAF), have been incarcerated in psychiatric hospitals for almost ten years. Another labour activist, Pen Yuzhang, a member of the Changsha Workers' Autonomous Federation in 1989, has also been held in a psychiatric institution; government reports about his release have not been independently confirmed.

There have been several recent reports on Wang Wanxin - including his move to a "secure ward" where he was being held with violent patients, and his wife's subsequent appeal. The move was apparently part of the pressure put on her to sign papers releasing him from hospital, but subject to 24-hour surveillance among other conditions.

Mental illness as a result of imprisonment

Cases have been reported of detained labour activists' becoming mentally ill after being severely mistreated in jail or labour camp. One such case is that of Yao Guisheng, a member of the Changsha WAF, responsible for helping WAF leaders to escape arrest in the immediate aftermath of the country-wide repression which followed the Tiananmen Square events. He was sentenced to 15 years' detention in October 1989 by the Changsha Intermediate People's Court on charges of "robbery and assault" (trumped up after an argument with a taxi driver), later changed to "looting". According to former prisoners, he was periodically placed in solitary confinement for refusing to "admit his guilt" and not working to the standards required of him. He was regularly beaten and forced to wear shackles. He became mentally ill as a result of this treatment. His case was later taken up by the Special Rapporteur on Torture of the UN Commission on Human Rights. In 1994, the government told the Special Rapporteur that Yao had never been ill-treated.

Role of the ACFTU

The ACFTU strictly enforces its legal monopoly over union organisation. It actively promotes the Party's and government's view that any unauthorised workers' action may lead to "social unrest and chaos". The President of the ACFTU has regularly warned against the spreading of strikes and other workers' protests. He also sits on China's highest ruling civilian body, the seven-member Standing Committee of the CCP's Politburo, and in this capacity helps lead the so-called "strike hard anti-crime campaign" under which several thousand people are executed each year for alleged or proven criminal activities.

Where detailed reports of social unrest are available, workers unanimously dismiss the official trade union as unhelpful or ineffective at best. At local level, ACFTU officials either deny any legitimacy to independent workers' action, by calling it illegal, or acknowledge that they are unable to defend workers' interests in the face of massive restructuring operations. While claiming to consider as its key welfare concern the protection of the more than 21 million workers dismissed in this process, the ACFTU appears to be helpless in negotiating, let alone enforcing, any social safety provisions that may have been obtained. The privatisation of state or other collectively owned assets frequently goes hand in hand with the corruption of local and regional government officials, over which the ACFTU appears to have no influence.

Right to strike

Labour disputes occur on a regular basis. According to official figures, their number rose from 8,150 in 1992 to over 120,000 in 1999. It is difficult to assess the number of cases leading to concrete industrial action. The figure of 100,000 work stoppages or other collective workers' protests occurring each year is often quoted, but difficult to verify in practice. However, there are no suggestions of such actions being called or supported by official trade union structures. There are, in fact, regular indications to the contrary.

Collective bargaining remains ineffective

Collective bargaining, if it takes place at all, seems to have little impact in practice. Employment contracts are mostly drawn up by employers, who set wages and working conditions themselves, where they are not defined by law. In fact, however, very often workers are offered no formal contract at all, especially in export processing zones (EPZs). In June 2001, an ACFTU leader in a joint-venture enterprise told a foreign trade union leader that the ACFTU would oppose a wage increase, even if one were voluntarily offered by the employer, a multinational company. The ACFTU official said this would trigger off demands for similar deals by workers throughout the special economic zone (SEZ) where the enterprise was located.

Women workers

Women form a large part of the workforce and are primarily affected by large-scale economic restructuring. They constitute the overwhelming majority in Special Economic Zones, where their rights are particularly affected, as in the case of pregnancy and prolonged exposure to toxic materials.

EVENTS IN 2002**Background**

The Liaoning and Heilongjiang provinces saw major workers' protests from March through May. Thousands of angry workers from over 20 factories took to the streets of Liaoyang, demanding a basic living allowance, pension and back pay. They also protested against the corruption of local officials who forced the Liaoyang Ferro-Alloy Factory, which produced metal plates for industry, into bankruptcy. 5,000 people had lost their jobs when the State-owned enterprise shut down. The protests were the culmination of a four-year effort by workers to protect their rights, in the context of the shift from a planned economy to a market economy. This has caused large state-owned enterprises (SOEs) to shut down and has resulted in layoffs of millions of workers. Social unrest was not limited to the north-eastern provinces: from south-western Sichuan province to southern Jiangxi province, farmers protested against oppressive taxes and shrinking incomes. The main reason underlying this wave of protest was the workers' demand for payment of wage arrears and pension benefits, as well as for proper compensation when their factories went bankrupt. However the action was also organized collectively by workers, in defence of their economic and social interests, and thus falls under the category of independent union activity. The government response to these demonstrations alternated between repression and offers of compensation. China's entry into the World Trade Organisation (WTO) in December 2001 merely accelerated the trend of factory shutdowns and layoffs, and 20 million jobs were expected to be lost across the country over the period 2003 - 2006. According to some reports, over 45 million people had already been made redundant during previous years.

Workers attempt to set up independent trade unions

Labour protests in Liaoyang and Daqing in March revealed the workers' will to organise independent trade unions, although the ACFTU is the only legal trade union organisation on the mainland.

In Liaoyang, the Ferro-Alloy Factory workers formed the "All-Liaoyang Bankrupt and Unemployed Workers' Provisional Union" and elected Yao Fuxin, a laid-off steel worker, as their representative to negotiate with the government. The Daqing oilfield workers formed the Daqing Petroleum Administration Bureau (PAB) Retrenched Workers' Provisional Union Committee and elected their own representatives.

To put an end to the wave of coordinated strikes and demonstrations that ensued, the government used the carrot and the stick alternately. On the one hand, it promised short-term pay-offs and quickly set up a basic welfare system - under which 20 million people received a Minimum Living Standard Allowance, compared to 2.8 million in 1999. On the other, it used large numbers of police and military to smash the protests and arrest the leaders.

Independent trade union leaders imprisoned

On March 17, Yao Fuxin was arrested on charges of organising "illegal demonstrations." Tens of thousands of Liaoyang workers from over 20 factories, including workers from textiles, paper, printing, machinery, liquid gas and leather goods plants, took to the streets to defend their demands and insisted that Yao Fuxin be released. On March 20, three other worker representatives, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming, were also arrested. The four leaders were accused of "collaborating with hostile overseas forces to disrupt social order." At a press conference during the 16th Party Congress on November 11, the ACFTU Deputy Chairman and First Secretary Zhang Junjiu stated that Yao Fuxin "had been detained because he had broken Chinese law by carrying out car-bombings and not because he had organised a workers' campaign." Similar comments had been voiced by the ACFTU representative in front of the Workers' Group of the ILO, during the 90th International Labour Conference in June. To these accusations, the Liaoyang Federation of Trade Unions (LFTU) Chairman Su replied: "That is sheer rumour. There is no way that Yao Fuxin was involved in such activities."

On April 11, when Yao Fuxin's wife was finally allowed to visit him in Tieling Jail (120 km from Liaoyang), she found him in an alarming physical condition due to what the authorities called a "heart attack", although he had no previous medical record of heart or any other disease.

Families of workers' leaders harassed

During their detention, the activists' rights were frequently violated. They were denied proper medical attention, as well as access to lawyers, and their families were continually harassed by the Public Security Bureau (PSB).

Workers' representative beaten up by police

On April 16, plainclothes police officers beat up Gu Baoshu, another worker representative at the Liaoyang Ferro-alloy Factory, before taking him away and interrogating him for 10 hours.

Dubious release of two workers' leaders

Pang Qingxiang and Wang Zhaoming were released on December 20, on condition that they gather evidence against their fellow protesters, that they remain at home, and that they do not meet with other laid-off workers.

Shortly after the conditional release of Pang Qingxiang and Wang Zhaoming, prominent democracy activist Xu Wenli was released on medical grounds on December 24. Xu had spent 12 years in prison from 1981 to 1993 for his participation in the Democracy Wall Movement. On December 21, 1998, he was sentenced to 13 years' imprisonment for his leading role in the China Democratic Party (CDP). Towards the end of 1997, Xu and other activists released an open letter to Chinese workers, urging them to organise independent trade unions. The authorities repeatedly attempted to link the Liaoyang union organizers to the CDP.

Trade union leaders undergo trial

In early January 2003, charges of "subversion", which carry up to life imprisonment or even the death penalty, were brought against Yao Fuxin and Xiao Yunliang. Their trial began on January 15, 2003. Their families were visited every day by PSB officials and warned not to engage in any demonstration in favour of the detained workers. Furthermore, their telephone lines were cut off.

Workers have been attempting for over a decade to create independent trade unions, but these attempts have always been repressed and the workers' leaders imprisoned.

Paramilitary police sent in to repress workers protests

During the March - May period, the north-eastern oil town of Daqing was similarly hit by large-scale worker protests over unemployment benefits, the suppression by the company of winter heating subsidies, and the tripling of pension contributions. The protests started on March 1, when 3,000 fired workers gathered in front of the Daqing Petroleum Administration Bureau (PAB). In the following days, some 50,000 oil field workers laid siege each day to a petroleum installation belonging to China's biggest oil company, PetroChina. Solidarity demonstrations were held by workers in the Xinjiang and Shengli oilfields, as well as in the Liahe oilfields, in Liaoning Province. More than 80,000 workers from the Daqing oilfield had lost their jobs during the previous years, and the management had announced that they would have to repay almost the whole of their unemployment benefits in the form of social contributions if they wanted to keep their right to a pension. 800 paramilitary police were sent in to disperse protesting workers. A campaign of intimidation followed, in which dozens of workers were detained for periods of up to two weeks, then released on the condition that they no longer participate in the demonstrations. Several representatives

of the independently formed PAB Retrenched Workers' Provisional Union Committee in Daqing City were detained on March 11 during negotiations with officials. The Heilongjiang Provincial Federation of Trade Unions was quoted by the Ming Pao newspaper, in its issue dated March 28, as declaring: "The ACFTU will not tolerate workers organising in this way".

In June, thousands of factory workers from the Nanxuan Wool Textile Factory in Shuikou, Guangdong province, fought running battles with security guards over three days, in what was described by local officials as one of the worst examples of labour unrest in recent years. The clashes started on June 24 when security guards tried to force workers to queue in the company canteen. When 800 of the factory's 15,000 employees walked out in protest against being manhandled – workers are frequently bullied and humiliated by security guards – the guards attacked them with steel pipes. Scores of workers were injured, and the Yangcheng Evening News, a local newspaper, published photographs showing trails of blood around the factory grounds. The strikers, joined by other workers from the plant, fought back, smashing factory windows and burning a company car at the plant entrance. After three days of violence, riot police were sent in to quell the rioting. The event shed light on the terrible working conditions of millions of young migrant workers from China's poor rural provinces, forced to work 12 to 14 hour shifts, seven days a week, for the equivalent of US\$2 a day.

**Protesting workers
beaten up and
arrested**

Similar repressive measures were deployed at the Guangyuan Textile Factory in Sichuan Province. Some of the 1,000 workers who had held strikes at the factory since March 13 were beaten and harassed and more than a dozen arrested.

The protests also reached the eastern mining town of Fushun, where thousands of sacked coal miners blocked roads and railways in protest against severance conditions.

Trade unionist jailed

On June 1, Di Tiangui, 57, formerly a state employee at Dazhong Machinery Factory, was jailed in a detention centre in Taiyuan, capital of Shanxi province, on suspicion of "establishing an illegal organisation". In fact, he had attempted to set up a national federation for 30 million workers retired from State-owned enterprises, many of whom had been left destitute by the restructuring and privatisation of the Chinese economy. On July 15, Di was formally charged with "incitement to subvert State power", a charge that often leads to heavy prison sentences. While in detention, Di remained shackled and handcuffed "in a way making it impossible for him to stand upright", according to relatives who visited him on June 21. His health had deteriorated precipitously since he had been arrested. Intimidated by this treatment, other independent labour activists in the area had gone into hiding.

**Heavy prison
sentences against
two trade union
rights defenders**

Hu Mingjun and Wang Sen, two workers' rights activists who are also provincial leaders in Sichuan Province of the China Democratic Party (CDP), which is not recognized by the authorities, were arrested in April and May 2001 respectively, and charged with "incitement to subvert the power of the state" - a charge that carries a maximum sentence of 5 years' imprisonment. They were given a secret trial at Dazhou Intermediate People's Court, over one year later, on May 30 2002, and sentenced to 11 and 10 years' imprisonment respectively, after the charge had been changed to "subversion", a more serious charge, frequently levelled at independent labour activists. No information was available at year's end concerning Zheng Yongliang, who had been arrested at the same time as Hu and Wang.

**Long-term labour
detainees**

Dozens of independent labour activists and leaders jailed in previous years remained in prison in 2002. The following is a partial list. More information about some of these and about earlier cases may be found in previous issues of this Survey.

They include activists, notably members of the Workers' Autonomous Federations (WAF), arrested in the wake of the Tiananmen Square massacre of June 4, 1989, and the protests that followed. Guo Yunqiao, leader of the Yueyang City WAF, in Hunan province, was sentenced to 13 years for leading a workers' protest in 1989. Chen Gang, Liu Zhihua and Peng Shi were arrested in or shortly after June 1989, after being prevented from organising a factory

protest. Chen Gang was sentenced to death for "hooliganism", but was later granted a reprieve and several reductions in his sentence. He is now due for release in November 2007. Liu Zhihua was sentenced for "hooliganism". Following three reductions in sentence, he is due to be released in January 2011. Peng Shi, sentenced to life imprisonment for "hooliganism", had his sentence reduced and he should be released in March 2006. Liang Qiang, detained following the 1989 pro-democracy protests, was sentenced in January 1990 to 15 years' imprisonment for "inciting students and workers to rebel." He is reportedly held in Beijing's Yanqing Prison and due to be released in May 2004. Shao Liangshen was sentenced to death in September 1989. His sentence has since been reduced and he is due for release in November 2007.

At least four leaders and activists of the underground "Free Labour Union of China" (FLUC), which was an attempt to organise an independent trade union organisation in Beijing, in 1992, remained in detention throughout the year. They are: Hu Shigen, sentenced to 20 years; he suffers from liver, heart and stomach illnesses and has developed a hearing impairment while in jail; Kang Yuchun, sentenced to 17 years, seriously ill with heart problems; Liu Jingsheng, sentenced to 15 years, who has a history of gastric problems, has lost his teeth and suffers from hypertension, and Wang Guoqi, a printer, sentenced to 11 years, seriously ill with scabies.

More recent cases include Cai Guangye, a doctor employed in a military hospital, arrested in December 2001 for supporting protesting workers at a chemicals company in Jilin; Lu Wenbin, a special correspondent for the Textile Daily newspaper, arrested on December 22, 2001 for documenting a strike and interviewing workers at the Huainan Textile Factory in Dafeng; Li Wangyang, a veteran independent trade union activist, sentenced to 10 years' forced labour on September 20 2001, and his sister Li Wangling, sentenced to 3 years' re-education through labour on June 7 2001 for helping him to publicise his demands; Li Jiaqing, a leader of the independent labour movement in Zhengzhou, Henan province, arrested in August 2000 and charged with disrupting social order on February 13 2001, and Liao Shihua, detained in June 1999 after organising a protest by workers of the Changsha Automobile Electrical Equipment Factory and sentenced in December 1999 to six years' imprisonment. Except for his case, no information about the detainees mentioned in this paragraph was available at year's end.

In March 2001, Zhang Shanguang, a teacher from Hunan and a veteran independent labour activist and prisoner, sentenced to 10 years in 1998 under charges of "threatening the security of the State" after attempting to set up an independent trade union, was repeatedly kicked and punched by prison guards. This was after he organised a petition to end torture and long working hours at the Hunan Provincial Prison N°1, an electrical machinery factory in Yuanjiang city, where he is detained. He suffers from tuberculosis and heart disease, but is reportedly forced to work in shackles and to undertake the hardest work.

Other labour activists who remained in detention in 2002 include Li Bifeng, Zhao Changqing, Xu Wangpin, He Chaohui, Yue Tianxiang, Wang Changchun, Wang Fanghua, Wang Heping, Wang Ligu, Wang Qun, Zhang Jun, Zhu Wanhong and Xu Jian. All had tried to protect workers' interests, by protesting, organising or representing workers.

Fiji

POPULATION : 800,000 / CAPITAL : Suva / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although the legislation guarantees the right to strike and bargain collectively, the authorities do not always adequately enforce it. In March, a company refused to recognise a trade union despite the fact that it represented more than 50% of the workforce.

THE LEGISLATION

Under the Fiji Constitution and the Trade Unions Act, workers have the right to form and join trade unions and the right to organise and bargain collectively. The Trade Unions Act requires a minimum of 7 people to form a trade

union. The Permanent Secretary for Labour has the power to decide on the registration, the suspension or cancellation of trade unions, after consultation with the Advisory Committee appointed by the Minister of Labour. The Advisory Committee has 4 members: one comes from an employers' organisation, one is from a workers' organisation, and the other two are "independent". Employees cannot be prohibited from becoming a member of a trade union, and employers are required to recognise a union for collective bargaining if more than half of their employees have joined it. They may also recognise minority unions. Unrecognised unions have no redress.

All unions must be registered with the government. The Trade Unions Act does not apply to the Navy, the Military or Air Service of the Crown, the Royal Fiji Police Force, or the Fiji Prisons Service. Restrictions can be applied in government employment, in the interests of defence, public safety, public order, public morality or public health.

The right to strike is recognised for all matters except those relating to trade union recognition. Under the Trade Unions Act, unions are required to give 21 days' notice to the Registrar of Trade Unions (the Permanent Secretary for Labour) to put a strike to the ballot. The strike is allowed if more than 50% of the financial members vote in favour. This applies to all unions, in both essential and non-essential industries. With respect to essential industries, however, the Trade Disputes Act imposes a further 28 days' notice, and requires the provision of information concerning the date and time of the strike, and the participants.

There are no provisions requiring the reinstatement of workers who have been sacked for carrying out trade union activities, nor are there provisions prohibiting employers from hiring strikebreakers.

RIGHTS IN PRACTICE

The Labour Ministry does not effectively protect workers against anti-union discrimination in practice. When the Merchant Bank forced members of the Fiji Bank and Finance Sector Employees union to resign in November 2000, the case was reported to the Ministry. The Ministry finally responded in September 2001 that the Merchant Bank would be prosecuted for breach of the Trade Unions Act, but had taken no further action by the end of the year.

Right to strike undermined

With effect from late 2001, the Registrar of Trade Unions has been disallowing the conduct of a strike ballot before the reporting and acceptance of a trade dispute. This decision was made when the Fiji Bank & Finance Sector Employees Union wrote to the Registrar of Trade Unions to notify him of the union's intention to hold a ballot as required under the Trade Unions regulations.

This has had a far-reaching impact on trade unions generally. The trade unions stand to be sued by the employers for any losses arising from a strike action for which a supervised ballot as required by the Registrar has not been held.

Many employers have been known to refuse to recognise trade unions. The police sometimes help employers to fight against trade unions, for example by preventing union representatives from entering company premises.

The neutrality of the Permanent Arbitrator has been called into question. He or she is appointed by the President of Fiji after consultation with the Minister for Labour and Industrial Relations. He or she is not a public officer, but the Arbitrator's offices are in the Ministry, the staff are officers of the Ministry, and the Arbitrator does not have a separate budget.

Appointment of Workers' Organisations to Boards and Committees

The Fiji Trades Union Congress was recognised by the Government in 1992 as the most representative organisation of workers. In consequence, appointments to the Boards of various national institutions were made by the minister from amongst trade union officers nominated by the FTUC. With effect from 2001, the minister has changed this policy and now decides on his own on appointments to the different Boards and Committees. However, he does not apply this policy when appointing members from the employer's organisation.

The minister is also promoting division within the trade union movement by giving recognition to a splinter organisation formed by a group of workers in late 2001.

EVENTS IN 2002

After all the political upheaval following the May 2000 coup, democratic rights were finally restored when the Fiji Court of Appeal ruled that the 1997 Constitution was the supreme legal authority. Parliament was recalled, but President Iloilo decided to dismiss the democratically elected government led by Prime Minister Mahendra Chaudhry and appoint a caretaker government under Laisenia Qarase. The elections of September 6 2001 were won by Laisenia Qarase's SDL party.

The constitutional issues regarding the composition of the cabinet in terms of Section 99 of the Constitution of the Republic of Fiji Islands have been pending since August 2001. It is expected that they will not be decided by the Supreme Court until the June 18-19 2003.

On March 7, the National Union of Factory and Commercial Workers (NUFCW) sent a letter to Pacific Batteries Limited at Lami seeking recognition. After receiving the letter, on March 12, the management sent dismissal letters to four union members on the grounds that the section they were working in was being closed, as it was running at a loss. On March 14, all the remaining union members stopped work, demanding the reinstatement of their four fellow workers. The union reported the dismissals to the Ministry of Labour and a conciliator was appointed. The management then engaged in a series of manoeuvres to escape the conciliation process, arguing that it would not deal with a non-recognised union, although the union members represented more than 50% of the workforce. The 46 remaining union members were subsequently sacked as well, and 50 strikebreakers were employed as replacements. The management later announced that, if the strikers wanted their jobs back, they would have to re-apply and their applications would be considered individually.

The government failed to implement the Trade Union Act in the case of the Turtle Island Resort, an exclusive 5-star resort which employs some 172 workers. In March 2000, the management fired 23 workers when the National Union of Hospitality, Catering and Tourism Industries Employees tried to organise them. The union complained, but without any results. In 2002, the union made another attempt to gain recognition. However, despite the Compulsory Recognition Order issued by the Ministry of Labour, the company has continued to lay workers off without discussing this with the union. Similar cases occurred also in the Castaway Island Resort, as well as at Sandollars Fiji Ltd Services: 4% of the employees and 82 employees have been fired from these two workplaces, respectively.

Company denies trade union recognition and sacks union members

Hong Kong SAR (China)

POPULATION : 6,700,000 / CAPITAL : Victoria / ILO CORE CONVENTIONS RATIFIED : ---



The Basic Law, which is the Constitution of Hong Kong, contains provisions guaranteeing freedom of association, the right to organise and the right to strike. However, no laws have been implemented to secure the effective application of these fundamental rights. Consequently, trade unionists risk victimisation and dismissal for organising unions and carrying out trade union activities, and migrant workers suffer from even greater discrimination. Furthermore, a draft bill was proposed in September, which if adopted would further restrict trade union rights.

THE LEGISLATION

The Employment and Labour Relations Ordinance (ELRO) was introduced in 1997 specifically to repeal the new laws brought in immediately prior to Hong Kong's reunification with China. These laws had been designed to implement the ILO core Conventions. The right of workers to form trade unions is recognised, but the ELRO, and the labour laws introduced since then, deny many fundamental trade union rights.

Lack of protection for strikers

The right to strike is permitted by law, but strikers have little protection. In April 2001, the government introduced amendments to the Employment Ordinance. These ostensibly increased the protection of workers against dismissal for participating in strikes. However, the amendment only ensures that if a worker is dismissed for strike action, then he or she has the right to sue the employer for compensation. There is still no legal entitlement to reinstatement, even if a worker is found to have been unfairly dismissed for participating in a strike.

Under pressure from unions, protest actions and criticism from the ILO, the government declared in 1999 that it would amend the law to better protect workers against unfair dismissal. In 2001, the Labour Advisory Board (LAB) finally agreed in principle to laws giving the Labour Tribunal the power to order the reinstatement of unfairly dismissed workers without the consent of the employer. However, the government has taken no further action on this and no timeframe for implementation has been stipulated.

The Public Order Ordinance authorises the use of force to break up strike pickets and demonstrations, thereby infringing freedom of assembly and the right to strike.

Bargaining not recognised

The law still does not guarantee the right to collective bargaining.

Limitation on use of funds

The ELRO restricts the freedom of a trade union to manage and use its funds as it wishes, particularly the use of funds for political ends or transferring them to foreign trade union organisations.

Eligibility for trade union office restricted

Only persons actually or previously employed in the trade, industry or occupation of the trade union concerned are permitted to become trade union officers.

Trade union rights threatened by "anti-subversion" legislation

In September 2002, a new draft law was proposed by the Hong Kong government. If adopted, it would enable the Chinese government to ban any Hong Kong organisation considered to be "affiliated" to a mainland organisation deemed to present a threat to national security. "Given that independent trade unions are categorized in this way in mainland China, this law threatens the very existence of free trade unionism in Hong Kong," said Lee Cheuk Yan, General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU), an ICFTU affiliate. The draft law also presents a serious threat to basic human rights such as freedom of association, freedom of expression, freedom of the press and freedom of information. In addition, it expands police powers to enter any premises in order to conduct searches and seize materials without any court warrant. According to Lee Cheuk Yan, "there is clear potential for abuse, in terms of intimidation and harassment."

Art. 23 of the Basic Law stipulates that the Hong Kong Special Administrative Region (HKSAR) "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government (CPG), or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

HKCTU members feared that the vague terminology of Art.23 would become a political tool to stop legitimate trade union activity and silence political opposition.

A three-month consultation period on the "Proposals to Implement Art. 23 of the Basic Law" began on September 25. The new law was scheduled to come into force by mid-2003.

On December 15, tens of thousands of opponents of the proposed "anti-subversion" laws took to the streets.

RIGHTS IN PRACTICE**Right to strike denied**

The right to strike is limited in practice by clauses in many employment contracts stipulating that absence from work may lead to dismissal.

No recognition of collective bargaining rights

Bargaining is neither promoted nor encouraged by the authorities, and employers generally refuse to recognise unions. Although 25 per cent of the workforce is unionised, less than one per cent of workers are covered by collective agreements, and those that exist are not legally binding.

The Hong Kong Confederation of Trade Unions is excluded from the LAB, the tripartite consultative body established by the government. This exclusion means that the HKCTU is denied the right to participate in tripartite negotiations on labour laws and policy and excluded from bodies such as the Committee on the Implementation of International Standards, which reports to the ILO.

Consultation no substitute

The government has consistently claimed that there is no need for collective bargaining rights in the public sector because the administration "consults" civil servants over their pay and conditions. However, recent civil service reforms, involving transfers, reductions in wages and benefits, retrenchment and contracting out to the private sector, have demonstrated very clearly that the government is free to act unilaterally without consulting the affected civil servants. The introduction of legislation on wage cuts for civil servants is a self-evident example. At year's end, the HKCTU was drafting a complaint to the ILO against the HKSAR government for its breaches of ILO Conventions 98 and 151.

This was exemplified by the contracting out of public services by government departments such as the Food and Environmental Hygiene Department (FEHD), where civil servant jobs are replaced with contract workers and workers hired through private companies. A so-called "voluntary" retirement (VR) scheme was introduced to cut the number of public sector jobs and allow the outsourcing of public sector work, although in reality the jobs to be cut were targeted. The victimisation of those civil servants refusing to join the VR scheme, together with the poor pay and conditions experienced by the contract workers replacing them, exposed the vulnerability faced by public sector workers in the absence of trade union recognition and collective bargaining rights.

Migrant workers' rights violated

A particularly dramatic situation is that of the estimated 240,000 foreign domestic workers in Hong Kong, mainly from Indonesia and Philippines. 60 per cent of them are reported to earn less – often very much less – than the minimum wage of HK\$ 3670. As they are subject to deportation if they lose their employment, they suffer extremely exploitative conditions and ill-treatment on the part of their employers.

EVENTS IN 2002

The HKSAR continued to pay the price of the economic recession throughout the year. Restructuring plans continued to cost the jobs of thousands of workers and contributed to increasing unemployment during the first half of 2002 (the unemployment rate reached the high level of 7.8% in May–July). Sectors such as banking, telecoms, civil aviation, electronics and printing, were particularly hard hit.

Management persists in refusing bargaining

The developments concerning the dispute between Cathay Pacific Airways and its pilots were not encouraging. Under the leadership of its parent company, the British-based Swire Group, Cathay Pacific Airways management engaged in a series of tactics which violate fundamental labour rights. The pilots of Cathay Pacific had been in negotiations with Cathay management for close to nine years, making it one of the longest-running unresolved disputes in aviation history. Cathay management had seemingly attempted to undermine the basic rights of its pilots, refusing to discuss fair pay and benefits for pilots, safer rostering practices and standards that are comparable to other major airlines, and used unprecedented tactics including the termination, in July 2001, of 51 pilots' contracts. Four of the seven union negotiators and eight of the union's 20 committee members were among those dismissed. Despite repeated attempts by the Hong Kong Aircrew Officers' Association (HKAOA) to bring Cathay management to the negotiating table, including a plea to appoint a mutually agreeable mediator, the union found itself at a complete standstill with the company. In the meantime, the HKAOA has lodged a complaint with the ILO against the HKSAR government's inadequate protection against anti-union discrimination.

India

POPULATION : 992,700,000 / CAPITAL : New Delhi / ILO CORE CONVENTIONS RATIFIED : 29-100-105-111



The government is working to bring in further restrictions on the rights to strike and to collective bargaining. In the State of Tamil Nadu, a law was passed to make strikes in “essential services,” defined in an overly extensive manner, illegal, with heavy penalties. Legislation concerning the Export Processing Zones (EPZs) was amended to extend the strike notice period, and workers’ rights in the zones continued to be flouted.

THE LEGISLATION

Workers may establish and join unions of their own choosing without prior authorisation. Collective bargaining is also recognised.

The legislation makes a very clear distinction between civil servants and other workers. Public service employees have very limited organising and collective bargaining rights.

Restrictions on the right to strike

Public servants have to announce a strike at least 14 days in advance. In some States, the law demands that all unions, including private sector unions, must submit formal notification of a strike before it is considered legal.

The Essential Services Maintenance Act (ESMA) enables the government to ban strikes and demand conciliation or arbitration in certain “essential” industries - but the Act does not define what these essential services are.

Interpretation varies from one State to another. Legal mechanisms exist, however, for challenging a decision taken under the terms of this Act, if a dispute arises.

In early 2002, the State government of Kerala invoked provisions of the ESMA in response to a strike by government employees. These provisions were used to terminate the contracts of all temporary government employees. The state government of Tamil Nadu also recently invoked the ESMA to impose fines and imprisonment on striking workers in services deemed by the government to be essential.

A State excluded from the system: Sikkim

The law on trade unions does not apply in Sikkim, a State annexed to India since 1975. Consequently, the workers there do not benefit from trade union rights. Although there are some workers’ associations, no one sector as such is organised. Registration of trade unions is subject to the prior permission of the Land Revenue Department of the Government of Sikkim after a police enquiry. The police only have to make one negative comment about one member of the union’s executive for it to be refused registration. Furthermore, the public also have the opportunity to state their objections to the creation of a trade union, which sometimes can also be enough to prevent its registration. According to the State Government, however, no such instance of an objection by the public to the creation of a union had come to its notice.

Repressive new legislation in Tamil Nadu

In the State of Tamil Nadu, the Tamil Nadu Essential Services Maintenance Act was passed in May. Characterised by trade union leaders as one of the most oppressive pieces of legislation enacted against workers in India since independence, the Act prescribes a punishment of up to three years’ imprisonment and a 5,000 Rupee fine for participants in a strike involving “essential services” within the meaning of the Act (a large number of public services are included, such as services relating to the supply of water and electricity, passenger and goods transport, fire-fighting and public health). Those who call for a strike or instigate workers to go on strike, or provide financial assistance for the conduct of the strike risk the same penalties. Under the Act, “strike” includes not only the refusal of the employees connected with these “essential services” to “continue to work or to accept work assigned” but also “refusal to work overtime” and “any other conduct which is likely to result in, or results in cessation or substantial retardation of work in any essential service.”

Trade Unions Act**Changes to labour law further curtail trade union rights:**

The Trade Unions Act of 1926 was amended in 2001. Under the amended Act, a union has to represent a minimum of 100 workers – excessive by international standards – or 10% of the workforce, as distinct from only seven people previously. The amendment also reduced the number of “outsiders” (those not employed at the enterprise) allowed to sit on a union executive, and requires unions to submit their accounts for auditing. According to the Government, the amendment aimed at encouraging smaller unions to join together to constitute a majority union, and at reducing the influence of outsiders in the trade unions.

Export Processing Zones

The government has designated the export processing zones (EPZs) and special economic zones (SEZs) as “public utilities”, requiring a longer strike notice period, up from 30 days previously to 45 days at present.

Further changes proposed:**Industrial Disputes Act**

In February, the Cabinet approved an amendment to the Industrial Disputes and Redress Act of 1947, which would make it easier for companies to lay off employees. Under the new Act, establishments employing less than 1000 workers (as against 100 at present) will be permitted to lay off or retrench workers or close down without consultation and without the prior approval of the government. This new law will affect over 90% of organised workers. The government, although it has been discussing it with trade unions, has adopted a very rigid approach. The government plans to introduce a recommendation of the Second Labour Commission Report in the parliament during the year 2003.

Other developments

The government was considering changing the labour law in order to raise the limit of 100 workers to 1,000 for carrying out retrenchments, lay-offs and closure of industrial units without prior permission. The National Commission on Labour had proposed a limit of 300. However, no legislative provision had been adopted by year’s end.

RIGHTS IN PRACTICE**Only a small minority of workers protected**

In practice, the legal protection of workers’ rights only concerns some 30 million people in the organised industrial sector, out of a total workforce of 400 million, trade unions being represented in an estimated 8.33 % of Indian industries. 93 per cent of the workers are in the informal economy, without any union representation, and in situations where it is difficult to enforce legislation.

Export processing zones (EPZs)

The government seeks to limit trade union action in the country’s seven export processing zones to a minimum. In law, the right to join trade unions and to bargain collectively applies to the zones, but entry is restricted to the workers, who are bussed in by their employers. Given that trade unionists are not able to enter the zones, organising is in practice extremely difficult.

Although the state government indicated that state labour authorities inspect all the units in the EPZs periodically, there seem to be moves to exempt the zones from the applicability of labour laws, and some states, such as Andhra Pradesh, have directed labour departments not to conduct inspections in the zones.

Women constitute the bulk of the work force in the EPZs, employed in such sectors as ready-made garments and electronics-based and software industries. In the Santacruz Electronics Export Processing Zone (SEEPZ) near Bombay, ninety per cent of the workers are women who are generally young and too frightened to form unions. Working conditions are bad and overtime is compulsory. A court in Bombay accepted, on presentation by the employer of a list of signatures, that workers in the SEEPZ had voluntarily agreed to overtime, while these same workers were in fact protesting against forced overtime. The court made no effort to validate the list of signatures.

Workers fear victimisation by management, and those who protest are immediately sacked. It is common for workers to be employed by fictitious contractors on temporary contracts rather than directly by the company. In the Noida EPZ, workers have been sacked for demanding that labour laws be implemented.

EVENTS IN 2002

A major strike over labour reforms and the government's privatisation plans took place all over India on April 16, mobilising some 10 million workers from state-run firms, banks, as well as insurance and financial sector firms. The one-day work stoppage followed the Indian Cabinet approval in February of reforms to the 55-year-old Industrial Disputes and Redress Act. The reforms increase the precariousness of employment for Indian workers. Unions were also protesting against the government's intention to push ahead with a programme under which it planned to privatise a number of state-run firms, across sectors including automobiles, telecom, petroleum and metals.

Union-busting practices

In March, the Transport & Dock Workers' Union, Mumbai and the Road Transport and Dockers' sections of the International Transport Workers' Federation (ITF) called on the managers at the Mumbai port to reverse union-busting measures that led to more than 300 employees being prevented from working. Managers had revoked the dock entry permits of all of the 313 unionised employees of the dock transport company M/s National Freight Carriers, but allowed the company to continue servicing the port under the name of two other transport firms, a classic union-busting tactic. The locked-out workers protested by starting a hunger strike.

In June, the Mumbai High Court ordered port authorities to allow 149 locked-out workers to return. Following pressure from the ITF and affiliated unions, and a high court challenge, the port was ordered to issue interim passes to the locked-out workers, and to limit working shifts to 8 hours, until the dispute was resolved.

Worker shot by police during protest

A labourer was killed and at least five others injured in June when police opened fire on protesters at a tea plantation in West Bengal.

Indonesia

POPULATION : 200,600,000 / CAPITAL : Jakarta / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



New labour legislation, which would present a serious threat to the right to strike and to collective bargaining, was massively opposed by the workers. The new laws were nonetheless to be enacted during the first quarter of 2003. There were cases of labour activists being fired, beaten and imprisoned.

THE LEGISLATION

Since the Suharto regime ended in May 1998, Indonesia has thrown out its draconian labour laws which prevented workers from forming trade unions and provided for the use of military force in settling industrial disputes.

Private sector workers are by law free to form workers' organisations and draw up their own rules. Under the Trade Union Act adopted in 2000, unions must be registered with the Manpower Ministry. They are required to have at least 10 members, a reasonable limitation by international standards. There can be more than one union at a workplace. Those who prevent a worker from joining a union are liable to a fine or imprisonment. The law gives civil servants the right to organise, which they did not have before.

Restrictions

There are still restrictions in the legislation. A court can dissolve a trade union if its basis conflicts with the 1945 Constitution, or the Pancasila, the national ideology which puts the emphasis on consensus and national unity, or if its members or leaders have committed a crime against national security in its name and have been sentenced to at least five years in prison for that reason. Once a union is dissolved, its leaders cannot form another for three years.

The law makes State interference in the internal affairs of the trade unions legal. The unions have to keep the government informed of nominations to and changes in their governing bodies, on pain of losing official recognition, and therefore the right to represent their workers.

Collective agreements must be signed within 30 days or must be submitted to the Manpower Ministry for mediation, conciliation or arbitration.

Teachers

Teachers mainly belong to the Suharto-era Teachers' Association (PGRI), which is technically classified as a trade union but continues to operate more as a welfare organisation, although it does ask the government to improve the status and salaries of teachers.

Proposed new legislation infringes upon free negotiation and collective bargaining

The Industrial Disputes Resolution Bill (PPHI) and the Manpower Bill (PPK), which contain many provisions contrary to the principles of freedom of association, were to be adopted in 2003. Under the former, although the settlement of industrial disputes is first to be sought through bipartite negotiation, one of the parties may subsequently apply for compulsory arbitration by the Industrial Relations Dispute Court (IRDC) if the parties fail to settle the dispute within a 30-day period from the start of negotiation, or after voluntary mediation, conciliation or arbitration procedures have failed. These provisions infringe upon free negotiation and collective bargaining, and are in clear violation of the principles of freedom of association, as set out by the ILO Committee on Freedom of Association (CFA). According to the CFA, "[a] provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining."

Restrictions on the right to strike

The proposed new legislation also infringes the right to strike. Under the Manpower Bill, workers who intend to go on strike must give written notification to the authorities and to the employer seven days in advance. The written notification must specify the number of workers expected to participate in the strike and be supported by affidavits submitted by the workers, attesting to their willingness to strike. Finally, a vote must be held to approve the strike. Before the workers can proceed with a strike, they must also engage in mediation with the employer. If the mediation fails, the dispute is brought to the IRDC for settlement. It is not clear whether workers may go on strike during the settlement procedures.

Strikes are prohibited in the public service, in essential services, and at enterprises that serve the public interest. This overly broad prohibition is contrary to international labour standards. Concerning the public service, the ILO Committee on Freedom of Association has ruled that while the state has broader leeway to regulate strikes by civil servants, only civil servants and public officials who "exercise authority in the name of the state" may have their right to strike restricted. Concerning essential services, the CFA has held that strikes may only be restricted where there exists "a clear and imminent threat to the life, personal safety or health of the whole or part of the population."

RIGHTS IN PRACTICE

Tension and intimidation

According to the Indonesian Prosperity Trade Union (SBSI), relations between government, big business and workers have still been tense. Frequently, when workers try to set up trade unions, companies either fire or demote union leaders and members, making workers afraid to organise or join a union. Trade unionists also cite a growing number of attacks on their organisers by paramilitary groups, supported by the military and police and paid for by employers, in order to intimidate workers or break strikes.

Collective agreements rarely go beyond the legal minimum provisions set by government in practice. Agreements tend to be presented to workers' representatives for signature rather than negotiation.

Strikes

The mediation procedures that have to be followed before calling a strike are so lengthy that they are almost never applied. Strikes are usually wildcat strikes that break out after a failure to settle long-term grievances, or after an employer has refused to recognise a union, etc.

Dues

Trade unions other than the KSPSI (new acronym of the former "SPSI", the only trade union tolerated under the former Suharto regime) have problems in getting their dues deducted directly from workers' salaries. Sometimes union dues are deducted from non-KSPSI workers ... then paid to the KSPSI.

EVENTS IN 2002

Background	Throughout the year, thousands of workers protested against job cuts in the foreign-owned footwear industry, which employed 300,000 workers across the country. Manufacturers such as Nike and Reebok, pointing out increasing labour problems, decided to close down or relocate several of their factories. The country, which had just started to recover from the economic crisis, was also expected to suffer a fall in tourism and in foreign investment due to the terrorist bombings in Bali in October.
Company refuses to reinstate illegally fired workers	In March, workers at Honda Prospect Indonesia – a subsidiary of Honda Motor Co. Ltd., Japan – went on strike in North Jakarta after negotiations concerning a wage increase resulted in deadlock. The local management reacted by suspending 208 workers. Later, an additional 160 workers were suspended, bringing the total to 368. The Indonesian Central Committee for Labour Disputes Settlement (known as the “P4P”) ruled that the strike was legally convened and ordered the company to reinstate the first batch of 208 workers. Since then, the Jakarta Administration High Court has upheld the dismissals of the 208 workers. On April 8, the police attacked the striking workers, leaving 30 injured. Despite a promise by the management of Honda Prospect Indonesia in September, the company refused to reinstate the workers and negotiate with the local union.
Nike withdraws, leaving 7,000 without jobs	On July 16, Nike announced its intention of ending the orders that it had placed with the PT Doson factory from September. This put 7,000 workers at risk of losing their jobs. After several months of battle, in which Nike refused to assume any responsibility, and the Indonesian Textile, Garment, and Leather Worker Unions’ Federation (SPTSK) fought to secure a fair deal for the jobless workers, the management of PT Doson agreed, at the end of November, to lend 500,000 Rupees to each of the workers.
Police violence against peaceful demonstrators	In August, there were massive demonstrations against the proposal to enact the two bills on the settlement of industrial disputes (PPHI) and the protection and development of manpower (PPK). To oppose these bills, more than twenty trade unions and organisations established the Committee Against Worker Oppression (KAPB). On August 19, 30,000 people marched through the streets of Cimahi Bandung, the capital of West Java. 37 labour activists were arrested by the police and imprisoned for allegedly inciting the workers to confront security officers. The protests and arrests continued during the following weeks. The detainees were reportedly beaten during their incarceration. Two workers received gunshot wounds. The protests continued in September. A small team constituted by government, employers and SBSI representatives was set up to prepare the draft bills on the settlement of industrial disputes (PPHI) and the protection and development of manpower (PPK). The majority of trade unions, including the newly-created Indonesian Trade Union Congress (ITUC) opposed these drafts.
Labour activist sentenced to 6 months imprisonment	Muhammad Opu, a trade union official of P.T. Intracawood Mfg. Tarakan, was sentenced to six months’ imprisonment on 22 August 2002. He had played a leading role in the peaceful and legal strikes organized by SP Kahutindo in support of the union’s sectoral minimum wage campaign in January.
Employer awarded \$US 2.34 million in “damages” stemming from lock out	The dispute at the Shangri-La Hotel in Jakarta, which had resulted in the lock-out and in the subsequent sacking of 579 workers who had refused to leave their union, went to the State Administrative High Court in Jakarta in March. On March 26, the High Court ruled, in an appeal case brought by the Shangri-la Hotel Independent Workers’ Union (SPMS), that the mass sackings were illegal, thereby overturning the P4P decision authorizing the hotel to fire union members. Both the P4P and the hotel owners subsequently appealed the High Court decision to Indonesia’s Supreme Court. On August 27, in the civil suit, the Jakarta High Court rejected on dubious procedural grounds the unionists’ appeal of the November 2001 decision of the South Jakarta District Court, which awarded the hotel owners 20.7 billion Indonesian rupiah – US\$ 2.34 million – in “damages” stemming from the lock-out. In addition, the defendants were ordered to publish at their own expense a written apology to the hotel owners in five national newspapers published in Jakarta. Following the appeal rejection, the International Union of Food, Agricultural, Hotel, Restaurant,

Catering, Tobacco and Allied Workers' Associations (IUF) managed to negotiate the hotel owners' renunciation of all claims arising from the Jakarta High Court decision.

The case had been brought to the ILO Committee of Freedom of Association (CFA) in February 2001. In November 2001, the CFA ruled that "it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can, in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker if the true reason is the worker's trade union membership or activities". The Committee requested "the Government to take steps to ensure the reinstatement of those persons in their jobs if they so wish." In its latest recommendations, the CFA also calls into question the legality of the hotel owner's civil suit for US\$ 2.34 million in "damages". On June 21, it condemned the lock-out and mass firing of union members as a violation of fundamental trade union rights. The ILO stated that the CFA "considers that the imposition of penalties for economic losses that might be linked to strike action and/or peaceful protest action constitutes a serious restriction of the right to strike."

Workers fired after establishing a trade union

In October, some 450 workers from the electronic firm PT Dwidaya Mandrasakti located in Bojongsoang Bandung Regency went on strike in protest against the dismissal of 13 workers who had participated in the establishment of a union, the Independent Electronic Labor Union (SBEI), to which the management had reportedly previously agreed. This was reported to have happened also at other companies.

Japan

POPULATION : 126,800,000 / CAPITAL : Tokyo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-138-182



The heavy restrictions affecting public sector employees' trade union rights were to be reinforced by reforms scheduled to be introduced in 2003, in spite of the ILO Committee on Freedom of Association's recommendations. In another case, the Committee found that Japan's system of protection against unfair labour practices was slow and inadequate.

THE LEGISLATION

The constitution recognises workers' freedom of association, and their right to organise, to bargain and act collectively. There are limitations, however, particularly for civil servants and to a lesser extent for employees of state-run companies and private companies with "higher social responsibility", such as the electric power sector.

Public service – heavy restrictions

Labour relations in Japan's public service are governed by the National Public Service Law and the Local Public Service Law, dating back to 1948, which heavily restrict basic trade union rights. At the national level, staff may organise with the exception of members of the police force, penal institutions and the Maritime Safety Agency. At the local level, they may organise with the exception of police officers and fire fighters. Administrative and clerical workers do not have the right to bargain collectively, at either local or national level. Their wages are set by laws and/or regulations. Non-clerical workers may negotiate collective agreements. All public employees are banned from striking, including non-clerical workers. Trade union leaders who incite strike action in the public sector can be dismissed and fined or imprisoned for up to three years.

Over the years, the Japanese government has repeatedly ignored ILO recommendations that it amend its legislation to remove the restrictions on public workers' rights and bring them into line with international standards.

Towards further restrictions

Even though the government had finally decided to reform its outdated public service system, and promised at the June 2001 International Labour Conference to "negotiate and consult with the employees' organisations concerned," it ignored these promises, and on December 25 2001 unilaterally adopted the General Principles of Administrative Reform. It ignored requests by the national trade union centre RENGO to bring its system into line with international

labour standards. Under the General Principles, the authority of the government as an employer is to be greatly expanded while "the current restrictions placed on the fundamental labour rights of public workers shall be maintained".

In November, the ILO Committee on Freedom of Association (CFA) asked the Government to "reconsider its stated intention to maintain the current restrictions on the fundamental labour rights of public employees," and "strongly recommend[ed] that full, frank and meaningful consultations be held soon with all parties concerned..." However, the Government reportedly continued its non-compliance with ILO recommendations, and stated that "The distinctive status of public employees in Japanese Society should be taken into account". The bill to revise the relevant legislation according to the General Principles was to be submitted to the Diet (Parliament) in January 2003.

Collective bargaining limited in state-run companies

Article 8 of the law on labour relations in public companies excludes from collective bargaining all issues to do with the management and operation of public companies. This includes promotion and demotion, transfer, dismissal, seniority and disciplinary measures. A number of other matters, such as education, training, health care, leisure time and staff safety and well-being are also excluded from collective bargaining in public sector companies, although when working conditions are affected by decisions taken in these areas, a collective bargaining process may be launched.

The system of trade union registration requires separate unions to be created in each municipality. Most staff in senior executive grades cannot be part of the same union.

RIGHTS IN PRACTICE

System of protection against unfair labour practices found slow and inadequate by the ILO Committee on Freedom of Association

Ruling in November 2002 on a case presented by a postal workers' union, which alleged that the legal provisions against unfair labour practices and anti-union discrimination and their implementation were inadequate, the CFA confirmed that "the procedure [was] far too slow and inadequate," and "request[ed] the Government to ensure, in future, that complaints of unfair labour practices and anti-union discrimination are processed speedily and effectively." It should be noted, in this context, that in 1999, the Central Labour Relations Commission (CLRC), a body established to implement measures to protect workers' and trade unions' right to organise, took an average of four years and one month to hear cases and as long as five years and one month from the filing of a complaint to the issuing of a decision.

In the private sector, trade union rights have generally been well respected by employers, although recent abuses suggest this may be changing. The right to strike is protected in the private sector and the law prohibiting discrimination or retribution against strikers is enforced, with provisions for the reinstatement with back wages of any workers fired for union activities. However, the procedures have sometimes worked too slowly to provide effective protection to union members. Restrictions in the public sector are enforced. Workers in public (state and local) enterprises cannot go on strike and cannot bargain on issues concerning the management and operation of enterprises. Public employees who instigate strikes are subject to penal servitude.

EVENTS IN 2002

Growing anti-union attitude

There are increasing signs of anti-union attitudes in the private sector, and some worrying cases of the authorities' not defending private sector workers' right to unionise, particularly in the process of restructuring companies. A law regarding the division of businesses into new entities came into force in early 2001, but did not guarantee the maintenance of workers' rights in the event of business divisions.

Kazakhstan

POPULATION : 16,300,000 / CAPITAL : Astana / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Employers take advantage of very restrictive legislation in terms of trade union rights. Anti-union practices are widespread.

THE LEGISLATION

Unions are allowed to exist, with a minimum of ten members, and provided they are legally registered, but the law places many obstacles in their way.

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| Individual agreements | The labour law adopted by the government of Kazakhstan in December 1999 protects the rights of the employer more than those of the employee and favours individual labour agreements (ILA) rather than collective ones. The employer can determine the term of the ILA, and decide on an employee's salary, provided it does not fall below the minimum wage. |
| Dismissals | The 1999 law also made dismissals easier, by removing the requirement that the permission of the union be obtained before terminating an employment contract. |
| Easy for employers to obstruct unions | There is no obligation for an employer to pass on dues collected through the check-off system to the union. Nor do employers have to allow the union to meet on their premises, or use any communications equipment. |
| Strike restrictions | There is a long list of enterprises where strikes may not be held, including those where production is round the clock. The procedure for taking strike action is lengthy and complicated. After the union has held an assembly and presented its demands to management, it must undergo compulsory arbitration. If it still wishes to pursue strike action, a further meeting of the membership must be held. |

RIGHTS IN PRACTICE

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| High registration costs | The cost of registering a branch union is prohibitive. It is the equivalent of about \$150 dollars, far higher than the average wage in Kazakhstan. This makes it almost impossible for union branches to be set up in small enterprises. |
| Puppet unions | It is common practice for companies to set up their own puppet unions or employees' organisations which carry out activities that are the exclusive prerogative of trade unions. The president of the "Kazakhmys" corporation forced workers to leave their union and join a company union headed by the assistant to the general director of the "Kazakhmys" department. |

EVENTS IN 2002

Tengizchevroil – persistent anti-union activities:

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| No guarantees | On February 2 2001, the Trade Union of Tengizchevroil Workers (TUTW) received a letter from the company refusing to sign a collective agreement concerning guarantees about its right to carry out union activities. |
| No dues | The union's problems with Tengizchevroil (TCO), a joint American-Kazakh enterprise (Chevron, Mobil and Kazakhoil) began in 1998, when the company suspended the check-off of union dues. After that time, the union experienced a series of problems, including difficulties in gaining access to the workers, continuing problems over collecting dues and denial of permission to hold union meetings. |

Puppet unions	The management also set up two puppet unions. First, it created the Independent Trade Union of the Tengiz Oil and Gas Complex in 1998. Its chairman was not even able to provide a list of members' names when asked. That union did not seem to satisfy management, as it then created the Association of Tengizchevroil Workers. The Association's chairperson made it clear in a letter to the TUTW that management had played an active role in the creation and decision-making of the union.
Collective bargaining compromised	Negotiations for a new collective agreement, concluded in October 2000, were carried out with all three unions. The TCO management made it clear that it would only carry on bargaining with the TUTW on condition that a common body was created, including the other two organisations. During the negotiations, the Trade Union of TCO Workers called for a clause guaranteeing trade union activity, but was not supported by the other two unions. The TUTW therefore called for a separate agreement on the subject. It was this agreement that the management rejected in February 2001. Meanwhile, the question of the transfer of trade union dues had still not been settled, and the management ruled out dealing with it in a separate agreement.
Agreement on check-off still withheld	When Togzhan Kizatova, the chairperson of the TUTW, wrote to the General Director of TCO, Tom Winterton, on 28 August, to try to settle the question of the deduction and transfer of union dues, Mr. Winterton replied that he was not in a position to seek a solution because "a Western businessman cannot act as an intermediary between the trade union and his workers".
Permission to hold union meetings denied	Management repeatedly denied or ignored requests from the TUTW to hold trade union meetings. According to the "Manual of TCO Managers," trade union meetings may only take place if the human resources coordinator receives a request for a meeting 10 days in advance with a list of all participants and the agenda. Furthermore, the Manual stipulates that "The HR coordinator takes part in all meetings of representatives of trade union and workers of Tengizchevroil". When the TUTW applied on September 26 to hold a meeting, management simply did not reply.
Latest developments	On April 16 2002, the Federation of Trade Unions of Kazakhstan filed a complaint with the ILO Committee on Freedom of Association (CFA). In November the CFA, "recalling the importance which it attaches to the obligation for all parties to negotiate in good faith, ... request[ed] the Government to adopt the necessary measures to ensure that the Tengizchevroil company bargains in good faith with the Trade Union of TCO Workers in accordance with the legislation on the deduction of trade union dues...", "...to ensure that reasonable access to workplaces of trade union members at Tengizchevroil is ensured", "to initiate the relevant inquiries into [the allegations of the forming of "yellow" trade unions at Tengizchevroil]...", and to "...take all the necessary measures without delay to ensure that the TCO administration withdraws the instructions contained in the Manual, which provide that the HRM labour relations coordinator shall be present at all meetings of trade union representatives and workers at TCO and that representatives of the administration of TCO may also attend these meetings, and that the Trade Union of TCO Workers be guaranteed the right to carry out its legitimate trade union activities, in particular the right to hold meetings without interference from the management."
Anti-union practices	The International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) reported that "regular violations of workers' rights" are committed at Kazakh oil refiner OAO ShNOS, managed by Canadian-headquartered Hurricane Hydrocarbons. A number of actions by ShNOS management run counter both to Kazakh law and to international standards. In a letter to Hurricane's President and CEO Bernard Isautier, Fred Higgs, ICEM General Secretary, pointed out among other things that ShNOS had consistently blocked the collective bargaining process over the past three years, in contravention of Kazakh labour laws, and that an elected union official, T. Tsareva, editor of the local newspaper, had been sacked, in violation both of Kazakh laws which forbid the harassment of elected union officials and of labour standards set by the International Labour Organisation and ratified by Kazakhstan. Fred Higgs also stressed that ShNOS "refuse[d] to supply economic information to the union needed for collective bargaining ... and to allow the

local union to take part in negotiations on restructuring of ShNOS (outsourcing), which touche[d] vital interests of a considerable number of workers and their families."

Korea, Democratic People's Republic of

POPULATION : 21,700,000 / CAPITAL : Pyongyang / ILO CORE CONVENTIONS RATIFIED : --



The Democratic People's Republic of Korea still has a single trade union whose only purpose is to carry out the ruling party's bidding. There is no recognition of trade union rights.

No freedom of association

There is no freedom of association in Korea. Independent trade unions are prohibited. The only authorised trade union organisation, the General Federation of Trade Unions of Korea, is controlled by the single party, the Korean Workers' Party (KWP). It operates according to the old "stalinist" model of trade unions, with responsibility for mobilising workers to meet production targets and providing health, education, culture and welfare services.

No collective bargaining

Workers do not have the right to bargain collectively. Government ministries set wages.

The state assigns all jobs. Joint ventures and foreign-owned companies have to hire their employees from lists of workers vetted for their "ideological purity", drawn up by the KWP.

Repressive system

The constitution of North Korea stipulates that all citizens of working age must work in full compliance with working discipline and working hours. The penal code provides for the death penalty for any individual who hinders the nation's industry, trade or the transport system by deliberately failing to fulfil a specific duty "even though he or she claims to be working normally". The penal code also states that anyone failing to properly carry out an assigned task shall be subject to at least five years in prison.

RIGHTS IN PRACTICE

A North Korean functionary once described the North Korean labour force to an audience of foreign businessmen in the following terms: "There are no riots, no strikes and no differences of opinion" with management.

Korea, Republic of

POPULATION : 46,400,000 / CAPITAL : Seoul / ILO CORE CONVENTIONS RATIFIED : 100-111-138-182



The legislation affecting trade union rights is very restrictive, making it easy for employers to take legal repressive measures against trade unionists involved in industrial action. During a month-long strike in the State-run power sector, the government helped the power plants' management to crush the union activists. Hundreds of trade union leaders and activists were arrested in the course of the year and 55 remained in detention at year's end.

THE LEGISLATION

Civil service virtually devoid of trade union rights

Broad categories of civil servants remain deprived of the right to belong to professional associations. The ILO has criticised the government of South Korea on several occasions on this point, recalling that all civil servants, with the possible exception of the armed forces and the police, must be free to form associations.

The ban on teachers' unions was lifted in 1999, and teachers began to organise at school level in 2001.

The right to collective bargaining is also violated in the civil service, as workers in government agencies, State enterprises and the defence industry may not exercise this right.

Government's initiatives to "allow" government employees' "trade unions"

On February 27, 2002, the government submitted a "draft on labour rights of public servants" to the Tripartite Commission (the Working-level Council on Labour Rights of public servants). The first item of this draft focused on which name the government employees' organisation should be known by. While the government was prepared to allow "Public Servants' Organisation" or "Public Servants' Cooperative," it made clear that the words "trade union" were banned. In the same way, while the government was willing to allow rights to organise and bargain collectively, it insisted that "the right to conclude a collective agreement and the right to act collectively are not allowed." Furthermore, the government intended to punish any "union activities" which could fall under penal provisions on "illegal union activities and violations resulting from union activities." Of course, not all government employees are to benefit from such a limited "right to organising". Those engaged in "the work of maintaining public well-being and social order," such as military or police personnel, fire fighters, and public security personnel, are excluded. The government was intending to complete the enactment of this "progressive" legislation within the year 2002, but it was to enter into force only after a three-year "grace" period.

Right to strike broadly denied

The 1997 Trade Union and Labour Relations Adjustment Act (TULRAA) and public service legislation ban strikes by people working for the central government or local governments, and by those involved in the production of military goods. The law sets out a long list of "essential services" where the right to strike can be heavily restricted by the imposition of mediation and arbitration procedures. Under the pretext of protecting students' right to learn, teachers are also refused the right to strike.

The TULRAA provides for mandatory "arbitration" for disputes in "essential public services" (if the parties cannot come to an agreement on their own). The Labour Relations Commission (LRC) conducts a mandatory mediation or "adjustment," lasting 15 days for public service enterprises. Recommendations arising from mediation, however, are not binding on any party. In industrial disputes in non-"essential" public services, the conclusion of mediation opens up the possibility of taking industrial action, including a strike or lock-out. For "essential public services," however, the mediation committee can recommend that the chairperson of the LRC refer the dispute to arbitration. Once a dispute is referred to arbitration, industrial action is prohibited. The arbitration award produced by an arbitration committee ends the dispute, and the award has the same effect as a collective agreement.

While it is not mandatory for the LRC to refer all disputes in “essential public service” enterprises for mediation, the practice so far has been to do so systematically, thus consistently denying workers in this sector the right to strike. The practice has been to delay or stall negotiations to the point where the union feels it has no solution other than to take strike action. Such action is by definition illegal, and management can initiate legal action and criminal proceedings. Arrest warrants can be issued against union leaders, and management can call on the police to remove striking workers from the premises. Employers can very easily use this legislation to deny fundamental trade union rights, and this is what happened for example in the Catholic hospitals case in September (on which details may be found below).

Striking workers and union leaders can be, and frequently are, prosecuted and sentenced under Art. 314 of the Penal Code, which prohibits “obstruction to business.”

Right to demonstrate limited

Under the Law on Assembly and Demonstration, any gathering is banned within a hundred metres from foreign diplomatic missions. As a result many large companies, such as Samsung, have invited embassies to rent offices in their buildings, effectively preventing workers from demonstrating in front of company headquarters.

Interference in the internal affairs of the trade unions

The TULRAA allowed for immediate trade union pluralism at industrial and national level from 1997, but had left the ban on pluralism at enterprise level in force until 2002. On February 1, 2001, the Tripartite Commission, which is headed by the government, decided to impose a moratorium on this provision, in effect extending the ban by a further five years, in contradiction with the government’s earlier commitments. The ban on union pluralism at company level now runs until December 31, 2006.

The TULRAA also prohibits employers from remunerating leaders from January 1, 2002, a measure criticised by the ILO. However, the above-mentioned moratorium also affects this provision, which is now scheduled to enter into force only in 2006. The ILO, however, has pointed out that the legislation goes too far in banning dismissed workers from remaining members of a union, and in proclaiming that non-union members are not eligible for trade union office. Under ILO standards, such matters should be left to the discretion of the trade unions’ statutes.

Third party intervention still hindered

The ILO has also called on South Korea to remove the obligation to notify the Ministry of Labour of the identity of third parties involved in collective bargaining and in industrial disputes (sanctions are foreseen if they intervene without the Ministry being notified). Current requirements for the registration of third parties make this a very cumbersome operation.

Other legislation used against trade unionists, especially following strikes, includes the Law on Obstruction of Public Law Enforcement and the Law on Traffic Obstruction.

Proposed legislation on Special Economic Zones (SEZs)

At the end of 2002, the government was planning to introduce a new law on Special Economic Zones (SEZs) (or Free Economic Zones (FEZs)), scheduled to enter into force in July 2003. The law contains preferential provisions in relation to foreign companies investing in the SEZs by exempting them from many national regulations on the protection of the environment and labour standards, which are likely to result in violations of workers’ rights.

RIGHTS IN PRACTICE

Kim Dae-jung’s final year as President of Korea was marked by numerous strikes and protests in favour of improved working conditions and against government privatisation plans. These actions were once again severely repressed.

The authorities justify the detention of trade union leaders by the violence marking some demonstrations and strikes. Unions insist police action is unnecessarily provocative and disproportionately brutal. Prosecutors are quick to issue arrest warrants as soon as workers go on strike, or sometimes when one is simply announced. Police or security agencies mount (occasionally sophisticated) surveillance operations in order to capture strike leaders. Unions’ offices and telecommunications are routinely monitored.

Teachers able to organise at school level	Though still restricted in areas such as the right to strike, teachers now enjoy the right to organise, and trade union membership in this sector has increased nine-fold, to 90,000, over the last two years.
“Paper unions”	In a context where trade union pluralism is legally prohibited at plant level, many employers have resorted to creating their own, management-controlled union organisations, known as “paper unions”. As they are impossible to democratise from within, owing to management’s hostility, and since it is legally forbidden to organise alternative unions, workers are left with little if any rights and cannot engage in genuine collective bargaining.
Right of appeal marred by excessive delays	Unionists complain that, when they take the Ministry of Labour to court for refusing to register their organisations, their cases often take up to three or four years to settle, during which time the union generally disappears.
Prison conditions	Imprisoned trade unionists are generally isolated from one another in order to prevent them from taking collective action while in jail. They are confined to their cells 23 hours a day and are allowed only one seven-minute visit from lawyers or relatives per day.
International scrutiny	Korea’s labour relations record has for years been the object of intense scrutiny by the ILO and by the OECD. The latter has put in place special monitoring procedures to assess the government’s compliance with a promise, made by Korea when it joined the organisation in 1996, that it would bring its legislation and practice into conformity with international labour standards. At year’s end, both ILO and OECD monitoring procedures were still in process.

EVENTS IN 2002

On December 19, Roh Moo-hyun, the ruling Millennium Democratic Party candidate and former liberal human rights lawyer, was elected President of the Republic of Korea.

Ten union leaders arrested	In February, the Supreme Public Prosecutor’s Office sought arrest warrants against 37 leaders of a strike, over privatisation and long work hours, by public sector railway, gas and power workers. On March 3, Kim Jae-Gil, President of the Korean Railway Workers’ Union (KRWU), was arrested together with 9 other members of the union after an agreement had been reached to end the strike and had been approved by an overwhelming majority of workers.
Unionists fired – replacement workers recruited – government and management join in union-busting tactics	<p>More than 5,000 unionised workers at the State-run Korea Electric Power Corp (KEPCO) walked out on February 25 in protest at state plans to privatise power affiliates, fearing it would result in job cuts and higher electricity prices.</p> <p>President Kim Dae-jung declared the “management” and “policy” related issues to be out of bounds for trade union activity, and that any action to influence or change the government policy or management matters was illegal. He went so far as to assert that such illegal activities did not exist in any advanced countries. On March 19, at a cabinet meeting, he directed his ministers to “resolve the illegal strike as soon as possible.” The next day, the management of five power companies presented the striking workers with an ultimatum, threatening to sack all those who failed to return to work by 9 am on March 25. On March 23, the Prime Minister confirmed: “The members of the trade union who fail to report for work by 9 am March 25, set as the final date for return to work, will, however large the number, be sacked. This is the categorical position of the government.” On March 24, the Labour Minister, Bang Yong Seok, who had volunteered to mediate over the issues that concerned “working conditions,” but ruled out the privatisation issue as an illegitimate concern of the workers and the unions, repeated the ultimatum.</p> <p>Before the ultimatum was presented, the Korean Confederation of Trade Unions (KCTU), an ICFTU affiliate, had come up with a proposal to leave out all reference to privatisation in an agreement focusing on the commitment of the government and the management to refrain from retaliatory actions against the union and its members upon the conclusion of the strike. The negotiation quickly came to an end when the government negotiators demanded that the union accept the inclusion in the agreement of a provision expressing the union’s explicit consent to the privatisation plan. The management of the five power companies then announced to the press that “the negotiations ha[d] broken down because the union refused to budge from its demand for the withdrawal of the privatisation plan.”</p>

The fact that the government had decided unilaterally to bring an end to the negotiations was confirmed on March 25 in a statement by Ahn Young-keun, a member of the National Assembly. He revealed that, together with 25 other members of the National Assembly, he had been working to mediate between the union and the government, and that the union was willing to suspend the demand for the withdrawal of the privatisation plan and end the strike if a public space could be created to arrive at a society-wide consensus on the issue. Ahn denounced the government for going on the warpath "to destroy the union using the possible electricity blackout and the people's discomfort and anger as a hostage."

The day after the ultimatum, nearly 4,000 strikers went ahead with their action, although the plant management had planned a disciplinary meeting on April 3. KEPCO had fired 197 trade unionists, and placed 404 others on a disciplinary list. Furthermore, it had asked the Seoul District Court to seize union workers' wages, severance pay and deposits to make up for losses incurred by the company in hiring part-time workers to fill gaps during the strike. The strike had not affected power generation. KEPCO sought 6.2 million Korean won (US\$ 4.74 million) compensation on estimated losses of 11.6 billion Korean won up to March 10. At the same time, the management issued notices for the recruitment of up to 1,000 new employees, claiming that it would be possible to run the power companies without the striking workers.

The KCTU called a solidarity general strike for April 2, to protest against the repression of the striking power plant workers.

Riot police sent in to break up unions

In March, two trade unions of government employees in the civil service were formed, but were refused the right to establish themselves legally by the government: the Republic of Korea Confederation of Government Officials Union on March 16, with some 15,000 members, and the Korean Government Employees Union on March 23, with some 70,000 members. At the inaugural Congress of the latter, held at the University of Korea campus in Seoul, about a thousand riot police forced their way in and arrested 178 delegates. Charges were laid against 47 of them, and 5 were imprisoned for their role in the formation of the union. Several other leaders of both unions were arrested in April.

Metalworkers' leader released

Sung-hyun Mun, President of the Korean Metal Workers Federation (KMWF), sentenced to one and a half years imprisonment on November 23, 2001, was released in March, due in large part to the international campaign coordinated by the International Metalworkers' Federation (IMF) on his behalf. He had been detained in relation with the KMWF-led strikes in 1998 and 1999. Charges included obstruction to business, obstruction of public law enforcement, and violations of the Law on Assembly and Demonstration and the Law on Traffic Obstruction. According to some observers at the time, the KMWF had played a key role in the workers' movement for labour law reforms and constituted the backbone of the July 12, 2001 general strike. Mun's arrest was considered to be the government's revenge against the union.

KCTU leader sent back to prison

Dan Byung-ho, President of the KCTU, who had already served several prison sentences, was again sentenced, on March 18, to two years imprisonment as punishment for his union's appeal for a general strike in June 2001 and, a month earlier, for the May Day rally. Dan was found guilty of all 5 charges laid against him, in 15 out of the 16 cases presented by the Prosecutor's Office, including a charge under the "obstruction to business" provision of the criminal law, as well as the charge of "obstruction to enforcement of the law, causing injuries and other damages." Dan Byung-ho has been active in the Korean trade union movement since 1987 and has spent about half of the time since then either in jail or in hiding.

Two trade union leaders released

On July 3, two trade unionists were granted early release from prison. Il-seup Kim, President of the Daewoo autoworkers union, and his vice president, Sunggap Kim, were freed after serving only 6 months of a 5-year prison term. The news came only days after a Global Unions-backed action day took place on June 27, picketing Korean embassies worldwide to demand the release of the numerous trade unionists languishing behind bars. On January 22,

the KCTU, in conjunction with the KMWF, its metalworkers' affiliate, the IMF, and other trade union organisations had already made an appeal for an international day of action for the release of imprisoned trade unionists in Korea.

Record number of prisoners

The number of imprisoned trade unionists remained high, however. On September 5, the KCTU issued a detailed list of imprisoned trade unionists. It revealed that 147 trade unionists had been arrested in 2002 (by September 5), of whom 55 were still held in custody, thus bringing the total number of unionists detained during the Kim Dae-Jung presidency to 833 (compared to 632 during his predecessor's five-year presidency). Furthermore, 63 trade unionists were wanted for arrest.

Riot police sent in to crush strike according to anti-union legislation

In September, an industrial dispute between the employees and the management of five Catholic hospitals reached a dramatic conclusion, due to the harmful effects of the anti-union legislation, in particular the compulsory arbitration mechanism in the "essential services" sector (see the "Legislation" section above).

The dispute had started in April, when the KCTU-affiliated Korean Health and Medical Workers' Union (KHMWU) presented its demands to the management, for industry-wide collective bargaining, employment security and protection, an agreement on working hours, pension schemes and wage increases. After 12 meetings, the management persisted in refusing to consider any of the union's demands concerning collective bargaining. Consequently, the KHMWU called a strike for May 23.

On May 22, on the eve of the planned strike, the Labour Relations Commission (LRC), which had initiated a process of mandatory but non-binding mediation, proposed that management and the union enter into further negotiations. The union called on the management to resume negotiations in order to avoid the strike planned for the next day. The management responded, one hour and a half before the strike deadline, that they would not come to negotiations when union members were preparing for a strike. Arbitration proceedings were opened, but the management still showed no intention of negotiating with the union.

The strike began as expected and the management introduced disciplinary proceedings against the strikers. It also conducted an active attack on the strike and the union, issuing numerous statements denouncing the union, and distributing them publicly, including to the patients. In its May 31 leaflet, the management described the union members on strike as "murderers," although the staffing of emergency services and the essential functions of the hospitals had always continued to be guaranteed during the dispute.

When some striking union members returned to work, due to the economic difficulties brought about by the suspension of wages during the strike, they were coerced into leaving the union. The management also telephoned family members of the striking unionists to threaten them that their relatives faced dismissal if they continued with the strike.

Eventually, on September 11, 3,000 riot police were sent in, and stormed three of the hospitals. When challenged, the police produced an official letter issued by the Catholic hospitals' management allowing the police to enter the hospitals' premises for law and order operations. The police chased fleeing workers all the way into the hospital chapel, dragging out crying women workers who in desperation were holding on to a crucifix in the altar. A total of 241 striking workers, mainly women, were arrested.

Following the police raid, the management of the Catholic hospitals again refused all proposals by the union to meet in order to resume the negotiations to end the dispute. It continued with disciplinary proceedings and the issuing of dismissal notices, and began to hire new staff to replace the striking workers. In total, 573 union members were referred to disciplinary proceedings and dismissal notices were issued to 20 key union leaders. Police summonses were issued against a total of 93 unionists.

In November, seven union leaders, Lee Sook-hee, Hwang In-deok, Kim Tae-hyeong, Park Ki-woo, Cho Eun-sook, Kim Young-joon and Lee Hyun-seong, were formally charged and received prison sentences.

Following these events, the ICFTU lodged a formal complaint with the ILO against the government of the Republic of Korea for violation of the principles of Freedom of Association, the Right to Organise and Collective Bargaining.

The complaint denounced the use of the compulsory arbitration mechanism in the essential services sector, as contained in the Trade Union and Labour Relations Adjustment Act, to deny fundamental trade union rights, and more specifically the use of this legislation to violate trade union rights at five major hospitals owned by the Korean Catholic Church.

More striking public sector workers arrested

On November 4, the KCTU launched a general strike covering 250 workplaces to protest against a proposed legislative reform that would have shortened the working week, but would also have cut incomes, and to press the government to recognise a public sector union and improve working conditions. 15,000 state employees from the three biggest car companies, Hyundai Motor, Kia Motors and Ssangyong Motor, walked off the job. Labour Minister Bang Yong-seok announced that the government would take stern action against strikers, and about 600 strikers were arrested overnight for breaching the ban on public sector work stoppages.

300 workers were arrested on November 7 during a peaceful rally organized by the KCTU and the Korean Federation of Construction Industry Trade Unions (KFCITU), an IFBWW affiliate, in front of the National Assembly. The rally was in protest against new legislation introduced in Parliament aimed at restricting workers' overtime and flexibility in workplaces, which would also have resulted in wage cuts. The workers, including the KCTU acting President, KFCITU senior and former Vice-Presidents and other KFCITU organisers, were released a few days later.

Kyrgyzstan

POPULATION : 4,800,000 / CAPITAL : Bishkek / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Practice continues to lag behind legislation.

THE LEGISLATION

The 1992 Labour Law recognises the right of all workers to form and belong to trade unions, and calls for practices consistent with international standards. The right to strike is not specifically protected, but strikes are not prohibited. Unions have the right to bargain for better wages and working conditions. The law protects union members from anti-union discrimination. The government sets the minimum wage, but this does not apply in the export processing zones.

The Labour Code currently in force was adopted in 1998. According to experts, it was the best Labour Code in the Community of Independent States (CIS) as regards the protection of workers' rights.

However, under pressure from the international financial institutions, the government of Kyrgyzstan started to prepare a new Labour Code, which would reduce workers' benefits and undermine unions' role in negotiations by allowing the employers to decide salaries and working time without prior consultations with the unions. The employers' cutting back of their investment in safety at work and the reduction of the role of the labour inspection have led to a further deterioration of health and safety at work.

RIGHTS IN PRACTICE

The process of transition from the Soviet era has proved slow, although unions have in general been able to carry out normal activities without obstruction. Respect for democratic rights in general has begun to diminish, however, notably since the highly questionable October 2000 elections. The government argued that the level of guarantees for workers is too high, making the economic environment of Kyrgyzstan unattractive for foreign investors.

In practice, trade unions rights are under attack in the bankrupt enterprises. Managements often cite the danger of bankruptcy in order to prohibit trade union activities, and trade union leaders and affiliates are victimised. This was the case in the Joint Stock Company 'Control Equipment' (AO 'Kontrolno-Izmeritelnykh Priborov') Bishkek.

Laos

POPULATION : 5,200,000 / CAPITAL : Vientiane / ILO CORE CONVENTIONS RATIFIED : 29



No freedom of association

Trade union rights in Laos are systematically repressed in both law and practice.

THE LEGISLATION

Trade union freedom does not exist in Laos. Under the 1994 Labour Code, "workers and employers shall have the right to organise and belong to any mass and social organisation that has been formed lawfully." In practice, the government does not register workers' organisations that are not affiliated to the Lao Federation of Trade Unions (LFTU), the single national centre, which is directly controlled by the single political party, the Lao People's Revolutionary Party (LPRP). In fact, the President and two Vice-Presidents of the LFTU are accorded status equal to a Minister and Vice-Minister in the government, and the LFTU Presidium and top officers are all paid salaries by the Government. In March 2001, LFTU President Venethong Luangvily stated in a speech to the 7th Congress of the ruling party that the LFTU operates "under the Party's leadership" and according to government policy. There were no indications during the year that the relationship between the government and the LFTU has changed. The "functions and activities" of employers' and workers' organisations are to be set by regulation. "Civil servants employed in State administrative and technical services, national defence and public order" constitute the overwhelming majority of the members of the LFTU. The LFTU's four-yearly congresses and leadership elections all take place with the authorisation of the LPRP.

LFTU representatives are usually LPRP members, or they are part of the management of the State-run companies. There is virtually no workers' representation in the joint ventures funded by private capital, despite a requirement in Article 11 of the labour law that a trade union must be established in "all labour units in accordance with specific regulations of the sectors concerned."

Severe limitations on bargaining and strikes

Labour legislation enacted in 1994 was supposed to establish certain minimum labour standards. However, only very limited collective bargaining is allowed.

The right to strike is severely restricted, with dissuasive penalties. The Penal Code provides for imprisonment of between one and five years of those who join an organisation that encourages protests, demonstrations and other actions that might cause "turmoil or social instability."

RIGHTS IN PRACTICE

No bargaining, no strikes

The government usually sets wages for government employees, while management sets wages for private sector employees. The minimum wage set by the Government is woefully inadequate to provide for a worker and his/her family.

Observers from international NGOs and Embassies based in Vientiane indicate that non-enforcement of the labour law, particularly in dealings with joint ventures in the private sector, is the norm.

No strikes have been reported in the past year.

Macau SAR (China)

POPULATION : 400,000 / CAPITAL : Macau / ILO CORE CONVENTIONS RATIFIED : --



China's influence has made itself felt since the handover, with less protection for trade union activity.

THE LEGISLATION

Prior to Macau's reunification with mainland China in December 1999, workers' rights to collective bargaining, the right to organise and freedom of association were protected under Portuguese law which was applied in the colony. These laws were replaced by a series of decrees introduced in 1999, which the government claims are in compliance with International Labour Conventions.

Freedom of association is guaranteed under Section 4 of Law No.2/99/M, while Section 45 of Decree-Law No.24/89/M prohibits the dismissal of workers on the grounds of membership of trade unions or their trade union activities. Section 347 of the Penal Code is ostensibly a deterrent against public authorities' interfering in workers' freedom of association.

No guarantee of collective bargaining

Section 6 of Decree-Law No.24/89/M provides that agreements concluded between employers and workers shall be valid. However, it does not explicitly state that such agreements should be concluded or that they should involve collective bargaining.

Public servants excluded

Certain clauses such as Sections 3(2) and 3(3) of Decree-Law No.24/89/M specifically exclude public servants and migrant workers from the protection of the labour law.

RIGHTS IN PRACTICE

Employers' power

It is common practice in Macau that workers do not have formal employment contracts with their employers. Generally, only migrant workers have employment contracts. As such, the power of employers to unilaterally change the wages and working conditions of employees or to terminate their employment (which is equivalent to dismissal) is unchecked. In the context of the excessive power of employers to act unilaterally, and with no legal-institutional framework for collective bargaining or even employment contracts, workers are easily victimised and discriminated against for their union activities.

No protection for strikers

While the right to strike is supposed to be protected by law, there is no legal protection against retribution by employers for involvement in strike action. As such, striking workers may be dismissed during or after the industrial action, regardless of the negotiated outcome.

China's influence

It is reported that the government of the People's Republic of China has a strong influence over local trade union activities, including the direct selection of the leadership of the largest private sector union federation. Nearly all private sector unions belong to this pro-Beijing federation. This has undermined the independence of trade unions, as the concern for supporting central government policies overrides the protection of the rights and interests of trade union members.

Migrant workers

Migrant workers, who make up nearly a fifth of the workforce, are denied the most basic forms of protection. While migrant workers usually have employment contracts, they have no right to collective bargaining and no effective legal recourse in the case of unfair dismissal. While they are entitled to compensation as a result of dismissal before the termination of their contracts, it is common practice for migrant workers to be issued with short-term contracts under which the non-renewal of the contract amounts to dismissal.

Malaysia

POPULATION : 21,800,000 / CAPITAL : Kuala Lumpur / ILO CORE CONVENTIONS RATIFIED : 29-98-100-138-182



The legislation is very restrictive on trade union rights and the authorities have very broad powers to keep trade union activity under control.

THE LEGISLATION

Many restrictions

The law recognises the right of most workers to form and join trade unions, but there are many legal obstacles to organising, while the process for obtaining recognition is slow and cumbersome. The Trade Unions Act of 1959 and the Industrial Relations Act of 1967, as well as subsequent amendments, place extensive restrictions on freedom of association.

General unions are prohibited and mergers between unions in different professional sectors are practically impossible. The government does not allow industrial unions in the electronics industry. Only in-house unions are allowed.

The Director General of Trade Unions (DGTU), who has the power to supervise and inspect trade unions, can refuse to register a trade union without giving any reason for such refusal and, in certain circumstances, can withdraw registration. Trade unions whose registration has been denied or withdrawn are considered to be illegal associations. The DGTU can specify the category a union would be permitted to organise, and can take as long as he likes to examine a registration request. He must also give his approval before a trade union is permitted to join an international organisation.

The law prohibits industrial unions from organising employees in managerial and executive positions, employees entrusted with confidential matters, or employees performing security-related tasks. Such employees must form or join a trade union that represents only their category of employees.

Trade unions are not permitted to use their assets for political purposes. The law has established a detailed list of all issues that may be considered as "political subjects". The Minister of Human Resources can add other items to this list.

The law establishes restrictions regarding who qualifies as a candidate to become a trade union official.

The public sector

Trade unions in the public sector are permitted to organise trade unions per ministry, department, profession or activity as well as join federations. Employees in statutory bodies (ports, Employees' Provident Fund, etc.) are only authorised to join internal trade unions, which, in turn, may join the Civil Service Federation and the national trade union centre. Employees working for the defence sector, police force or prisons do not have the right to form or join trade unions.

Restrictions on the right to strike

Legal restrictions make it practically impossible for workers to hold a legal strike:

- Trade unions are not allowed to go on strike for disputes relating to trade union registration or illegal sackings.
- Legislation requires that parties to a dispute notify the Ministry of Human Resources prior to going on strike or imposing a lock-out. The Ministry can then attempt conciliation and, if this fails, refer the dispute to the industrial court. This entire procedure takes much too long and during this period, strikes and lock-outs are prohibited.
- Essential services are very broadly defined and trade unions in these sectors face additional restrictions on their right to strike, including the requirement to give at least 21 days' strike notice.
- Two-thirds of the members of a trade union must vote in favour of a strike in a secret ballot.
- The ballot must include a resolution that states "the nature of the acts to be carried out or to be avoided during the strike."
- Pre-strike authorisation procedures are cumbersome.

Restrictions on collective bargaining

The Industrial Relations Act limits collective bargaining in "pioneer" companies. The electronics industry among others still has this status. Since 1994, the government has claimed that measures were being taken to repeal this provision, but nothing has been done thus far. The Industrial Relations Act also excludes hiring and firing, transfer and promotion, dismissal and reinstatement from the scope of collective bargaining.

In the public sector, the joint council system limits public sector unions to a consultative role where their only power is to "express their point of view" on principles regarding wages and working conditions. It is practically impossible to go on strike in this sector. Trade unions do not have the right to take their disputes to the industrial court without the specific permission of the King of Malaysia.

Other laws used to restrict trade union rights

Under the 1960 Internal Security Act (ISA), any person suspected of threatening national security may be detained by the police for up to 60 days without trial, a period during which the person is held incommunicado, with no access to lawyers or to family members. After this initial 60-day detention period, a two-year detention order may be issued with the Home minister's approval. The detention order is renewable indefinitely. ISA detention is usually accompanied by severe physical and psychological torture (including beatings, forced nudity, sleep deprivation, round-the-clock interrogation, death threats and threats of violence directed towards family members, including threats of rape and violence to the children). The ISA has consistently been used to repress political opposition activists, and others. Other laws, such as the Official Secrets Act (OSA), the University and University Colleges Act (UUCA), the Printing Press and Publications Act (PPPA), and the Sedition Act can also be invoked to restrict the exercise of human rights organisations. The Malaysian Penal Code requires police permission for public gatherings of more than five people.

The MTUC (Malaysian Trades Union Congress) continues to exert pressure on the government to ratify ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, so far without success.

RIGHTS IN PRACTICE

Employers tend to take advantage of the legal limitations on who can organise in order to prevent as many people as possible from joining a union. Employers often interpret managerial and executive categories to include supervisors, assistant supervisors, section leaders and lower-level supervisory personnel. The trend has also been to consider all workers working in information technologies as being in the "confidential" category, which effectively prevents them from joining the same trade union as the rest of the employees. In this manner, employers are able to maintain a series of small-sized, and therefore weaker, trade unions.

Inefficient labour courts

Some employers have opposed government directives granting trade union recognition and have refused to comply with industrial court orders to reinstate illegally dismissed workers. So far, the government has failed to apply any sanctions against these employers. In some cases, companies have changed their name or ceased to exist during the court case.

The MTUC has criticised the delays in processing claims filed with the industrial courts. Even if a worker has been fired for carrying out trade union activities and is later reinstated following a court decision, it can take three or four years, during which time the worker has no income.

Foreign workers barred from trade union membership

The Minister of Human Resources has declared that foreign workers do not have the right to become trade union members - despite the fact that the law only prohibits them from becoming union officials. Notices on work permits also state that foreign workers are not allowed to join trade unions.

Police intimidation

Intimidation and obstruction by police at legally conducted peaceful pickets has become common. The Malaysian Trades Union Congress has been called in on several occasions to seek the intervention of the Inspector General of Police.

EVENTS IN 2002

2000 workers denied union representation

Japan- and Korean-based multinational corporations (MNCs) have demonstrated vehement opposition to trade unions. Japanese employers successfully persuaded the authorities' Director General of the Department of Trade Unions to remove more than 3000 workers from union membership. Industrial unions organising in metal, electrical, chemical and non-metallic mineral products were denied union recognition despite majority representation. Japanese MNCs are also avoiding union recognition by filing challenges in the High Court, which often drag on for three to five years.

Labour activists remain in jail

Labour activist Tian Chua, arrested in April 2001 and held at the Kamunting Detention Centre in Taiping, remained in jail in spite of the ruling by the Federal Court – the highest court in Malaysia – in September 2002 that the police arrest and detention of five Reformasi leaders, among whom Tian Chua, under the Internal Security Act (ISA) were unlawful. On October 1, Deputy Prime Minister Abdullah Ahmad Badawi, who is also the Home minister, said that the activists would not be released, as the government had made its decision to detain them based on valid national security concerns. On June 4, 2001, he had signed an order under the draconian ISA (see the "Legislation" section above) to detain the activists without trial for two years. Tian Chua had been very active in organising workers of all races in Malaysia, and was the organiser of the Labour Resource Centre.

Anti-ISA protesters repressed

On October 1, more than 100 police stopped a planned anti-ISA meeting from taking place at the Selangor Chinese Assembly Hall in Kuala Lumpur. About 10 persons were beaten by riot police as they tried to enter the building. Police said they had acted under Section 27 of the Police Act, which empowers them to stop activities held in a private location if such activities are deemed prejudicial to national security interests. The Deputy Prime Minister Abdullah Ahmad Badawi explained that the police were sent in because the organiser did not inform them about the gathering.

Peaceful marchers arrested

17 persons, including two women, were arrested in Kuala Lumpur on May 1 during a peaceful May Day celebration march. Shortly after they had started marching, uniformed and plainclothes police violently dispersed the demonstration, tearing off posters and banners, pulling away head bands that some of the marchers were wearing, and kicking, beating and threatening others. The police reportedly attempted to stop workers from getting on the buses parked nearby, and when they finally allowed them to do so, they arrested those who were helping the people in. Two demonstrators, arrested for bringing food to their detained fellows, were charged in the Kuala Lumpur Magistrate's Court with "disorderly conduct" at the Dang Wangi police station, a charge that carries a maximum of RM 500 fine and/or six months' imprisonment.

Maldives

POPULATION : 300,000 / CAPITAL : Male / ILO CORE CONVENTIONS RATIFIED : ---



No recognition of union rights

The government still does not recognise the right to form trade unions in its legislation.

THE LEGISLATION

There are no trade unions on the Maldives. The law does not specifically ban trade unions, but it does not recognise the right to form a trade union or to strike.

The right to bargain collectively is not recognised either. Wages in the private sector are set by a contract between employers and employees.

RIGHTS IN PRACTICE**Discouraged**

The government has in the past exerted pressure to discourage seamen from joining foreign seamen's unions.

Workers have not sought to form trade unions as such, but do form associations that address workers' rights issues.

Nepal

POPULATION : 22,500,000 / CAPITAL : Kathmandu / ILO CORE CONVENTIONS RATIFIED : 29-98-100-111-138-182



The persistent climate of political violence, caused by the ongoing Maoist insurrection, led the King to declare a state of emergency, and to assume the entire executive power. This, of course, was to affect trade union rights.

THE LEGISLATION

The right to form and join trade unions is recognised. The 1992 Trade Union Act defines the procedures to follow for establishing a trade union and prohibits anti-union discrimination. However the government has not yet implemented all of the provisions.

On January 10, 2002, bank workers at officer levels were notified that they were not allowed to form or join a union.

Strike restrictions

Strikes are permitted, but there are a series of restrictions. The government may stop a strike or suspend a trade union's activities if they disturb the peace or adversely affect the economic interests of the nation. The Labour Act also stipulates that a strike is legal only if 60% of the union's members vote in favour of the action in a secret ballot. Strikes are also prohibited in a very long list of essential services, such as water supply, electricity and telecommunications, road, air and sea transport, the print industry, the government press, hotels and restaurants.

The Labour Act provides for collective bargaining.

RIGHTS IN PRACTICE

There is little collective bargaining in practice, partly because of worker inexperience, partly because of employer reluctance.

Both the authorities and employers have sought court injunctions to prevent workers from going on strike.

EVENTS IN 2002**Background**

The country continued to be marked by a climate of violence, hundreds of people being killed by the Maoist guerrillas throughout the year, among whom about 200 members of the Nepal Trade Union Congress. This led the King to take over the whole executive by declaring the state of emergency, and to suspend the fundamental rights and the election process.

Trade unionists killed

In 2002, the Maoist guerrillas killed at least 52 trade unionists, mostly teachers. They were all dragged from their workplace, hospitals, residence or trade union office before being killed in public. The methods used by the guerrillas were very brutal, ranging from lynching, beating and cutting limbs to hanging and shooting.

Pakistan

POPULATION : 137,600,000 / CAPITAL : Islamabad / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-182



The legislation contains very restrictive provisions regarding trade union rights. “Essential services” and “defence installations” are very broadly defined, and workers in public sectors such as oil and gas production, electricity generation and transmission, the state-owned airline and ports do not have the right to strike. Several cases of union-busting manoeuvres and harassment of trade unionists were reported.

THE LEGISLATION

In September 2002, the government introduced a “new labour policy,” which was to implement the recommendations of the National Tripartite Labour Conference held in July 2001. In spite of this, however, the Industrial Relations Ordinance of 2002 (IRO), promulgated in October in replacement of the Industrial Relations Ordinance of 1969, strengthens the restrictions on trade union rights. Under the new IRO, the restrictions imposed on collective bargaining rights in the banks, Pakistan International Airlines (PIA), Karachi Electric Supply Corporation (KESC), railways open line, security, printing presses, oil and gas, fire fighting staff and watch and ward personnel were maintained. The time limit for starting the bilateral dialogue between the management and the union was increased from 10 to 15 days, and the duration for the dialogue from 14 to 25 days. The deterrent provision in respect of imprisonment of employers indulging in serious anti-labour practices contained in IRO 1969 was deleted and the fine ceiling reduced to Rs 20,000.

The IRO permits industrial workers to form trade unions but contains many restrictions. Agricultural workers or teachers are not covered by this law, as these sectors are not considered an industry. Supervisory and managerial staff are excluded. The law does not apply to companies that employ less than 50 people.

Pakistan International Airlines Corporation

In 2001, an order was passed to suspend trade unions, associations, organisations or any other groups of employees in the Pakistan International Airlines Corporation, as well as agreements between the Corporation and its employees or groups of employees.

Banks

Amendments to the Banking Companies Ordinance in 1997 state that a worker cannot become a union member or official in a banking company unless they are employed by the bank in question. They also stipulate that no officer or member of a trade union in a banking company shall use any bank facilities, including a car or telephone, to promote trade union activities. Any person violating such provisions shall be liable to a fine or imprisonment of up to three years or both.

Public sector

In the public sector, the Essential Services Maintenance Act of 1952 (ESMA) covers the state administration, government services and state enterprises such as oil and gas production, electricity generation and transmission, the state-owned airline and ports. Workers in most of these sectors may form unions, but cannot go on strike. Hospital staff, some civil servants and workers in many defence-related establishments may not form unions. These definitions are broad, effectively denying many workers their rights. Forestry workers are considered civil servants, while many railway lines are classified as “defence installations” and consequently their workers are considered as defence personnel.

In November 2001, the government introduced new laws on public sector workers, preventing them from appealing to the courts against dismissal, and prohibiting any court intervention in such matters. Likewise, the new IRO restricts the possibility of seeking interim relief from the National Industrial Relations Commission or the Labour Court against unfair labour practices. Furthermore, the penalties imposed on trade union representatives found guilty of unfair labour practices are comparatively heavier than those imposed on employers.

Strike limitations

There are many legal obstacles to the right to strike. Cumbersome conciliation procedures have to be followed before a legal strike can be held, and the new IRO has reinforced them. The government has the right to ban any strike which may cause "serious hardship to the community" or prejudice the national interest. Under the new IRO, the government can put an end to any strike that has lasted for more than 15 days. The IRO allows the government to ban strikes in any public service utility and the ESMA provides for up to one year's imprisonment for anyone who contravenes the ban. The Anti-Terrorist Ordinance of 1999 codifies the crime of a "terrorist act", which includes "acts of civil commotion". Illegal strikes and go-slows are considered "civil commotion", which carries a penalty of imprisonment of seven years to life, as well as fines.

Export processing zones (EPZs)

The new ISO has not lifted the restrictions on trade union rights in the EPZs. Workers in EPZs may not form or join unions, bargain collectively or strike. They have no protection against employer interference or anti-union discrimination. The government reported in the course of the year to the ILO that it had authorized the Export Processing Zone Authority (EPZA) to frame draft legislation and that draft labour laws were being finalised by the authority. It was not known at the time of writing whether these complied with international labour standards.

RIGHTS IN PRACTICE

In industry, some employers divide production up into units of less than 50 people in order to evade labour legislation, even to the extent of having employees of different enterprises working at the same premises. Employers also artificially promote workers to managerial status so that they no longer qualify for union membership, usually without the concomitant salary. The procedures for union registration and the appeals process can take many years if an employer is opposed to the formation of a union. Employers often strongly resist unionisation of their employees, resorting to intimidation, dismissal and blacklisting.

Strikes are rare, and given the complications attached to organising a strike, are usually illegal and short. They are often broken up by police and used by employers to justify dismissals.

The United Bank Employees' Federation has reported that, further to the amendments to the Banking Companies Ordinance, union members have been ruthlessly victimised by the management of banks, particularly the United Bank Limited (UBL). Over 500 trade union leaders have been dismissed, including the President of the UBL Employees' Federation of Pakistan and the General Secretary of the UBL Labour Union Karachi. They believe the dismissals are being used by the UBL management as a pretext to undermine the very existence of the United Bank Employees' Federation. The government has not acted on the ILO's request that it amend the Act.

EVENTS IN 2002

In April, President Pervez Musharraf's mandate was extended for five years in a referendum marked by allegations of fraud. Parliamentary elections were held in October, and in November the newly elected Parliament sat for the first time in three years. In November, Musharraf reactivated the Constitution, which had been suspended when he took power in a coup in 1999, after introducing amendments to reinforce his power and that of the army.

Unionists fired for "absenteeism" while imprisoned

On March 21, three officers of the Pearl Continental Hotel Workers' Union were released on bail. Union General Secretary Ghulam Mehbob, Joint Secretary Bashir Hussain and Vice Chairman Aurangzeb had been arrested together with other union officers or members following a suspicious fire incident at the hotel on January 6. They were unable however to return to their jobs, as their positions at the hotel were officially terminated on March 2, when management informed them that their posts could no longer be left vacant.

The circumstances surrounding the arrests and detentions of the union leaders, which took place in the midst of a vicious anti-union campaign by the hotel management, suggest that management and police colluded in a union-busting operation.

The fire, which damaged part of the hotel on January 6, initially described by the hotel management as a routine accident, was then reported to the police as resulting from a deliberate act of union sabotage. As a consequence, the

Central Investigation Agency (CIA) police detained a group of union officers and members on January 7. In the course of January, all but the above-mentioned three trade unionists were progressively released.

When Union President Mohammad Nasir reported for work on January 21, a few days after his release, he found that he had been suspended for failing to report for work during the time he had been in police detention. Two other unionists who had just been released were likewise suspended for absenteeism. The management then announced a restructuring plan, which resulted in the sacking of 31 active members and officials of the union, including officers Noor Wali, Ali Murad, Hidayatullah, Moin Khan and Nasreen Reshad, who were terminated on March 11 without any prior notification.

Other union-busting manoeuvres

The management also initiated legal proceedings to cancel the union's official registration, stopped deducting union membership fees, and ceased payment of the union office rent as established in the collective agreement.

Unionists beaten by police with management complicity

On July 6, Union Vice Chairman Aurangzeb and Vice Social Secretary Hidayatullah were reportedly beaten at a police station in Karachi in the presence of management staff of the hotel. They were released after more than 26 hours' custody. The workers at the hotel reported that the Assistant Superintendent of the Police, who had participated in the aggression, spent the night following the assault at the hotel with members of the management.

Management refuses to bargain

The Pakistan Bank, Insurance, Financial & Commercial Employees Federation, a Union Network International (UNI) affiliate, reported in June that the local CGNU management had continuously been ignoring their attempt for discussions about a new collective agreement, and had withdrawn the previous offers that they had made in a meeting several months before. Furthermore, after filing a petition against union office bearers for Unfair Labour Practice in the Pakistan Labour Court, the management refused any communication with the union.

KESC union ban continues

The ban on trade union activities at the Karachi Electric Supply Corporation (KESC) was still in place at the end of the year.

Anti-union practices at Leather Field

Over 150 workers who had been unfairly dismissed had still not been reinstated in January, including the elected officers of the Leather Field Labour Union, in violation of orders issued by Pakistan's National Industrial Relations Commission. It was also reported that the company had required that recalled workers should pledge to refrain from union activities. The company also attempted to put pressure on the All-Pakistan Federation of Labour (APFOL) by requesting government and police action against the union.

Philippines

POPULATION : 74,200,000 / CAPITAL : Manila / ILO CORE CONVENTIONS RATIFIED : 87-98-100-105-111-138-182



Many legal obstacles make it difficult for workers to enjoy their trade union rights, especially in the public sector. Employers frequently use all sorts of tactics to bust the unions. In some cases, they have encouraged the police and security guards to resort to violence to crush workers' protests. Union activity is still strongly discouraged in export processing zones.

THE LEGISLATION

The law recognises the right of workers, including public employees, to form and join trade unions, although organising is restricted in the public sector.

Obstacles

The law also contains many obstacles to trade union activity. A union must represent at least 20% of the workers of a given collective bargaining entity in order to register. High membership rates are also legally required for the

establishment of a federation or national centre. Trade union leaders must be employed in the same enterprise as the workers they represent. Foreign nationals may not establish or join a trade union unless there is a reciprocal agreement between their respective countries and the government of the Philippines.

The right to strike is recognised under Philippines law. In order to obtain permission to strike, a trade union is required to give advance notice, wait for a certain period and obtain the agreement of a majority of its members. All avenues of conciliation must have been exhausted. If the Minister of Labour and Employment considers that the industry concerned by the strike is vital to the economy, he or she can impose compulsory arbitration and compel the workers to return to their jobs.

The Law also prescribes heavy penalties for participation in an illegal strike. Trade union leaders are liable to prison terms of up to three years. Anyone who organises or directs any "meeting for the purpose of spreading propaganda against the government" is liable to life imprisonment or the death penalty. The term "meeting" covers the notion of picketing during a strike.

Public sector workers have limited bargaining rights. Strikes are banned.

RIGHTS IN PRACTICE

Employers can and do appeal against unions' right to registration. The process can be very lengthy, seriously hampering organising efforts.

The government and employers also take advantage of the restrictions in the law to obstruct the right to strike. The requirement to give advance notice to the Ministry of Labour gives employers the opportunity to divide the workers among themselves and, in most cases, to organise reprisals against them. If the workers still go ahead with the strike call, the employers can request the National Commission on Labour Relations to issue an injunction against the strike. Instead of playing an impartial role, the government tends to interfere in labour disputes to the benefit of the employers.

Export processing zones

Trade union activity is strongly discouraged in the export processing zones in particular. The officials who govern the zones try to block organising by maintaining a "union free, strike free" policy, and claim they have the right to carry out their own labour inspections in the zones. The Department of Labour and Employment (DOLE) has proved unable or unwilling to enforce labour legislation in the zones. As a result, there has been very little effective union organising.

A study carried out in 2000 by the TUCP showed that in seven export processing zones (Cavite, Victoria Wave, Luisita Industrial Park, Laguna, Subic Bay Metropolitan, Bataan and Cebu) at least 977 employees from 43 enterprises had been dismissed for being union members, forming a union, or calling for transparent union elections. In seven enterprises, management had refused to recognise the union, and in eight others it had refused to negotiate. Six firms had set up their own "sweetheart" unions to sabotage the existing union.

EVENTS IN 2002

Workers threatened by management

In early January, the Toyota Motor Philippines Corporation (TMPC) management set up a pro-management union, requesting all the employees to vote for a ratification election, for the newly formed Labour Management Council (LMC), consisting of supervisory employees and other workers. The TMPC Workers' Association (TMPCWA) organized a campaign to boycott the ratification, by distributing leaflets to the workers. This campaign, seemingly supported by one-third of the employees only, did not succeed in stopping the election of the pro-management union. The management subsequently threatened the workers who boycotted the ratification and voted against the LMC.

In March, the Fiscal's Office prosecuted 3 of the 25 union members against whom the TMPC had filed a criminal case, allegedly for looking at the management of TMPC "in a threatening manner" and shouting "invective words" when the management tried to enter the company's premises during a strike organised to protest against the unfair dismissal of 227 union members in 2001.

Management obstructs negotiations and sacks union members

In January, some 300 union members, including union officers, were suspended or dismissed by management at the luxury Dusit Hotel Nikko in Manila, after the National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN) held a peaceful information picket – an action guaranteed by law. The picket was in protest against a lock-out decided by the hotel management, which had been obstructing negotiations on a new collective agreement since November 2000.

On February 2, the Department of Labour and Employment ordered all hotel employees – including those suspended or dismissed – to be “admitted by the hotel to work within 24 hours.” An escape clause in the order, however, offered management the option of “payroll reinstatement”: keeping the sacked and suspended workers on the payroll while barring them from work, pending official confirmation of the termination order. This list initially included 225 union members, among them over 90 union officers and members who were issued dismissal papers. The back-to-work order also imposed compulsory arbitration on all issues, including the negotiation of a new collective agreement, one of the issues at stake.

On February 27, management began calling some workers on payroll reinstatement to report to work, but each employee was pressured to sign a “waiver” to the illegal lock-out case as a condition for physical reinstatement. Under the terms of the “waiver”, the employees were to agree not to pursue the illegal lock-out case they had filed in response to the suspensions.

By the end of March, 121 workers from the suspended list had been called back to work, and 96 dismissed workers remained on payroll reinstatement.

Union-busting at McDonald’s

Following the creation of the McDonald’s Supervisory Employees Association (McSEA) in May, and its registration with the Bureau of Labour Relations (BLR) of the Department of Labour and Employment (DOLE) in June, McSEA filed a petition for the conduct of a secret ballot certification election on June 4. The company therefore filed its own petition to cancel the Certificate of Creation of the union, alleging, among other things, that it was a prohibited union because initiated and formed by managers, and that it lacked the 20% support legal requirement. In a previous attempt to unionise dating back to 1990, the creation of the McDonald’s Workers’ Union failed after manoeuvres such as massive promotions, additional incentives, re-orientation of employee and constructive dismissals.

Picketing workers attacked by police and security guards

On June 28, about 500 police of the Region 4 Philippine National Police (PNP), and the Regional Special Action Force (RSAF), and security guards from the Matrix Security Agency and Guardians dispersed a legitimate protest action led by some 400 picketing workers of Nestlé-Cabuyao, Laguna. The police and security guards attacked with batons, stones, teargas and water cannon, as the workers tried to restore their picket line at the company’s gate. 14 strikers were injured. One, Felicisimo Pastolero, needed five stitches in a head wound, and another, Vicente Batayon, suffered a broken clavicle. The policemen reportedly even chased the workers who were bringing the wounded to the nearby clinic for treatment. 16 strikers had already been injured, and another detained for a couple of hours, in dispersal actions that took place on June 3 and June 17. The Nestlé workers subsequently suffered all sorts of intimidation. Local residents were also intimidated to stop them from supporting the striking workers.

Management and local authorities join in busting union

At Cebu Mitsumi, an electronics firm in Danao City (Cebu Province), over 15,000 workers were still waiting at year’s end for their trade union rights to be respected, eight years after their union, the Cebu Mitsumi Employees Union (CMEU), had filed its petition for certification election on February 5, 1994. After years of anti-union practices, which led the Trade Union Congress of the Philippines (TUCP) – an ICFTU affiliate – to file a complaint against the government of Philippines with the ILO Committee on Freedom of Association (CFA), in March 1995, the DOLE issued, in August 2002, an order declaring the election of May 4, 2001, a failure and ordered the holding of another certification election. At year’s end, however, a new date for the election had still not been determined. Furthermore, Ferdinand Ulalan, President of the CMEU, was dismissed from the company, effective from October 24. He was accused of committing serious misconduct, wilful disrespect and grade insubordination. A case for illegal dismissal and unfair labour practice was filed, and the initial hearing set for December 10.

When the CMEU filed a petition for a certification election in February 1994, in conformity with the Filipino legislation, the management of the company and Danao City government officials tried to discourage the workers from joining the union. Already, when the national government assigned an area in the city as a special trade zone, the Danao City Council passed a resolution making Danao City union-free and strike-free. From then on, Danao City government officials collaborated with the management of Cebu Mitsumi in suppressing the trade union rights of the workers of the company, harassing and threatening the worker union officers and other members. As if this was not enough, they resorted to other acts of harassment, as the arrest and detention of Ferdinand Ulalan and his wife under charges of violating the country's drug law, a trumped-up charge aimed at putting an end to their union activities and discouraging other workers in pursuing their union activities.

In the May 4, 2001 certification election, only 123 out of 15,718 workers qualified to vote were able to cast their vote, because of the management's manoeuvres. A few days before the election, the management of Cebu Mitsumi announced that May 4 would be a "forced leave day." DOLE officials and the union representatives were allowed entry into the company premises only two hours after the scheduled voting time, after submitting to unusually stringent security checks. The voting time was delayed for several hours. Posters calling for the boycott of the CMEU were posted at the gate and inside the building. A large number of security guards, unusual blockades outside the company site, and the management's threats of dismissal dissuaded the great majority of the workers from participating in the election.

Singapore

POPULATION : 3,900,000 / CAPITAL : Singapore / ILO CORE CONVENTIONS RATIFIED : 29-98-100-182



Although the Industrial Relations Act was amended in a positive way for the workers, Singapore needs to go further in updating its labour legislation. Several of the restrictions that still exist in law are not applied in practice.

THE LEGISLATION

Private sector – limitations on the right to organise

Workers are free to join trade unions in the private sector. However, the parliament may impose restrictions on grounds of security, public order or morality. Forming a trade union is subject to the approval of the Registrar of Trade Unions, who has wide-ranging powers to refuse or cancel registration, particularly where a union already exists for workers in a particular occupation or industry. These powers could be used to obstruct the establishment of a trade union or impose a single union structure. The unions point out that this could be used to promote "yellow" unions.

The Registrar also has far-reaching powers to investigate union finances.

Public sector – exceptions to union ban

There is no legal right to form and join trade unions in the public sector. The Trade Unions Act actually prohibits government employees from joining trade unions, but the President of Singapore has the power to make exemptions from this provision. The Amalgamated Union of Public Employees has been granted such an exemption, and the scope of representation has been expanded over the years to cover all public sector employees except the most senior civil servants.

Collective bargaining – court can reject agreements

Collective agreements must be certified by the tripartite Industrial Arbitration Court before going into effect. The Industrial Arbitration Court can refuse certification, at its discretion, on grounds of public interest. Transfers and layoffs are excluded from the scope of collective bargaining, although unions are not precluded from negotiating a compensation for workers in such cases.

Under the Industrial Relations (Amendment) Bill passed in July 2002, it is no longer an offence for newly-established companies to provide more favourable conditions than the legal minimum stipulated under the Employment Act. In

practice, the Industrial Arbitration Court has always granted exemptions to allow the certification of collective agreements that exceeded the minimum conditions in the Employment Act.

Disputes can be settled through discussions with the Ministry of Manpower. If conciliation fails, the parties may submit their case to the Industrial Arbitration Court. In limited situations, the law provides for a system of recourse to compulsory arbitration, which can put an end to collective bargaining at the request of only one of the parties.

Interference in internal trade union affairs

The Trades Union Act restricts the right of trade unions to elect their officers, and whom they may employ. Foreigners and those with criminal convictions may not hold union office or become employees of unions. However, exemptions can be granted by the Minister. The Act also limits the objectives on which unions can spend their funds and prohibits payments to political parties or the use of funds for political purposes.

Restrictions on the right to strike

To call a strike, 50% plus one of all the trade union's members must vote in favour, rather than the internationally accepted standard of over 50% of those actually taking part in the vote. Strikes are prohibited in essential services such as water, gas and electricity.

Increased representation for executives

The Industrial Relations (Amendment) Bill was passed in Parliament on 23 July 2002 to allow rank-and-file unions to represent executive employees in disputes concerning dismissal, retrenchment benefits and breach of individual contract. Before the Amendment Bill was passed, executives did have the right to form their own unions but in practice found this difficult because they are small in number.

RIGHTS IN PRACTICE

Practice suggests that many of the laws are outdated, as many of the potential restrictions are not applied. For example, compulsory arbitration has not been imposed since 1981, while the Industrial Arbitration Court has never in practice refused to certify a collective agreement on the grounds of public interest. The unions have called for these outdated restrictions to be removed from the country's legislation.

Sri Lanka

POPULATION : 18,700,000 / CAPITAL : Colombo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



An improvement was reported as concerns union rights in export processing zones (known in the country as Free Trade Zones, or FTZ). Acting under union pressure, the government prevailed on employers to respect union rights in FTZ enterprises. Workers' Councils may be elected in enterprises where there is no formal trade union presence.

THE LEGISLATION

All workers have the right to form unions, including public sector workers. Seven workers may form a union, adopt a charter and elect leaders. An amendment to the Industrial Disputes Act adopted in December 1999 granted compulsory recognition to any union which represents more than 40% of workers at a given workplace. It also forbids employers from firing a worker as a result of his or her union activities. Public service unions are technically forbidden by law to federate amongst themselves, but the relevant legal provision has reportedly never been invoked and there are at present seven federations of public sector trade unions. Most of them are politically affiliated.

Limitations on the right to strike

The right to strike is recognised, but with limitations in the public sector. A new law was to be passed in September, providing for a 14-day strike notice. However, this law has not yet been adopted. Civil servants normally have the right to strike. The government imposed certain restrictions on the right to strike in May 2000 through the use of

the Public Security Act, adopted in order to deal with ethnic strife that brought havoc to the country during the '80s and '90s. In April 2001, the government took steps to lift this strike ban in response to an observation sent to the ILO Committee of Experts on this issue by a local union. However the government reserved the right to declare any service "essential", whenever necessary, through the Public Security Act. During the final quarter of 2001, the government was forced to abandon emergency laws as it failed to muster the majority support required to sustain it in the legislature. As a result, the government was compelled to give up the right to declare any service "essential" and impose a strike ban whenever it felt it necessary. Moreover, following the signing, on February 22, 2002, of a Memorandum of Understanding between the government and the LTTE armed rebellion group, which brought the internal armed conflict to an end, the Essential Public Services Act n° 61 of 1979 was formally revoked.

However, the President of Sri Lanka may designate by a Presidential Order any service provided by any category of workers in public services as essential, thus giving him or her the power to outlaw strikes. Essential services in Sri Lanka cover the supply and the distribution of food or drink, supply of water and electricity, postal, telephone and broadcasting services, airport services and health and rubbish collection services. Once the Presidential Order is issued, it has a validity of 14 days unless the Parliament approves such order, although the President is free to issue another order notwithstanding the lapse of such earlier order.

Any violation of an order in force under this Act is considered an offence which can carry from 2 to 5 years of imprisonment after a summary trial before a magistrate. In addition, where a person is convicted, the court may order the forfeit of all his or her movable and immovable property; and if the name of such a convicted person is registered under a professional or vocational register, his or her name may be removed from that register.

The law bans reprisals against strikers in non-essential sectors.

The law provides for the right to collective bargaining.

The law grants workers in the export processing zones, called Free Trade Zones (FTZs) in Sri Lanka, the same rights to join unions as other workers.

RIGHTS IN PRACTICE

There are widespread violations of trade union rights in Sri Lanka's FTZs. The zones are managed by the government's Board of Investment (BOI), which sets wages and working conditions and discourages union activity. Union members face intimidation, including threats of beatings from security guards, and new workers are warned not to join unions. Labour representatives say that the Labour Commission, under pressure from the BOI, fails to prosecute employers who refuse to recognise or enter into collective bargaining with trade unions. Consequently, few trade unions have been formed in the FTZs.

In spite of the adoption of the Industrial Disputes (Amendment) Act of December 1999, which is supposed to protect workers against acts of anti-union discrimination in taking up employment and in the course of employment, many serious cases of anti-union discrimination and non-recognition of trade unions have been reported since the adoption of the Act. These cases have been at enterprises such as the Cosmos Macky factory in the Katunayake FTZ, a Korean/Sri Lankan joint venture company producing sports and ski wear for export; Fine Lanka Luggage Ltd., producing clothes for many internationally known companies; the Bensiri Rubber Products Branch, an Indian owned company producing surgical gloves and hot water bottles for export; Dulon Zippers, a Korean-owned company making zippers for export as well as for the local market; Skyspan Asia in the Biyagama FTZ, producing fabric fireproof membrane structures for export; Topstar Branch, a Korean-owned textile factory also in the Biyagama FTZ, producing power loom and knit fabric for export; and many more. The government clearly does not stop anti-union persecution nor provide adequate protection against anti-union discrimination.

EVENTS IN 2002

Background – Peace

In December, the government and the Tamil Tiger rebels ended a 19-year civil war by agreeing to share power in a federal system. A political solution was reached, with the Norwegian government's assistance, when the Tamil Tiger leader, Velupillai Prabhakaran, agreed to settle for regional autonomy rather than a separate Tamil state in the north-east of Sri Lanka. More than 60,000 people had been killed in the civil war since 1983.

Trade unionists axed following merger

When the Standard Chartered Bank (SCB) and Grindlays decided to merge, SCB management attempted to axe 47 unionised employees of Grindlays, without incorporating them into the staff of the SCB. The Ceylon Bank Employees' Union insisted that the management of the SCB include the 47 union members in its staff, but the SCB management pressurised the Grindlays employees to sign the offer letter they had individually received and forget about their 47 comrades.

Tajikistan

POPULATION : 6,000,000 / CAPITAL : Dushanbe / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



There are ambiguities in Tajikistan's labour legislation that could leave the door open to serious restrictions. The government has repeatedly failed to respond to ILO requests to clarify the provisions concerned.

THE LEGISLATION

Freedom of association, the right to strike and the right to collective bargaining are recognised in national legislation. At the same time, however, the law appears to give the government a free hand to restrict those rights. Freedom of association, the right to strike and the right to collective bargaining are recognised in national legislation. At the same time, however, the law appears to give the government a free hand to restrict those rights.

Interference in trade union activities?

The Law on Trade Unions states that interference in trade union activities by the state authorities shall not be permitted "except in cases specified by law". The text does not, however, state what those cases are, and the government has repeatedly failed to respond to requests from the ILO for clarification.

Restrictions on the right to strike

Similarly, the Labour Code states that restrictions on the right to strike shall be "subject to the provisions of the legislation in force in Tajikistan". Again, the provisions are not specified, and again the government has repeatedly ignored ILO requests for the text of the provisions referred to. In particular, the ILO wanted to know whether the old legislation inherited from the USSR restricting strikes in the transport sector and providing for penalties of up to three years' imprisonment were still in force.

RIGHTS IN PRACTICE

Collective bargaining does take place in practice. Strikes do not. The people are exhausted after the long civil war and nobody wants to strike, for two main reasons. First, virtually all sectors of the economy are paralysed and those who have a job are happy to do it for very little money. Of all the CIS countries, Tajikistan has suffered the most from the break-up of the Soviet Union. It coincided with civil war and the Tajiks lost their chance to rebuild their economy and establish new trade and economic relations in the post-Soviet world. The second reason is that workers are afraid that any kind of open conflict could be used by political forces seeking to foment unrest and war. Given these circumstances, the trade unions want to support the President of Tajikistan and develop social dialogue.

Taiwan

POPULATION : 22,300,000 / CAPITAL : Taipei / ILO CORE CONVENTIONS RATIFIED : ---



Many sectors and professions are still prohibited from forming trade unions, such as teachers, who organized the first ever teachers' demonstration in Taiwan's history in September. New legislation to improve trade union rights had still not been adopted.

THE LEGISLATION

The right to organise is protected by law but there are restrictions. Army personnel and defence industry workers, police, fire fighters, teachers, civil servants, doctors and Medicare personnel are still not permitted to form trade unions. There were discussions whether to allow teachers and public servants to form trade unions. Migrant workers can join trade unions, but only Taiwan citizens may hold positions of leadership.

The legislation authorises the government to interfere directly in the internal affairs of trade unions. As a case in point, trade unions must submit their articles of association and rules to the authorities for review prior to official registration. The authorities can also dissolve unions if they do not meet certification requirements or if their activities constitute a "disturbance of public order."

There are many restrictions on the right to strike, which make it difficult to hold a legal strike and undermine collective bargaining. The authorities can impose mediation or arbitration procedures for disputes that they consider to be serious or involve "anti-competitive practices." During such procedures, the law prohibits workers from interfering with the "working order."

Severe sanctions are applied for failure to comply with the law, workers are not allowed to strike and employers are not allowed to take retaliatory action.

Collective bargaining is recognised by law but is not mandatory.

Two new bills have been tabled, one by the President of the ICFTU-affiliated China Federation of Labour (CFL), Lin Hui Kuan, who is also a legislator, and another by the government. The bills will bring several improvements if adopted, although progress seems slow. The CFL-sponsored bill would enable workers in small-sized companies to join a union, reduce the number of workers required to form a trade union from 30 to 20, and increase the amount of protection afforded to trade union leaders by imposing sanctions against employers found guilty of intimidation or anti-union discrimination. But the government's bill would still prohibit civil servants, teachers and workers in the army and the defence industry from joining a trade union. Besides, it still contains restrictions on the right to strike in some sectors, such as mass transport, public service and medical care.

Companies operating in the export processing zones are subject to the same labour laws as the rest of the country, with the exception of some high-tech industries.

RIGHTS IN PRACTICE

Respect for trade union rights has improved in practice, since the change of government in 2000. It has recognised seven new national trade union federations, whereas previously only one was tolerated. However there are still very few unions, and very few workers covered by collective agreements. Collective bargaining generally only takes place in large companies, which only account for 5% of companies in the country.

Labour representatives at an Economic Development Advisory Conference held in August 2001 had reported that many employers were still unwilling to discuss labour disputes with unions, and some were still ready to fire workers for union activities.

Improvements on their way?

EVENTS IN 2002

On September 28, National Teachers' Day, an estimated 60,000 teachers and supporters took to the streets in Taipei to demand the right to form trade unions. The demonstration, the first ever in Taiwan's history to be organized by teachers, followed a Cabinet decision to abolish a 1955 policy exempting junior high and elementary school teachers from taxes.

Thailand

POPULATION : 62,000,000 / CAPITAL : Bangkok / ILO CORE CONVENTIONS RATIFIED : 29-100-105-182

1 8 3



Workers in both the public and the private sectors are allowed to form and join trade unions, with the exception of civil servants. In spite of certain legislative changes, many obstacles still prevent workers from enjoying all of their trade union rights, and a current revision of the Labour Relations Act would further undermine these rights. Union-busting and harassment of trade union members are widespread. Legislation pertaining to migrant workers leaves them with virtually no rights.

THE LEGISLATION

Basic provisions in the private sector

Private sector workers have the right to form and join trade unions under the 1975 Labour Relations Act (LRA). They may decide on the rules of their unions and may have employee representation in direct negotiations with employers. The Act prohibits anti-union discrimination by employers. Ten workers in the same factory or industry can apply to form a union. Unions must be registered with the Ministry of Labour and Social Welfare (MOLSW).

Restrictions on trade unions' right to have advisers

However, the Thai government uses a Proclamation by the last military government to restrict the unions' right to have advisers. Under this Proclamation, each union is entitled to no more than two advisers, who must register with the Ministry of Labour, and have their registration regularly renewed. The Ministry of Labour has broad discretion to deny registration.

No real protection

There is no specific protection for union founders or committee members. Despite the ban on anti-union discrimination, therefore, workers can be legally fired for any other reason provided they receive severance pay, even if they are union leaders, a provision which can easily be abused. Members of the bilateral Worker-Employer Welfare Committee are protected from dismissal under the 1998 Labour Protection Act, but reinstatement for unfair dismissals in such cases is a very lengthy process.

The LRA requires that all members of a union executive must be full-time workers in the enterprise. They must therefore negotiate leave of absence for trade union work with the employer.

Conditions for engaging in collective bargaining

Employees representing at least 15 per cent of the workforce, or a trade union with a membership representing at least 20 per cent of the workforce may apply to negotiate on working conditions. Provided the application is validly submitted, the parties must enter into negotiations within three days. If a new agreement is signed, it must then be formally registered within 15 days.

Dispute settlement procedure

If employers and employees do not reach an agreement, the party that took the initiative of engaging negotiations must inform labour arbitration officials in writing within 24 hours of the beginning of the dispute. Labour arbitration officials will attempt to resolve the dispute within five days. If an agreement can still not be reached, the employer, the employees and the labour arbitration officials may continue their discussion with a view to settling the dispute. Alternatively, employers and employees may voluntarily agree to appoint an arbitrator or engage either in a lock-out or in a strike. A strike or lock-out must be declared with a 24 hours' prior notice. An employer may not dismiss or transfer employees, their representatives or trade union members during the dispute settlement procedure, except in case of misconduct.

State enterprises

Employees of state enterprises regained the right to form trade unions and bargain collectively when an amended State Enterprise Labour Relations Act (SELRA) came into force in April 2000. When the SELRA was first enacted by the military dictatorship in 1991, it abolished trade unions in state enterprises. No less than 10 employees, representing at least 10 per cent of the workforce – administrative staff, casual, seasonal and contract workers excluded – may apply to establish a trade union. An application must be filed with the Registrar, along with documentation listing the names and containing the signatures of those who intend to become members of the union. Once registered, the trade union obtains legal personality. Each state enterprise can have only one union, and each state enterprise employee may be a member of only one union. Under the SELRA, the objective of a state enterprise union must be to promote good relations among employees, and between employees and employers, to aim to protect workplace conditions, and to co-operate with authorities in seeking to ensure the effectiveness of the state enterprise and protect its interests.

Under the SELRA 2000, there is still a restriction on affiliation between state enterprise unions and private sector labour congresses or federations. State enterprise unions can only affiliate to a national labour congress as a confederation. Concretely, the State Enterprise Workers' Relations Committee (SERC), the national confederation of state enterprises that groups 40 state enterprise unions, can affiliate with a national labour congress but individual state enterprise unions cannot.

No unions for civil servants

Civil servants are excluded from the Labour Relations Act, and there are government regulations prohibiting them from forming unions. The government sets civil servants' wages.

Restrictions on the right to strike

Private sector workers have the right to strike but the government may restrict strikes that would "affect national security or cause severe negative repercussions for the population at large." The SELRA prohibits strikes and lock-outs within state enterprises. Labour law forbids strikes in "essential services," which it defines in broader terms than those set out by the ILO. There is no protection for the right of civil servants to strike.

Proposed new law would weaken union rights

The Thai government is preparing a revised version of the Labour Relations Act, which would further weaken collective bargaining and the right to strike. The law would give the Labour Minister sweeping new powers to impose arbitration. The Minister could end any labour dispute by decree and could order unions not to demand wage rises – and employers not to pay them. These powers could be invoked for reasons of "national security," "public order" or undefined "serious economic problems."

RIGHTS IN PRACTICE**Exploiting legal loopholes**

Unions in Thailand report that employers frequently dismiss workers who try to form trade unions. In some cases, they are fired while awaiting registration, in others they are fired ostensibly for non-union reasons invented by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

Impact of the privatisation process on freedom of association

The Thai government is using the legal division between the private sector and the public sector (the private sector is covered by the Labour Relations Act, the public sector by the SELRA) to restrict freedom of association, in the context of an ongoing privatisation process. When a state-owned company passes to the private sector, the Ministry of Labour cancels its trade union's registration, on the grounds of the difference in legal status. This is what happened to the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU), which filed a complaint with the ILO Committee on Freedom of Association in February 2002 (see the "Events" section below).

Abuses of legal provisions to keep trade unionists out of the factory

There are frequent abuses of the provisions of Article 75 of the Labour Protection Act of 1998, according to which the employer may temporarily halt his operations wholly or partially for any cause other than force majeure, provided that the employer pay the employees at least 50 per cent of their normal working day's wage during that period. Employers have used this provision to indefinitely keep trade union members out of the factory on half pay, thereby forcing them out of the company.

Labour courts inefficient

The unions also report that tripartite labour courts are very slow in handling disputes, and tend to side with the employer in cases where union leaders have been fired. Even where a court has ordered the reinstatement of an illegally fired worker, employers often react by offering substantial severance pay in lieu of reinstatement.

Another means of circumventing trade union activity is outsourcing, which has proved increasingly popular among employers, notably in the garment and textile industries.

Low rate of unionisation in the private sector

According to a survey conducted in 1999, 2.79% of private sector employees were unionised, whereas in state enterprises, 52.6% of employees were unionised. Furthermore, only a small minority of employed workers – i.e. an estimated five per cent – are covered by collective bargaining agreements.

Migrant workers registration requirements – no freedom of association

Legally registered migrants are not permitted to change employers. If they do or if they are fired, they are immediately deportable. Thai employers thus use these provisions to impede migrant workers' freedom of association. Those who dare raise protests are fired by the employer and handed over to the Immigration Department. The Mae Sot textile factory Burmese workers' case gives a clear picture of the situation (see the "Events" section below). The number of illegal migrant workers in Thailand is between one and two million. They are ruthlessly exploited.

Union-busting practices at Gina

Since Gina Form Bra Company Ltd., originally a Lao company, was taken over by a Thai group in 2001, the management of the company immediately began to harass and intimidate union committee members and union members with a view to busting the union, which was formed in 1994. Gina is located in Bangkok and produces underwear for big brands such as GAP, Victoria's Secret, Banana Republic, K-Mart and Jacob. The company is certified under the name WRAP (Worldwide Responsible Apparel Production).

In January 2002, the management threatened to call in the police to stop the union from collecting union dues.

On January 4, the Labour Relations Committee ordered the company to pay damages and reinstate 24 workers who had been laid off in August 2001. However, when the workers reported to work on January 9, the company refused to give them any work and said that it would appeal to the Labour Court to quash the order. On January 23, the Company paid damages to one of the workers, but subsequently ordered her to return the amount.

On February 28, four days after the union congress was held, four of the newly elected committee members and one union activist were dismissed. A complaint was filed with the Labour Department.

On May 3, the former union treasurer, Somboon Rodjareon, was beaten up by two thugs and was told to leave the area of the factory. She was again beaten up on May 13.

On August 14 and 15, six committee members were moved from the sewing section to the quality checking section situated in another small building where fewer union members were at work and where wages and benefits were lower. The management claimed they had received workers' complaints that the committee members had taken six days' leave, which had affected the production and the teamwork of their lines.

Between 22 and 27 August, the union committee members were ordered to stop working, with pay. During their absence, management forced union and non-union members to sign a blank piece of paper on which management later wrote workers' agreement to new provisions which were below the existing benefits. The management then took this document, and registered it with the Department of Social Welfare and Labour Protection of the Ministry of Labour and Social Welfare, presenting it as an agreement between the company and the workers' representatives.

On September 17, the National Human Rights Commission, with which the union had filed a complaint on November 27, 2001, ruled that the management's actions against the workers and the union were a violation of human rights and were against several sections of the LRA 1975. That did not stop the management from suing five union members the next day, including the union president, claiming that they had slowed down their work performance and threatened their co-workers who did not join their slow down, and that the workers had complained about it to the management.

Trade union registration retroactively cancelled

On December 26, 2001, the Department of Labour Protection and Welfare (DLPW) of the Ministry of Labour and Social Welfare (MOLSW) informed the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU) that its registration was revoked, with effect from October 1, 2001, and that it would have to be newly organized from scratch, under the provisions of the Labour Relations Act, the reason for this being a purported change of status of the company from a state company to a private sector company. A new union, with a new leadership, was subsequently registered by the authorities.

A complaint was filed by the BCPEU with the ILO Committee on Freedom of Association (CFA), on 18 February 2002. In November, the CFA, recalling, among other things, that "measures of dissolution by administrative authorities constitute serious infringements of the principles of freedom of association," that "the dissolution of trade union organisations is a measure which should occur only in extremely serious cases, and only following a judicial decision so that the rights of defence are fully guaranteed," and that "legislation which accords the Minister complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association," noted that "all these principles were violated in the particular circumstances".

Trade unionists fired

On May 16, Auto Alliance (Thailand), a joint venture uniting Ford Motor Co. and Mazda Motor Corp., suspended four union leaders for allegedly instigating a refusal of overtime on the part of the workers. By the end of the month, three had been fired outright and the case of the fourth (who could not be fired immediately because he was a member of a legally mandated committee) was pending before the Thai labour authorities. After strong protests by the International Metalworkers' Federation (IMF) and its affiliates, an agreement was reached for the reinstatement of the workers. On May 16, Auto Alliance (Thailand), a joint venture uniting Ford Motor Co. and Mazda Motor Corp., suspended four union leaders for allegedly instigating a refusal of overtime on the part of the workers. By the end of the month, three had been fired outright and the case of the fourth (who could not be fired immediately because he was a member of a legally mandated committee) was pending before the Thai labour authorities. After strong protests by the International Metalworkers' Federation (IMF) and its affiliates, an agreement was reached for the reinstatement of the workers.

Desperate workers at Light House

Workers at the Light House production plant (Light House is a sub-contractor of the American luggage multinational, Samsonite Corporation) were driven to desperate measures by events which began as early as October 2001 when 600 workers were dismissed (out of a total workforce of 1,400). The majority of these were women with more than 10 years of experience with the company. Overtime benefits were cut and wages slashed by 25% to \$3.60 per day for the remaining workforce, despite a dramatic increase in their workload. Impressive protests ensued in Bangkok, culminating in 200 protesting workers from the Light House Labour Union presenting a letter written in their own blood to the Thai parliament.

Trade union committee members sacked

In June 2002, 20 elected union representatives at Light House were sacked, and when 849 workers stopped working to protest, all were immediately dismissed. 200 workers were taken back on new contracts on July 12, following a walkout. On July 23, at a meeting between the Ministry of Labour and Social Welfare, the management and the Light House union, the management said it would only take back the 20 union committee members, and an additional 37 workers. The 20 union committee members were indeed reinstated, but they were given jobs which denied them access to the rest of the staff in the factory, thus preventing them from carrying out their legitimate trade union activities. In August, 75 workers, mostly women, were still waiting to be reinstated. The management claimed that it did not have sufficient work for them, yet it forced non-union workers to work overtime and continued to hire new staff.

Agreement signed following global trade union campaign

On September 14, following a sustained global trade union campaign, the workers and the Lighthouse management finally signed an agreement by which the 29 workers who stated that they wanted to go back to work were reinstated. The management further promised that it would not "interfere with trade union activities" nor "obstruct any activities conducted in accordance with the law."

Burmese workers in Thailand regularly sacked

On February 25, 42 workers were expelled in the wake of a protest for increased salaries in the garment factory of Chaw Knitting Industries Co. Ltd. By the end of the year, at least 700 workers were sacked.

In May, 30 workers from the ATA factory in Mae Tao, Mae Sod, were sacked without any reason being given to them.

In May, 12 Burmese workers from the CM garment factory were given the sack. Also, New Product Co. sacked 50 workers who led the bargaining process on piece rates. In total, New Product Co. sacked about 3,000 workers.

In November, Laung Chaing Garment Co., belonging to the Uni Ocean international group, closed its factory, forcing 1,000 workers out of their jobs without any compensation.

Employers regularly take advantage of the difficult situation of migrant workers to sack them whenever they please.

Central Labour Court orders reinstatement of unfairly dismissed unionists

On September 26, 2002, the Central Labour Court ruled that the 21 I-TV union member journalists who were sacked in February 2001 were to be reinstated with back pay. The nine union committee members and twelve other union members had been fired on February 6, 2001, literally one day after the union held its founding congress and elected its leadership. On June 1, 2001, the Labour Relations Committee had already ordered the reinstatement of all 21 dismissed union members and leaders, but the television company had subsequently appealed the case in July.

Management refuses to bargain

In December, 41 workers at Xaloy Asia (Thailand) Ltd., one of the world's largest manufacturers of plastification systems and a subsidiary of the Swiss engineering group Saurer, were locked out of the company's plant in Chonburi, as a direct result of having formed a union and put forward collective bargaining demands. Xaloy management had persistently refused to bargain in good faith with the workers. The dispute was continuing at year's end. Not only did management insist that all workers fully accept company demands before they could be reinstated, but it refused to agree to binding arbitration of the dispute, or to the use of Article 35 of the Labour Relations Act, as suggested by mediators from the Ministry of Labour's local office.

Tanong Pho-Arn – 11 years on

June 19 marked the eleventh anniversary of the disappearance of Tanong Pho-arn, President of the Labour Congress of Thailand. He went missing three days after organizing a protest rally and a few days before he was due to fly to Geneva to tell the International Labour Conference of the limitations placed on free trade union activity following the February 1991 coup. He had been publicly critical of the martial law imposed by the military government, which had denied him permission to attend the ILO Conference. Shortly before his disappearance, he had been followed everywhere and received numerous anonymous death threats. He told his family, "If I don't contact you for three days, that means I have been arrested. If it's more than seven days, that means I am already dead." According to information submitted to the UN Working Group on Enforced or Involuntary Disappearances, it is alleged that army personnel, acting under the direction of General Khraprayoon, may have taken him to a safe house in Thonburi Province at Wat Yai Rom, where he was killed, and then transferred the body to a military compound in Kanchanaburi Province. The Working Group had not received information on the case from the Thai government at the time of writing.

At an event to commemorate the May 1992 Democracy Uprising, the University Affairs Minister, Mr. Sutham Saengprathum, had promised that a committee set up by the government to investigate the disappearance of democracy protestors would also investigate Tanong Pho-arn's disappearance.

Turkey

POPULATION : 65,700,000 / CAPITAL : Ankara / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



In spite of recent constitutional and legislative changes introduced with a view to qualifying the country for accession to the European Union, the legislation remains generally inadequate as regards full protection of workers' trade union rights, both in the public and in the private sector. Strikes are prohibited in many sectors which are not considered essential under ILO standards. Where permitted, strikes are subject to many restrictions. There were numerous reports of anti-union practices throughout the year, and many trade unionists were arrested and imprisoned by the authorities.

THE LEGISLATION

Many restrictions on trade union rights

The law recognises the freedom of association and the right to form a trade union, but also imposes many restrictions. Candidates for union office must have worked for at least ten years in the sector represented by the union. Unions must obtain official permission to organise meetings or rallies, and must allow the police to attend their events and record the proceedings. If a union seriously contravenes the laws governing its activities, it can be made to suspend its activities or enter into liquidation on the order of a labour tribunal.

The law on Public Employees Trade Unions (PETU), adopted by parliament in June 2001, restricts the right to conduct collective bargaining and the right to strike for all public employees' trade unions (covering over 2 million employees). It also places restrictions on the right to organise, thus affecting over 400,000 public employees.

Workers in the private security sector do not have the right to form trade unions. People of foreign nationality can join a union, but workers have to be Turkish to be a member of a union's executive body. They also have to have at least ten years' work experience.

The law provides protection against anti-union discrimination. The size of the fines that can be imposed on employers who do not respect trade union rights is too small to be dissuasive, however. Trade union leaders are not properly protected against transfer and dismissal and the law does not impose any obligation on the employer to reinstate dismissed trade unionists, other than union delegates.

Limitations on the right to strike

Solidarity strikes, general strikes and go-slows are banned. Severe penalties are foreseen for participation in illegal strikes, including imprisonment.

Strikes are banned in many sectors that do not fall under the category of essential services defined by the ILO. Strikes are prohibited in funeral parlours, the administration of cemeteries, the gas, oil, water and electricity industries, the public fire department, maritime transport, railways and urban public transport, banking and finance, health and public services. The law imposes compulsory arbitration in these services.

Where strikes are allowed, there is an excessively long waiting period (nearly three months) from the start of negotiations before a strike can be held. Collective bargaining must take place first. If there is a decision to go ahead with strike action, the employer must be given at least one week's notice. Furthermore, the law allows the government to suspend a strike for up to 60 days for reasons of national security, health or public safety. Unions can petition the Council of State to lift such a suspension but if the petition is turned down, binding arbitration can be imposed at the end of the period.

There are further restrictions on the right to strike: it is prohibited to prevent raw materials entering a factory or finished products leaving it, and to prevent non-union members from working. Only four or five strikers can remain at the factory gates to supervise the strike. They cannot set up a tent or any kind of shelter to protect their food, or hang up banners that say anything other than "There is a strike at this workplace."

In the export processing zones, the ten-year ban on strikes, lock-outs and mediation was repealed in the framework of the August 2002 legislative reforms.

The Job Security Act was adopted in August. According to the Act, employers cannot dismiss without valid reason workers who are employed in workplaces with over ten workers and who have indefinite-term contracts and over six months on the job. The Act specifies that the following cannot be considered as a just motive for dismissing an employee:

- trade union membership or participation in trade union activities, either outside working hours or, with the consent of the employer, during working time;
- being or seeking office as a workers' representative;
- instigating or participating in legal proceedings against an employer for rights violations;
- race, religion, sex, civil status, family obligations, pregnancy, political opinion, ethnic or social origin;
- temporary absence from work due to injury or illness.

According to the Birlesik Metal-Is union, the most important shortcoming of this law is that it does not cover workplaces where ten or fewer employees are employed, thus giving employers the possibility of escaping legal provisions by employing fewer than ten workers at the plant – often by transferring production to subcontractors, or by employing workers on fixed-term contracts. The proportion of workplaces in Turkey with fewer than ten employees was approximately 25 per cent of total employment as of 2000. Employment in the informal economy represents 30 to 40 per cent of total employment, and the major violations of workers' rights occur precisely in the informal economy and in small companies in the formal economy. Also, seafarers are excluded from the scope of the Act.

The Labour Act of 1936 was amended in August, bringing job security provisions into line with ILO Conventions. The amended Act also brings agricultural enterprises with less than 50 employees within the scope of national labour law, effective as of March 15, 2003.

Restrictions on collective bargaining

Collective bargaining is heavily restricted in Turkey. To be recognised as a bargaining agent, a union must represent more than half the employees in an enterprise and 10% of all employees in the sector.

Only one union per enterprise is authorised to conduct collective bargaining. The procedure is so long and cumbersome that it is often very difficult to make free use of this right.

RIGHTS IN PRACTICE

Poor rights record

Turkey has a very poor human rights record in general. It would like to join the European Union, but its government is still responsible for many violations of human rights, including trade union rights. In an attempt to move closer to EU standards, constitutional changes were adopted in October 2001, the main fundamental change being the abolition of the death penalty for common criminal offences. The European Commission's 2002 annual report on Turkey's progress towards accession notes, however, that allegations of torture and ill-treatment in police custody are still frequent. Despite some modifications in the field of freedom of association, the exercise of this right is still very restricted. The minimum number of federations required to form a confederation has been increased from three to five. Associations still cannot use languages other than Turkish in their official activities. Moreover, the authorities still have considerable discretionary powers in authorising meetings and demonstrations.

Restrictions are particularly acute in the four provinces in the south-east of the country, where the state of emergency continues and allows the authorities to detain suspects for lengthy periods without charge. Many trade unionists are held under a draconian application of Article 312 of the penal code, which provides for imprisonment for "inciting hatred."

Bargaining obstructed

As regards collective bargaining rights, unions report that the government manipulates membership figures or claims there are irregularities in the figures in order to deny them that right. If a union wishes to take an employer to court over challenges to its bargaining rights, the case may take one to two years.

EVENTS IN 2002

Background

Unemployment rose from 6.6% in 2000 to 8.5% in 2001. An unemployment insurance scheme was set up and the first unemployment benefits were paid out in April 2002.

In August, Yasar Okuyan resigned as minister of Labour and Social Security, shortly before the adoption of the Job Security Act.

In November, the Justice and Development Party (AKP) won the parliamentary elections (taking 363 of the 550 seats), and Abdullah Gul, an economist and former disciple of Necmettin Erbakan – the founder of the Islamist political movement – took office as prime minister.

Union leaders in Court

On February 14, sixteen leading officials of Tüm Yargı Sen (TYS), a union which represents staff in the justice ministry, including prison wardens, appeared before the Court of Appeals, in Ankara. The union is a member of the ICFTU-affiliated Confederation of Public Servants Trade Unions (KESK). In 2001, the sixteen officials had been sentenced by the State Security Court to three years and nine months imprisonment, after the union had issued a critical report on the newly-built "F-type" (high-security) prisons. They were wrongly accused of having opposed the transfer of extreme left-wing and other alleged terrorist detainees to the "F-type" prisons.

The case against TYS's President, Tekin Yildiz, ten other national officials, four Ankara branch leaders and a former TYS Steering Committee member, was launched by the authorities in October 2000, soon after prisoners started a hunger strike in protest at plans to transfer them to the new "F-type" prisons. At least thirty prisoners and several security personnel were killed when the authorities forcibly transferred the detainees in December 2000.

Although they had appealed against their sentences, many of the TYS leaders were banned from the public service, from holding union office, and from travelling abroad or were transferred to jobs in other cities.

On March 13, the Court of Appeals in Ankara pronounced their acquittal. These colleagues have all returned to their civil service positions now and the union has brought a compensation case before the court for the payment of their salaries in the period they have been taken away from duty. This case is in progress.

In September 2002, the number of hunger strikers who died as a result of their action reached 57 since the beginning of the hunger strike in October 2000.

Police raids union headquarters and arrests unionists

A strike at the Yonca shipyard in Tuzla/Istanbul took a turn for the worse in May, when the shipbuilding company and the Turkish state seemingly joined forces in an attempt to break the strike through intimidation of the workers and their trade union, Limter-Is. On May 16, the Turkish central security forces and gendarmerie raided Limter-Is headquarters, arrested its President, Kazim Bakis, and searched his home. Later, on the same day, the union's Deputy President, Hakki Demiral, the General Secretary, Hacı Yapici, and five of the strikers were arrested in their homes.

More trade unionists arrested

To condemn such pressure against the strike, the trade union confederation DISK and a number of its affiliates staged a protest demonstration on May 18, with the result that on the following day another trade union officer from Limter-Is, plus four more strikers were arrested. All those detained were subsequently released.

Limter-Is had resolved to take strike action in late April, following Yonca's refusal for more than two years to recognise the union's organising and bargaining rights at the shipyard, even though the courts had ruled in favour of the union. In another dramatic incident at the shipyard, two workers had lost their lives due to the failure on the part of the employer to ensure that all necessary safety measures had been taken.

- Union-busting practices** 400 workers at Ditas, a company producing automotive spare parts and situated in Nigde, Central Anatolia, embarked in July on a strike that was to last for several months. The workers, all members of the IMF-affiliated Birlesik Metal-Is trade union, took industrial action in protest against the employer's refusal to respect trade union rights at the workplace, and to bargain with the union. After the beginning of the strike, the company attempted to destroy the union in the plant by offering increased wages to the striking workers on condition that they quit the union. The union was also the first in Turkey to organise workers at a subcontractor.
- Employer engages in judicial proceedings to bust union** In July, the Turkish Glass Employers' Organisation (Sisecam Group) applied to a labour court with the aim of destroying the Kristal-Is union by referring to the 10 per cent threshold rule. As a result, all union activities in the Turkish glass industry were stopped. The situation became even more serious in January 2003, when the collective agreement expired, leaving the workers without a collective agreement as long as the judicial procedure was ongoing.
- Harassment of trade unionists** Throughout the year, members of Egitim-Sen, an Education International (EI) affiliate, were persistently harassed, investigated and tried for their legitimate use of their freedom of speech and freedom of association. Egitim-Sen members and executive officers were arbitrarily subjected to transfers, removed from office or expelled. In Tunceli, four Egitim-Sen members were held in custody and plainclothes policemen gave them a summons not to recruit any new members. Several union members were transferred because of their union activities. One was transferred because he spoke Kurdish in school, others for participating in Newroz celebrations (the Kurdish New Year). Some members were tried for defending the right to education in their mother tongue.
- Union leaders sentenced to imprisonment** In December, 35 demonstrators, including union leaders, were sentenced to fifteen months' imprisonment for "participating in an unauthorised gathering and disobeying the order of dispersal." They had demonstrated in June 2001 when the draft Labour Code was under discussion in parliament.

Vietnam

POPULATION : 77,100,000 / CAPITAL : Hanoi / ILO CORE CONVENTIONS RATIFIED : 100-111-182



While legislative restrictions and the single trade union system are still in place, some strike action is tolerated and independent activity is slowly emerging. In November, striking workers were attacked by managers with metal bars, requiring police intervention.

THE LEGISLATION

- No freedom of association** Workers are not free to join and form trade unions of their choosing. Any union formed must be approved by the party-controlled Vietnam General Confederation of Labour and must affiliate with it. All local trade unions must operate under the umbrella of the VGCL.
- Restrictions on the right to strike** The right to strike exists, but with limitations. There are cumbersome pre-strike procedures to follow. Management and labour must go to the enterprise's own labour conciliation council, or in the absence of this to the provincial labour arbitration council. Not all provinces have such a council, however.
- Strikes are prohibited in public services and those considered by the government to be important to the national economy and defence. The definition is broad, covering a total of 54 sectors, including transport, banks, the oil and gas industries etc. The Prime Minister has the right to suspend a strike considered detrimental to the national economy or public safety.

Collective bargaining Party-approved unions have the right to bargain collectively on behalf of all workers. Acts of union discrimination are prohibited by the labour code.

Export processing zones Export processing zones are covered by the same laws as the rest of the country.

RIGHTS IN PRACTICE

Strike action tolerated Despite the restrictions on strike action, many strikes do take place, without respecting all the procedures, and are generally tolerated by the authorities.

At the same time, many "labour associations" are developing outside the official VGCL, among taxi drivers, market porters and cooks for example.

Old habits die hard The VGCL itself is proving slow to adapt to the market economy and the changing climate that results. It still sees itself as the bridge between boss and worker, rather than the defender of workers' rights. The credibility of the VGCL among workers both in the North and the South of the country is quite low, and many workers believe that the leadership is unable to successfully represent their concerns.

Export processing zones Employers in the zones tend to ignore workers' rights. Only about 10% of workers have long-term employment contracts. The remainder are on contracts of between three months and a year, which helps employers avoid the legal requirement to set up a union in enterprises with 10 employees or more. Although wages and working and living conditions are poor, the workers are too afraid of losing their jobs to protest. The management boards of the EPZs have labour offices, but in practice they do not deal with labour disputes, and little is done to ensure workers' legal protection in the event of conflict.

EVENTS IN 2002

In November, a group of striking workers at the Taiwanese-owned Dzoanh Duc furniture plant in Binh Dzuong province, near Ho Chi Minh City, were attacked by some twenty factory managers armed with metal bars. 100 police had to intervene to protect the workers. At least four of the workers were taken to hospital. They were complaining about long working hours, low pay and being regularly forced to work overtime without pay. Moreover, the majority of the workers did not have a contract and the company did not pay for their social and medical insurance. Several incidents of this kind were reported to have occurred at other foreign-owned factories.

Despite Europe's status as an industrialised continent and its essentially democratic image, severe violations of trade union rights are still taking place, particularly in the transition countries where the effect of policies imposed by the international financial institutions (IFIs) has been devastating in social terms. Faced with the IFIs' demands, the public sector has decreased as a consequence. Privatisations, often carried out without consultation, have fuelled the growth of unemployment, forcing increasing numbers of workers to accept precarious jobs often with fixed-term contracts. This trend, further strengthened by the countries' desire to attract foreign investment, has in practice led to a decrease in respect for trade union rights, with workers risking the possibility of not having their contracts renewed as a result of their trade union activities. Though some new labour codes have improved trade union rights, most amendments to legislation have further weakened acquired rights; this has been the case in Poland, where amendments to the Labour Code adopted in August 2002 have allowed employers to hire labour on demand under fixed-term contracts up to the time of Poland's accession to the European Union, in 2004. In Russia, the law imposes severe limitations on the right to strike, particularly in the public sector; and makes procedures so cumbersome as to make most strikes technically illegal. In Ukraine, the Confederation of Free Trade Unions of Ukraine (CFTUU) challenged legal provisions making trade unions' registration with the Justice Ministry equivalent to prior authorisation, which constitutes a flagrant violation of relevant ILO standards.



Restrictions on fundamental union rights have remained widespread, in both theory and practice. Harassment measures are still being used against trade unions in many countries, making many workers scared to join unions. Discouragement of unions via threats or refusals to transfer union fees remains common practice. Sacking of trade unionists, which is also a common occurrence in Europe, has taken place in almost all the countries mentioned in the report, which highlights the situation in the Czech Republic, Hungary, Bulgaria, Croatia, Russia and Ukraine. In the Czech Republic one employer immediately sacked the president of the trade union the moment it was set up. In Hungary the management of the company AEROPLEX Ltd, which is linked to the national airline company MALEV, immediately brought in private security guards to stamp out a strike: the members of the Air Transport Services Union had to resume work supervised by guards armed with machine guns. In Poland, the President of the union at the Warsaw Marriott Hotel was violently attacked by security guards at the hotel in just another incident aimed at quashing union activities in the building. In Ukraine, heavily armed police officers without a search warrant conducted a night raid on the offices of the newly established miners' union.

As the last dictatorship in Europe, Belarus is by far the most worrying country with regard to basic union rights. The Presidency has worked hard to eradicate free trade unions. In a speech in September, President Alexander Lukashenko stated openly that trade unions should be integrated in government bodies. At the Congress of the Federation of Trade Unions of Belarus (FPB), the authorities exerted strong pressure to get their own candidate elected, who was none other than the former Director of Administration of the head of state. He is now running the main trade union in the country.

In addition, numerous threats have since been made against independent trade unionists and many government representatives have been nominated to run trade union bodies.

Though there is generally greater respect for trade union rights in Western Europe, a few countries have attracted criticism, though there have been minor positive changes made to some national legislation. The report cites problems in Germany, Belgium, the United Kingdom, Switzerland, Spain and Andorra. In Germany, civil servants are still not allowed to strike and in Spain workers who do not have legal residence status are denied any union rights.

The July 2002 Judgement of the European Court of Human Rights (ECHR), which covers all Council of Europe member states, on the "Wilson/Palmer case against the UK", ruled that it was the duty of states to ensure that union members were not prevented or dissuaded from asking their union to represent them in disputes with their employers.



Europe

Andorra

POPULATION : 66,000 / CAPITAL : Andorra / ILO CORE CONVENTIONS RATIFIED : --



Trade union rights are still not respected in Andorra, in law or in practice. There were hopeful signs at the end of the year, however, as negotiations began on the drafting of new labour rights legislation.

THE LEGISLATION

Obsolete legislation

The Constitution formally protects the right of association and the country signed the European Social Charter in November 2000. No legislation has been adopted, however, to apply the relevant international conventions on this, and obsolete, undemocratic laws are still in force.

The Constitution makes no explicit reference to the right to strike, nor is there any legislation to penalise acts of anti-union discrimination. In the private sector, the employer can dismiss a worker without compensation, with the result that the worker loses all social security benefits.

RIGHTS IN PRACTICE

No protection

The labour inspectorate does not accept complaints from workers unless they sign them. The name of the complainant is immediately known to the employer who can dismiss them without hesitation as there is no law to protect workers from such reprisals.

Illegal unions

The only unions that exist are illegal. Only the police union, which is more like an association than a trade union, has been registered since 1983, when many unions sought recognition. Employers' organisations, on the other hand, were duly registered and can therefore unilaterally decide on their employees' working conditions.

Belarus

POPULATION : 9,400,000 / CAPITAL : Minsk / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The situation regarding trade union rights seriously deteriorated throughout the year. The government turned the Federation of Trade Unions of Belarus (FPB) into a puppet union, while it intensified the pressure on the remaining independent unions to force them under its control. Those that resisted encountered numerous tactics aimed at destroying them. Trade union leaders were systematically replaced by pro-government leaders.

THE LEGISLATION

Violations in law

The 1996 Constitution transferred all powers to the President of Belarus, giving him the right to enact decrees that carry the weight of law. This constitution technically recognises the right of workers to form and join trade unions, but both the Trade Union Law of January 2000 and several Presidential Decrees contain serious violations of trade union rights.

Compulsory registration

Presidential Decree No. 2 of January 1999 required all previously registered trade unions at national, branch and enterprise level to re-register. If a trade union is not registered, its activities are banned and the organisation has to be dissolved. The long and complicated procedures include an obligation on the trade unions to provide the official address of their headquarters. This is often their workplace or the premises of the enterprise. A letter from the management confirming the address is usually required, making trade unions completely dependent on the goodwill of management.

High minimum membership requirements

The same Decree sets forth minimum membership requirements at the national, branch and enterprise level. These are so high that they make it almost impossible to create new unions, and they also undermine the position of existing ones. At the national level, there must be a minimum of 500 founding members representing the majority of the regions of Belarus. A list of names must be sent to the Ministry of Justice.

Heavy limitations on the right to strike

The January 2000 Labour Code imposes severe limitations on the right to strike. Firstly, it imposes very complicated conciliation procedures lasting at least two months. Second, the strike must be held in the three months following the failure of the conciliation procedures. Third, the President may suspend a strike for a period of up to three months or even cancel one, in the interests of national security, public order, public health or when the rights and freedoms of others are threatened. Moreover, the duration of the strike must be specified in advance and a minimum service must be ensured. Strike participants may not receive financial aid or subsidies from foreign organisations.

New Decrees

Several new anti-union decrees were adopted in 2001. Presidential Decree No. 8 lays down stringent conditions for the receipt of foreign grants for activities in the country. Foreign funds must be registered with the Human Resources Department, which is directly under the responsibility of the Presidency. The decree prohibits the use of foreign grants in activities related to elections, referenda, meetings, rallies, demonstrations, pickets and strikes, as well as for carrying out seminars or propaganda activity. Decree No.11 makes it practically impossible to carry out protest action. Organisations violating these decrees are liable to dissolution.

Check-off reinstated after appointment of new union leader

The check-off system, which had been terminated by a decree of December 2001 "on measures to protect the rights of trade union members," was restored by an order of October 18, 2002, three months after the President of the Federation of Trade Unions of Belarus (FPB) had been replaced by a pro-government leader (see "Events" section below). Examining this matter in November, the ILO Committee on Freedom of Association (CFA) stressed that it could not "but wonder whether the real intentions on the part of the Government were not (...) aimed at weakening a trade union movement that it held in disfavour," and condemned "the manipulation of the trade union movement apparently intended by the issuance of Decree No. 1804 terminating check-off facilities, only to be restored once the leadership of the FPB had changed."

RIGHTS IN PRACTICE

Constant attacks

Democratic rights are not respected in Belarus, least of all trade union rights. The government has sought by every means to undermine, if not eliminate, the trade unions.

Harassment

Workers are actively discouraged from joining independent trade unions. Those who do, face continual pressure at the workplace to leave the union or risk losing their jobs. Members of independent trade unions have been arrested for distributing trade union literature, have had materials confiscated and have been denied access to work sites.

Trade union leaders are particular targets for harassment. Threats are taken very seriously in a country where political opponents to the regime have disappeared.

Systematic interference

A report adopted by the ILO's Governing Body in March 2001 condemns Belarus for "numerous and varied attacks on trade union rights" and "regular and systematic interference in trade union activities". The list of allegations in the report included interference in union activities and elections by the government – the head of the presidential administration ordered Ministers and chairs of government committees to interfere in the elections of branch unions - anti-union discrimination and attacks on union assets.

EVENTS IN 2002

The government devoted all its energies to getting rid of any representative and independent trade unions in the country. "Yellow unions" were established in various enterprises and parts of the country. Workers were forced to

join these unions under threat of dismissal, withdrawal of bonuses and premiums and other means. On September 19, Aleksandr Lukashenko addressed the Congress of the FPB, openly stating his belief that trade unions must be "incorporated into the government authorities," and calling upon the trade unions to support the State's policies. In November, the ILO Committee on Freedom of Association (CFA) examined several issues in relation to a complaint filed in 2000 against the government by several trade unions and the ICFTU. The CFA concluded, among other things, that there had been "undue interference by the public authorities in recent trade union elections in Belarus." Belarus figured among the few countries placed by the CFA on the list of serious and urgent cases.

Affiliates pressurised to leave union

In April, the Presidential Administration ordered regional governmental structures to set up new regional trade union structures. At the same time, the Administration put pressure on regional union structures to withdraw from the FPB.

No consultation

On April 22, Frantz Vitko, President of the FPB, and Oleg Podolinski, head of the International Department of the FPB, officially contacted the government of Belarus, requesting to be included in the Belarus delegation to the International Labour Conference that was to take place in June. However, the government did not respond to this request, and instead took the decision to nominate two other persons without any consultation whatsoever with either the FPB or the Congress of Democratic Trade Unions of Belarus (BDKP), the other main representative trade union confederation in the country. The ILO Committee on Freedom of Association (CFA), referring to the conclusion drawn in the report of the Credentials Committee to the ILO Conference, urged the government "to ensure in future that all decisions concerning the participation of workers' organizations in tripartite bodies, both national and international, are taken in full and meaningful consultation with the trade unions whose representativeness has been objectively proved."

Union busting

On June 11, coupled with a systematic drive to convince trade union leaders to withdraw their members from its ranks, the Ideological Section of the Presidential Administration proposed to liquidate the FPB, and to undertake to set up an association of "independent" unions.

Union placed under governmental control

On July 16, the FPB Presidium was pressured by the government to elect Leonid Kozik, former Deputy Head of the Presidential Administration, as president of the FPB, in replacement of Frantz Vitko, who was coerced into offering a "voluntary resignation." The managers of many enterprises had threatened to sack workers who refused to vote in favour of Leonid Kozik. After Kozik's "election," the government started to directly support the FPB, going so far, in 2003, as to place the union on a list of organisations that were to benefit from public funding.

Trade unionists harassed

On July 17, three trade unionists selling the FPB newspaper *Belaruskii Chas* were taken in for questioning by the police.

Editor in chief of FPB newspaper sacked

In August, Aleksandr Starykevich, editor in chief of *Belaruskii Chas*, the most widely read independent newspaper in Belarus, was sacked, against the will of the FPB Presidium.

Other trade union leaders intimidated

Intimidation was also used to replace other regional and sectoral trade union leaders, including:

- Vladimir Mirochnik, President of the Brest Regional Association of Trade Unions;
- Nikolai Kovsh, President of the Brest Regional Committee of Science and Education Unions, who was the only delegate to support Frantz Vitko during the July 16 Plenum. Vitko received a "recommendation" to resign from his union post.

Unions placed under government control

Government officials and senior members of management were appointed to lead individual union structures:

- Nikolai Basalai, former Head of the government administration's Executive Committee for the Moscow district of the city of Brest, was appointed President of the Brest Association of Trade Unions;

- On August 22, a senior member of the management of a Polotsk enterprise was elected as Chairman of the regional union committee.
- Nikolai Basalai, former Head of the government administration's Executive Committee for the Moscow district of the city of Brest, was appointed President of the Brest Association of Trade Unions;
- On August 22, a senior member of the management of a Polotsk enterprise was elected as Chairman of the regional union committee.

On September 10, Aleksander Yaroshuk, President of the Agricultural Workers' Union, one of the few remaining opponents of President Lukashenko, who had opposed the eviction of Frantz Vitko and the dismissal of Aleksandr Starykevitch, was removed from office and replaced by the former Agriculture Deputy Minister, Vladimir Samosyuk.

Government ignores independent union

After the suspension, for almost one year, of national tripartite negotiations, held under the National Council for Labour and Social Issues, the government agreed to re-open the negotiation process with the trade unions. However, the BDKP was carefully kept out of this process, and the General Tripartite Agreement that was signed on January 4, 2003, between the Government, the Confederation of Manufacturers and Entrepreneurs of Belarus and the FPB, was signed by the FPB as the representative of all the country's trade union associations.

Failed attempts to replace union leaders

On December 19, the leadership of the FPB took the initiative of organising a plenary meeting of the Union of the Agricultural Machinery Workers (ASM) with the aim of removing Alexander Bukhvostov, the ASM President, and replacing him by someone loyal to Leonid Kozik, and to the public authorities. However, the majority of the delegates supported Bukhvostov, and he remained President of the union. Days later, Gennadii Fedynich, the President of the Radio Electronic Workers Union (REP) was also supported by the majority of the delegates of his union in spite of strong pressure exercised on them.

Other attempts to destroy independent unions

At the end of December, Leonid Kozik made another move to get rid of any independent trade unions. He asked the BDKP to renegotiate the lease contract between themselves and the FPB – the BDKP rents premises in the FPB building.

When the Belarusian Trade Union of Air-Traffic Controllers (BPAD) decided to join the BDKP, on December 23, 2002, the management of the Belaeronavigatsiya Republican Unitary Enterprise – a company subordinated to the (public) National Committee for Aviation – organised systematic pressure against the BPAD, its leaders and activists. Management representatives made it clear that membership in the BPAD would have a negative impact on the professional situation and career of the employees. Applications for leaving the union were also prepared by the management, and were signed by some employees. In November 2002, the National Committee for Aviation had officially asked the Ministry of Justice to check the legal registration of the BPAD, although it had been legally re-registered in September 1999. Back in June 2002, the administration of the Centre for Flight Coordination had already either dismissed or refused to renew the contracts of three trade union members, who had set up a primary organisation of the BPAD.

Trade unionist victimised

A.F. Evmenov, a trade unionist who was dismissed in January 2000 from the October Glassworks joint-stock company following his refusal to work during a "subbotnik" – a supposedly free and "voluntary" day of work – was still unemployed at the time of writing. All his attempts to find a new job had proved unsuccessful, and the chairperson of the District Executive Committee had even stated that, owing to Evmenov's "negative professional references", all enterprises and institutions of the town had refused to employ him. At the end of October 2002, A.F. Evmenov managed to secure temporary employment at the Osipovichy Railservice company. However, on the very day that he submitted documents to the district election commission, in order to register an initiative group in connection with an election to the local council, the District Executive Committee ordered that he be dismissed on the spot. Moreover, there were reports that the competent authorities were commissioned to find out who had helped A.F. Evmenov to secure employment, even of a temporary nature.

Belgium

POPULATION : 10,200,000 / CAPITAL : Brussels / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



In March, the social partners concluded a protocol agreement that should restore the full force of the right to strike, which has often been successfully called into question by certain employers. In July, the European Committee of Social Rights denounced court rulings banning strike pickets, even in the absence of any violence, threats or intimidation - and case law banning any strikes - on the grounds that these bans constituted a “misuse of the law”.

THE LEGISLATION

Strong legislation

Workers have the right to form and join unions of their own choosing. The government does not require trade unions to register. The right to strike is recognised, as is the right to collective bargaining.

Trade union delegates are protected from anti-union discrimination by law. Employers found guilty of anti-union discrimination are required to reinstate workers fired for their union activities or pay a fine.

RIGHTS IN PRACTICE

Circumventing the law

Unions are allowed to exercise their rights in practice, and there is a strong tradition of collective bargaining. There are some weaknesses, however. Employers prefer to pay fines rather than reinstate workers dismissed for union activities.

The right to strike has often been undermined in practice, with many cases in recent years of employers seeking court rulings to ban strikes. The courts have often ruled in the employers' favour, ending strikes under the threat of fines and prohibiting picketing. The Sabena pilots' strike in September 2001 was a case in point. The “gentlemen's agreement” concluded by the social partners in March 2002, and the conclusions submitted in July 2002 by the European Committee of Social Rights should help restore the full effectiveness of the right to strike (see below).

Union excluded from collective bargaining

The Centrale générale des syndicats libéraux de Belgique (CGSLB), which is affiliated to the ICFTU, reported that it had been excluded from sectoral bargaining in certain sectors, e.g. transport and cleaning services, despite its being well represented in those sectors.

EVENTS IN 2002

Conclusion of a “gentleman's agreement” on collective disputes

In March the social partners concluded a “gentleman's agreement” on collective disputes and ways of solving them. Based on this agreement, the employers undertook to avoid recourse to legal procedures until conciliation had been exhausted. For their part, the workers undertook to respect the notice periods required for strikes, so as to ensure that all forms of concertation were attempted that are aimed at solving such disputes.

The main commitment made by the employers' federations under this agreement was their voluntary move to avoid using the courts to solve strike-related problems. Hitherto, employers had tended to curb the effective exercise of the officially-recognised right to strike by seeking legal injunctions to prevent picketing. The chairs of the courts of first instance had often issued emergency interim rulings – thereby avoiding hearing the arguments of the other side – which went in the employers' favour. In addition, these decisions generally entailed hefty fines, which brought about the collapse of the strike action.

Restrictions on the right to strike denounced by the European Committee of Social Rights

On 11 July, the European Committee of Social Rights, the Council of Europe's committee responsible for examining the conformity of Member States' law and practices with the European Social Charter, produced its conclusions, which entirely concurred with the criticisms raised by the Confédération des syndicats chrétiens (CSC) and the Fédération générale du travail de Belgique (FGTB), an ICFTU affiliate.

In particular, the Committee denounced rulings banning strike pickets, even in the absence of any violence, threats or intimidation, and case law banning any strikes, on the grounds that the bans constituted "misuse of the law". The Committee felt that this use of the notion of "misuse of the law" or of the "proportionality" criterion implied that the courts were presuming to judge the "appropriateness" and, hence, the "admissibility" of the strike, and that such legal practices "risked undermining" the legitimate exercise of the right to strike.

The Committee concluded that Belgium was not in line with Article 6, Paragraph 4 of the European Social Charter, since the right to strike was limited in Belgium and those limitations went beyond those permitted under Article 31 of the Charter.

Disciplinary measures against strikers

The CGSLB reported that some of its members had been harassed by the management of the TEC company (a public transport company based in Wallonia). The management had tried to discipline all of the strikers who had responded to the union's strike call.

Bosnia and Herzegovina (BiH)

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POPULATION : 3,600,000 / CAPITAL : Sarajevo / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



A more complete legislative framework is gradually being put in place, although it still has some shortcomings. One notable problem is the lack of protection for trade unionists and for workers who try to organise in some of the newly privatised companies.

THE LEGISLATION

Freedom of association is included in the labour law of both the Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska (RS). All workers, including migrant workers, are free to join trade unions, with the exception of the military. The fact that there was no unified labour code covering the whole state created obstacles to trade union registration. The Law on Associations and Foundations, covering the whole of BiH, was adopted in December 2001, but it does not provide the mechanisms for registering a federation at BiH level.

There are no legal sanctions against employers who obstruct union organising. Financial penalties are foreseen for anti-union discrimination against individuals, but this can be hard to prove.

Previous authorisation

The time limitations prescribed in the legislation for the registration of trade unions are very short and are, according to the ILO, equivalent to a system of prior authorisation. Exceeding such limitations may lead to disproportionate penalties, such as the dissolution of the organisation in question or cancellation of its registration.

Strikes limited in the public service

The right to strike is recognised, although there are some limitations.

In the Federation, a strike must be notified to the employer in writing, no later than ten days before the beginning of the strike. The written notification must list the reasons for the strike, the locality, and the date and time at which the strike is to take place. The law requires that "production maintenance" be ensured during a strike. How this is to be done must be worked out in advance with the employer and announced on the day the strike is due to start. Furthermore, the employers interpret "production maintenance" as meaning continuing production as usual, making a strike meaningless.

In the Republika Srpska, a minimum service must be provided by enterprises categorised as public services, the list of which is excessively long. Workers in these enterprises must give at least eight days' notice before striking.

No collective bargaining in Brcko District.

The right to collective bargaining is recognised in both entities. The Brcko District of BiH has a separate labour law, however, which came into force in December 2000 and stipulates that collective agreements will be regulated by a

separate law for the District. No such law has come into force yet, meaning that collective bargaining rights are not recognised or practised in Brcko.

RIGHTS IN PRACTICE

Collective bargaining avoided

The Trade Union Confederation of the Republika Srpska (TUCRS) reported that both the government and employers do everything they can to avoid bargaining with the trade unions. The Labour Law for the RS was adopted in October 2000, but by the end of 2002 there was still no new National Collective Agreement and no collective bargaining had taken place in practice. However, the TUCRS was confident that bargaining would begin soon, thanks to the creation of a tripartite Economic and Social Council.

No protection

Under the privatisation process, trade unionists throughout BiH have been just as vulnerable to dismissal as any other worker. In some of the newly privatised companies, employees are warned they will be dismissed if they join a trade union.

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POPULATION : 8,700,000 / CAPITAL : Sofia / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Collective bargaining is not sufficiently protected in law and is often violated in practice. The unions reported that the authorities tended to avoid a meaningful social dialogue in the context of the labour law reforms.

THE LEGISLATION

The constitution provides for the right of all workers to form or join trade unions. However, the military are excluded. Legislative changes in 2000 had left a legal vacuum for the registration of trade unions, delaying or denying the registration of some organisations. In 2001, the national trade union centre CITUB obtained a change to the law to allow for these registration procedures to go ahead, pending a specific law on the registration of trade unions. Public servants are covered by a separate law, which recognises their freedom of association.

Strike limitations

The right to strike is recognised, provided all other means of settling the dispute have failed. Employees in the energy, communications and health care sectors, as well as the military and members of the judiciary, are denied the right to strike. Public servants are only allowed to engage in "symbolic strikes." A draft Bill amending the Civil Servant Act would enable certain categories of civil servants to go on strike. "Political strikes" are prohibited, as are strikes in essential services, the list of which exceeds the ILO definition. In the railway transport sector, the right to strike is strongly limited: a 50% minimum service is required in the case of a strike. A 1998 amendment to the law made district court rulings on the legality of strikes final, taking away a union's right to appeal.

Weak protection from discrimination

The labour code provides for six months' salary as compensation in cases of anti-union discrimination. However, the burden of proof lies with the worker, who has to go to court to prove his or her case. Employers may appeal the court ruling, enabling them to postpone payment of compensation, in some cases indefinitely.

Bargaining rights not recognised in public sector

Collective bargaining is allowed for private sector workers, but the law on public servants does not specifically recognise this right.

Where collective agreements are concluded between representative trade union and employers' organisations at the sectoral level, they can be extended to cover all enterprises in the sector, but only at the discretion of the Minister.

RIGHTS IN PRACTICE

Frequent harassment

The unions report frequent cases of discrimination and harassment against trade union activists and members, who are relocated, downgraded or sacked. This has created fear and insecurity, often making workers reluctant to join a trade union. The legal proceedings for the reinstatement of dismissed workers can take a long time, sometimes years, while the sanctions against employers for unfair dismissal are too weak to be dissuasive. In the private sector, some employers simply ban trade union membership within their enterprise and force the newly employed workers to sign declarations that they will not establish or join trade unions.

Collective bargaining obstructed

Collective bargaining is not always effective in practice. Employers often refuse to negotiate collective agreements, delay negotiations unnecessarily or refuse to sign agreements. In other cases, employers sign agreements but do not apply them. Collective bargaining has proved particularly difficult in small and micro enterprises.

Withholding union dues

The authorities are reluctant to enforce the law on the check-off of trade union dues. There have been cases of employers' deducting dues from workers' salaries but not passing them on to the unions.

EVENTS IN 2002

Trade union leader arrested during strike

On March 29, Haralmpi Hristov, President of the Confederation of Independent Trade Unions in Bulgaria (CITUB) Regional Coordinating Council in Vratsa, was arrested during a strike and was detained and handcuffed by the police, although the mayor of Sofia had authorised the strike.

Unionists get the sack

On May 22, the chairperson and entire leadership of the Union of Journalists in Bulgaria Podkrepa in New Television were sacked by the Chair of the Board of Directors, Ms. Silva Zourleva, on the ground that the six journalists did not have the required skills and qualification. It was, however, reported that the dismissals followed a notification letter by the UJP Podkrepa to the New Television management, focusing on management's disregard of health and safety requirements in New Television studios and violations of the Labour Code by not respecting preliminary notification terms when ending work contracts.

A strike staged by the Bourgas harbour dockworkers from May 21 to May 30 resulted in the dismissal of five trade union members. The management of the harbour, supported by the government, decided to lock the strikers out and recruited unqualified workers to replace them, which was the cause of several accidents.

Avoiding social dialogue

On October 17, a Bill on the amendment of, and addenda to, the Labour Code, proposed by the MP Atanas Vassiliev, was adopted by the National Assembly without the matter being referred to the National Council for Tripartite Cooperation, as provided for in the Labour Code. The amendments in question, which entered into force on December 31, directly affected the rights of the social partners to participate in social dialogue.

Croatia

POPULATION : 4,700,000 / CAPITAL : Zagreb / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Even though improvements have recently been recorded in the legislation, much remains to be done to secure adequate enforcement of trade union rights in practice. There is a tendency to ignore collective bargaining rights.

THE LEGISLATION

Workers are entitled by law to form or join unions without prior authorisation.

Limitations on the right to strike

The right to strike is recognised, but there are limitations. Workers in the government administration and public services may not strike. Strikes can only take place at the end of a collective bargaining agreement or in specific circumstances mentioned in the agreement. Workers used not to be able to strike over non-payment of wages, according to a Supreme Court ruling, but an amendment to the Labour Law in March 2001 overturned this, specifically entitling workers to strike over non-payment. If the strike is over the negotiation of a new collective agreement, there must be a mediation process before any action can be taken.

Collective bargaining is protected by law, and the labour code prohibits anti-union discrimination. Union delegates cannot be dismissed by the employer or be reinstated or downgraded without the consent of the trade union. If there is no consent by the union, the employer can apply to the courts for a decision.

RIGHTS IN PRACTICE**Anti-union employers**

Private employers in small enterprises resist union organising, as do large national and international companies operating big commercial chains. Many of these employers simply prohibit their workers from organising. As the majority of workers, approximately 80%, are on fixed-term contracts, usually of only three months, they dare not join or form a union for fear that their contract will not be renewed.

Inefficient legal system

There have been many cases of employer harassment of trade union activists and officials, despite the protection provided in law. One serious problem is that the legal system is too slow and inefficient in dealing with these cases. Court procedures last an average of more than three years. The majority of the cases concerning the unfair dismissal of union delegates that were filed in 1996 had not been resolved by the end of the year.

Collective bargaining rights ignored

Employers, including the Croatian Employers' Association, often do not want to bargain collectively, or else they cancel existing agreements, claiming they are unable to respect the terms. The State has also been guilty of ignoring collective bargaining rights, having unilaterally decided on the grades of civil service posts. Many older workers found their rights reduced as a result.

The Commercial Trade Unions of Croatia reported other forms of obstructing trade union activity, such as opening and keeping mail addressed to the union delegate, the surveillance of union members by cameras installed in company offices, and the refusal to allow unions to use company premises for meetings.

EVENTS IN 2002

Cases of employees sacked for their trade union activities, as well as employees sacked without prior due notice to the trade unions, occurred throughout the year. In one company which had recently been declared bankrupt, the employees were pressured into signing statements by which they cancelled their trade union membership. A member of the Union of Autonomous Trade Unions of Croatia (UATUC) was reportedly beaten during his visit to a company by a director of that company. In another company, union dues were deducted from the workers' salaries and credited to one of the company's bank accounts. In yet another, members of a trade union were threatened and pressed to quit the union.

Czech Republic

POPULATION : 10,300,000 / CAPITAL : Prague / ILO CORE CONVENTIONS RATIFIED : 229-87-98-100-105-111-182



Restrictions on the right to strike remained. New legislation, which will enter into force in January 2004, will allow employers to dismiss trade union officers without having to request the prior authorisation of the trade union. Many cases of anti-union discrimination and harassment were reported during the year.

THE LEGISLATION

New labour legislation, which came into effect in January 2001, guarantees the right to organise and provides for protection from anti-union discrimination.

There are no restrictions on the registration of trade unions or international cooperation and affiliation. Foreigners and migrant workers also have the right to organise.

The new law provides for works' councils, even in workplaces where there is no union representation, and these works' councils provide all workers with the right to information and consultation regarding major company decisions. The legislation on works councils prohibits discrimination because of membership of the works' council or any activity resulting from membership.

COLLECTIVE BARGAINING

Improvements in private sector

The right to collective bargaining is protected for private sector workers. Collective agreements can improve upon the rights and obligations provided in law, but only in those areas stipulated by law. The 2001 Labour Code extended the range of areas in which improvements can be made.

Restrictions in the public sector

A new draft law bars public sector employees from collective bargaining. The government has explained this violation of ILO Convention No. 98 by virtue of the fact that wage levels set by collective agreements could have a bearing on the state budget. Public sector workers and their unions are instead offered the possibility of signing agreements with the public sector employer concerning some elements of their contract – excluding wages, working conditions and working times – but these agreements are not legally binding.

Limitations on the right to strike

Strikes are prohibited in certain essential services, but the list of these covers some – such as nuclear energy and oil and natural gas pipelines – that do not conform to the ILO definition of such services (i.e. that their interruption would endanger the life, personal safety or health of the whole or part of the population). The law on collective bargaining, which also regulates strikes, requires trade unions to provide employers with a list of the names of strikers at least one day before the strike.

New legislation impedes trade union rights

The Service Act, which was adopted in 2002 and is to enter into force on January 1, 2004, governs the status of employees in public services, and their rights and obligations, including their trade union rights. According to the Act, no prior endorsement on the part of trade union bodies will be required for dismissal of a trade union officer.

RIGHTS IN PRACTICE

Harassment

In practice, there are frequent cases of violation of trade union rights, harassment of trade unionists and even action by employers targeted against the very right to associate. On repeated occasions, employers in the trade sector have exerted both direct (verbal) and indirect pressure on employees who either seek to establish or are part of a trade union. The problem occurs in small and medium-sized enterprises, as well as in the big chains, such as Billa, Penny Market and Plus Discount, all owned by foreign investors. It is common practice for employers to carry out special "checks" on trade unionists' performance of their normal workday tasks. Another tactic is for trade unionists to be told directly that trade union membership is not company policy, for example.

Other examples of anti-union activity include refusing trade unions access to company premises and preventing communication between unions and their members, offering money for the dissolution of enterprise unions and refusing to withhold union dues from salaries. In some cases, workers have been fired for attempting to form a union. There is legal recourse for victims of anti-union discrimination, but the court procedure is generally slow. Some employers refuse to bargain with union representatives, or obstruct the conclusion of collective agreements.

EVENTS IN 2002

- Trade unionists sacked** At soon as a trade union was established at M-technika Ltd., Prachatice, in April 2002, the company management obstructed trade union activities, and sacked the union chairman without the union's authorisation.
- At the Teslamp company, Králíky, notices of dismissal were issued to trade union officials, again without prior trade union endorsement.
- Refusal to bargain** At Vishay Electronic Ltd., Prachatice, the employer has consistently refused to bargain since March 2001, stating that no collective agreement was needed at the company. An intervention by a mediator, which was approved by the Ministry of Labour and Social Affairs, proved unsuccessful.
- Similarly, the HTN Pistol, LITOMYŠL, and Komfi LITOMYŠL companies refused to provide information to the trade unions and to negotiate with them.
- Trade union chairman denied right to attend meeting** At a meeting between employee and management representatives at Pittsburgh Corning CR Ltd., KLÁSTEREC nad OHŘÍ, security guards removed the trade union chairman from the meeting room, as the employer had not allowed him to attend.
- No office for the unions** At Bike Technology and Public Relations Ltd., Sobotín, the employer withdrew permission for trade unions to use an office for their trade union activities. He also reduced the bonuses to which the workers were entitled, and paid their wages in arrears. Finally, he forced them to sign termination agreements, stating that they would otherwise be sacked under worse conditions.
- Anti-union employers** At the Vítkovice Hospital, Ostrava, the new employer forced trade union members to cancel their union membership.
- At the ČESKY Brod Hospital, the director stated clearly that he would not tolerate any trade union activities. He committed acts of humiliation against the chairwoman of the trade union and issued a notice of dismissal. The notice was withdrawn following ČMKOS intervention.
- The director of the Institute of Social Care of JIŘÍKOV consistently refused to recognise the trade union. He unilaterally issued working rules and kept disparaging the trade union role in statements to employees, such as: "Unions cannot protect you from dismissal" or "Abolish unions, they only deprive you of your money."
- Refusal to comply with collective agreements** Billa, Modletice u Prahy, a multinational company, refused to sign the draft collective agreement, the text of which was negotiated as far back as May 2001. A complaint was forwarded to the headquarters of the company, the REWE group, to no avail. Following the ČMKOS intervention, the Ministry of Labour and Social Affairs extended the sector collective agreement covering the trade sector so that Billa would be covered by this agreement. However, the management of the company continued to ignore its obligations and refused to communicate with the employees' representatives. Representatives of the union of workers in the trade sector encountered the same difficulties.
- At SPAR, Czech Trade Company Ltd., Prague, communication with the management substantially worsened. The company kept putting off the negotiation and signing of a new collective agreement under various pretexts, and refused to abide by obligations stemming from the sectoral collective agreement.

Georgia

POPULATION : 5,300,000 / CAPITAL : Tbilisi / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Despite a strong legislative framework, trade unions still face interference in their activities. The court battle over the GTUA's assets is over.

THE LEGISLATION

Recognition of rights

The right to form and join trade unions is recognised in law. The 1997 Trade Union Law contains comprehensive legislation on basic trade union rights. Workers in governmental organisations are governed by a separate law on the civil service, which also recognises the right to join trade unions. Collective bargaining is recognised in the law on Collective Agreements and Contracts. The law provides punitive measures against those who refuse to take part in negotiations. The right to strike is also recognised, and anti-union discrimination by employers is banned.

Potential limitations

The Organic Law on the Suspension and Prohibition of Activities of Voluntary Associations defines the grounds for the suspension of voluntary associations, including trade unions. Final responsibility for such decisions lies with the courts. Grounds for prohibition include stirring up national or social conflicts.

New code

A new version of the Labour Code is being worked out, and the Georgian Trade Union Amalgamation (GTUA) is taking an active part in this.

RIGHTS IN PRACTICE

Interference

There has been repeated interference in the activities of the GTUA. Over the past few years the GTUA has faced systematic obstruction through harassment and intimidation. Both the GTUA and its national affiliated unions report frequent cases of management warning staff not to organise trade unions. Some workers, including teachers in the Imereti region, employees of mining, pipeline and port facilities and employees of the Tbilisi municipal government complained of being threatened by employers on account of their trade union activity. Some employers have failed to transfer the union dues deducted from workers' wages to the union's bank account.

Assets returned to unions

The battle over the restitution of the GTUA's assets is over. The GTUA's building, the Palace of Culture, which had been confiscated from it in March 1992 and placed under the control of the Ministry of Defence, was returned to the GTUA after a long period of legal proceedings. On June 1, 2002, the Ministry of Defence of Georgia left the building of the Palace of Culture and an appropriate legal agreement, certifying acceptance of the property, was signed.

EVENTS IN 2002

No consultation with the trade union

In clear breach of the collective agreements in two companies, Electrotransfer and Electrodispatching, the tender to manage the branch of the energy sector that controls the companies was won by the Irish company, ESB International. The collective agreements in these companies recognised the right of the trade union to be involved in decisions regarding restructuring and mass dismissals. However, the companies' administrations did not inform the trade union of their negotiations with ESB International and the relevant government institutions. Furthermore, an agreement was reached between the administrations of Electrotransfer and Electrodispatching on a restructuring programme consisting of the merging of these companies and mass dismissals. The trade union was presented with a fait accompli, being informed of this restructuring programme simultaneously with the news regarding the transfer of management.

Workers forbidden to form trade union

Employees of the National Commission for Energy Regulation were forbidden to set up a union, on the grounds that a Georgian law on "electrical energy and natural gas" forbade the formation of trade unions within its structures.

Germany

POPULATION : 82,000,000 / CAPITAL : Berlin / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Civil servants are still denied the right to strike and public sector teachers still have no collective bargaining rights.

THE LEGISLATION

The Basic Law guarantees the freedom of association. Minimum standards are provided for in separate acts, rather than a single labour code.

The Basic Law recognises the right to bargain collectively and agreements are governed by the Act on Collective Agreements. Collective agreements are binding for members of the trade union and employers' association concerned.

Workers are able to participate in management decision-making through works' councils, which are responsible for supervising the implementation of the union's collective agreement in a workplace. The rights of these councils are regulated through the Works Constitution Act that was amended in June 2001 to strengthen workers' consultation and information rights in line with European Union legislation. Members of works' councils do not have to be union representative.

Consultation and information rights strengthened

No right to strike in the civil service

The principal limitation on workers' rights is the denial of the right to strike of all civil servants, including teachers, railway employees and postal employees. No civil servants have the right to strike, irrespective of their function. The ILO has repeatedly reminded the government of Germany, since 1959, that this restriction is not in line with Convention 87, and has asked it to change its legislation accordingly, but to no avail.

Teachers still denied bargaining rights

Similarly, teachers in the public service continue to be denied their right to collective bargaining. This has not changed despite repeated ILO criticism of this violation of convention 98. A pilot project aimed at ensuring more dialogue with trade unions was launched in 1999, resulting in an agreement regarding careers and training in 2000. Despite this hopeful move, there is no sign of any change in the law.

RIGHTS IN PRACTICE

Avoiding collective bargaining

Some companies in the eastern part of Germany have refused to join employer associations or have withdrawn from them, then bargained independently with workers.

EVENTS IN 2002

Background

The economic growth was at its lowest level since the 1993 recession. Massive strikes over wage increase took place throughout the year in the engineering, the construction and the banking sectors. The number of unemployed passed the 4 million level in January, with a 10.4% jobless rate. In spite of all this, Gerhard Schröder was renewed as chancellor in September.

Striking workers sacked

In July, the Skanska-owned Polish company Budexpol Skanska Sp. Z o.o. sacked 21 Polish workers without prior notice from the Hagen construction site after their participation in a strike called by IG Bau over wage increase and working time reduction. As a result, the Polish workers were forced to leave Germany as their work permits and visas had expired.

It was reported that Ruppiner Strassen und Tiefbau GmbH responded with a strong anti-union attitude vis-à-vis 27 workers who had taken part in a strike.

Hungary

POPULATION : 10,000,000 / CAPITAL : Budapest / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Previous amendments to the Labour Code that weakened trade union rights were repealed. The unions reported many cases of trade unionists being subjected to harassment, intimidation and unfair dismissal.

THE LEGISLATION

The Labour Code recognises the right to organise and the right to strike. Collective bargaining is permitted at the enterprise and industry level. Under a separate law, public servants may negotiate working conditions, but the final decision on increasing public service pay rests with parliament.

Labour Code amendment strengthens trade union rights

The Labour Code was amended by Act XIX of 2002, which came into effect on September 1, 2002. This amendment, introduced by the newly elected left-wing government, repeals some of the most controversial changes made under the previous right-wing government, which weakened trade union rights. Under the new provisions, the rights of local trade union sections are strengthened compared to those of the works' councils. The employers must consult the local trade union sections over measures affecting employees or a group of employees, especially in the event of reorganisation, contracting out and privatisation. Works' councils no longer have the possibility of concluding workplace agreements with the legal effect of collective agreements if there is no union section at the workplace. The amendment also modifies the regulations pertaining to the check-off system for the collection of union dues. Under the new provisions, the employer must deduct union membership fees from employees' pay and transfer them to the union concerned, on the basis of a written request by the employee.

Other improvements include the raising of the weekly rest period from 40 to 48 hours, a rise in employees' bonus entitlements for working afternoon shifts, night shifts or Sundays, and an increase in statutory time off for union activists. The unions were expecting to take advantage of the left-wing government's term of office to push the review of the Labour Code further, hoping that they would be able to bargain for more "worker-friendly" provisions.

RIGHTS IN PRACTICE

Abusive interpretation of Strike Act

The unions reported that the right to strike has been violated as a result of the judicial interpretation of the Act on Strikes. The Act qualifies a strike as unlawful if "it has been declared during the term of a collective agreement for the purpose of altering the provisions in that agreement." This has been extended in practice to apply to strikes over the renewal of a collective agreement, three of which have been declared illegal, including the February 2000 railway strike. The unions believe government pressure had a lot to do with this.

National survey finds widespread violations

A survey carried out among member organisations of the National Confederation of Hungarian Trade Unions (MSZOSZ), an ICFTU affiliate, found evidence of violations of the freedom of association, discrimination against trade union officers, intimidation, a lack of protection and breaches of labour law.

International trade union cooperation needed

MSZOSZ found that, particularly when dealing with multinationals or foreign-owned companies, there was a clear need for international trade union cooperation to protect workers' rights effectively.

Among the most typical examples of violations of trade union rights in Hungary, MSZOSZ cited interference on the part of employers in the establishment of trade unions or in the activities of already established unions, restriction of the right to collective bargaining and holding back information with a view to impeding the protection of workers' interests.

LIGA - the Democratic Confederation of Free Trade Unions, another ICFTU affiliate - reported that the lengthy nature of the legal proceedings, which could sometimes be attributed to delaying tactics by the employers, was prejudicial to the effectiveness of trade union activity.

Other reported violations of labour laws include unlawful termination of employment contracts, and the failure to observe legislation concerning weekly holidays, working time and the minimum wage.

EVENTS IN 2002

- Strikers intimidated** After the Trade Union of Hungarian Air Transport Services started a strike, on January 2, the management of AEROPLEX Ltd. (the limited company linked to the Hungarian airline company MALEV) proceeded to break the strike by calling in security personnel equipped with submachine guns. Furthermore, the employer refused to let the union leader on to the company premises. The workers were claiming pay rises.
- Union leader sacked** At the end of June, István Gaskó, President of LIGA and of the Free Trade Union of Railway Workers (VDSZSZ), was sacked with immediate effect by MÁV Hungarian Railways Plc. The company attempted to justify the sacking by referring to the collective agreement, which contained a clause providing for the dismissal with immediate effect of any employee violating the personal rights of another employee. MÁV blamed Gaskó for having violated the privacy and damaged the good name of Ferenc Járási, the former vice-president of the VDSZSZ. In fact, István Gaskó had taken Ferenc Járási to court over financial irregularities within the union, charges that were subsequently proven. LIGA believed that the real reason for Gaskó's sacking lay in the fact that he had been openly critical of the company's business practices and treatment of its employees. On July 18, after reaching an understanding with the railway company, István Gaskó was finally reinstated by the new leadership of MÁV Hungarian Railways Plc.
- Sacked for denouncing violations** After the Baking Industry Workers' Trade Union asked the Supervisory Authority for Labour Health and Safety to hold an investigation at the Baking and Commercial Joint-Stock Company in Józsefváros, over a violation of the collective agreement and irregular accounting with respect to wage bonuses, the managing director of the company fired the employees who had helped reveal the violations, including trade union members. The managing director also pressurised the trade union members to leave the union, under the threat of retaliation. As a result, most of the union members cancelled their membership of the union, and those who did not suffered retaliation as announced. Legal proceedings were instituted against the director but in the meantime, all trade union activity ceased at the company.
- Unionists sacked without union approval** LIGA reported that the Hungarian Flight Company MALEV refused to continue employing union members. MALEV continued to pay the employees their salaries, but at a lower rate. The airline also withdrew the trade unionists' entry passes, therefore seriously hampering their trade union activities. The union brought the case to court, but at the end of the year the case was still pending.
- Intimidated unionist stops union activity** In another case, an employer sacked one of his employees, a trade union member, without notifying the union. The matter was brought to court and the employer had to pay compensation to his former employee, who had in the meantime found another job, but did not want to engage in any trade union activity in his new company.
- Anti-union employer** The union also reported the failure of an employer to cooperate with the newly established union, refusing to provide it with an office where it could hold its meetings and to give the company's address for the union's registration.
- Sacked for speaking on the radio** In another case, a trade union member was sacked for speaking on a radio programme. The court ruled in his favour.
- Sacked for refusing to move to another post** A senior trade unionist was sacked for refusing to accept his employer's decision to move him to another post, which would have constituted an unfavourable change in his working conditions and gone against the terms of his contract.

Unionist victimised

An employee of a foreign-based company was victimised from the moment he was elected as chair of the newly established union. He was eventually sacked by his employer, who accused him of refusing to perform his job, when he had in fact been asked to sign a piece of paper written in a foreign language. He had asked for a written Hungarian version of the text, but this was refused. The employee appealed to the labour court, which ruled in his favour. However, the employer delayed the employee's reinstatement, telling him that he would contest the verdict so he should look for another job.

Latvia

POPULATION : 2,400,000 / CAPITAL : Riga / ILO CORE CONVENTIONS RATIFIED : 87-98-100-105-111



Organising and bargaining rights do not apply to civil servants.

THE LEGISLATION

Restrictions on the right to organise

The Trade Unions Act of December 1990 stipulates that residents of the Republic shall have the right to freely form trade unions. The application for registration must be reviewed by the Ministry of Justice. If the Ministry refuses an application, it must give its reasons, grounded in law, and the union has the right to appeal. A union must have at least 50 members, too high by ILO standards. The state police are still banned from organising, and numerous requests to remove this ban have been ignored.

Strike limitations

The right to strike is recognised, but the limitations contained in the 1998 law on strikes remain in place. A quorum is required to vote on a strike, pre-strike procedures are too long, solidarity strikes are prohibited and strikes must not be called to protest at the government's economic and social policies.

Collective bargaining – no time limit

The law on collective bargaining does not set any time limit on negotiations, thus allowing employers to drag them out indefinitely. The law on collective bargaining does not set any time limit on negotiations, thus allowing employers to drag them out indefinitely.

Improvements

There were some improvements to the legislation during the year 2001. The Labour Law and the Labour Protection Law were adopted, taking into consideration ILO Conventions and European Union (EU) directives. The unions report that on the whole they have managed to retain previous rights and guarantees and add some new ones. The Labour Protection Law is described as a framework law based on EU requirements, experience and principles. There were some improvements to the legislation during the year 2001. The Labour Law and the Labour Protection Law were adopted, taking into consideration ILO Conventions and European Union (EU) directives. The unions report that on the whole they have managed to retain previous rights and guarantees and add some new ones. The Labour Protection Law is described as a framework law based on EU requirements, experience and principles.

RIGHTS IN PRACTICE

Trade union representatives, notably from the Industrial Workers' Trade Union, find it difficult to gain access to the largest newly-formed companies, where owners try to discourage organising in every way. Unions representing workers in the fish industry and commerce reported similar difficulties.

The Free Trade Union Confederation of Latvia (LBAS) says that the government does not promote the formation of strong and independent trade unions as the basis for stable social partnership and social dialogue. Opposition to the formation of trade unions is strongest in the private sector.

Lithuania

POPULATION : 3,600,000 / CAPITAL : Vilnius / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



In spite of the adoption of a new Labour Code, some restrictions on freedom of association and on the right to strike remain.

THE LEGISLATION

The Law on Trade Unions recognises the right to form and join trade unions, a right that is extended to the police force and the army. Restrictions on the right to join trade unions remain for certain limited categories of civil servants.

To be registered, unions must have at least 30 founding members in large enterprises, or represent at least one-fifth of all employees in small enterprises.

Strike restrictions

The Law on Trade Unions recognises the right to strike. However, the new Labour Code, adopted in 2002, which entered into force on January 1, 2003, prohibits strikes in essential services, the list of which exceeds the ILO definition. It also prohibits strikes in natural disaster areas as well as in areas where martial law or a state of emergency has been declared. In cases where there is "a direct threat that the proposed strike will affect the provision of minimum conditions (services) required for meeting the essential (vital) needs of society and this may endanger human life, health and safety," the courts may delay a strike that has not yet begun for a period of 30 days, and suspend those that have begun for the same period.

A strike may be held only if a decision in favour of the strike is approved by secret ballot by either two-thirds of the enterprise employees in case of a strike at the enterprise level, or two-thirds of the employees of a structural subdivision of the enterprise and at least a half of the employees of the enterprise in case of a strike at a structural subdivision of the enterprise. These requirements are considered overly burdensome by the ILO Committee on Freedom of Association.

The employer must be given notice in writing at least seven days prior to the beginning of the intended strike. The strike notice is fourteen days if the strike concerns certain categories of services considered as essential (but which exceed the ILO definition).

RIGHTS IN PRACTICE

In the recent past, unions reported anti-union discrimination against organisers, and the dismissal of workers for their union activities. The judicial system is very slow in dealing with unfair dismissal cases, they say.

Managers often determine wages without entering into bargaining with the unions, except in larger factories with well-organised unions.

The Lithuanian Trade Union "Solidarity" (LPSS) reported that the government did not consult the trade unions when drafting new labour legislation.

It also indicated that under the new Code on Civil Procedure which was to enter into force in 2003, qualified trade union lawyers would no longer be allowed to represent and defend their members in the Supreme Court.

Malta

POPULATION : 400,000 / CAPITAL : Valetta / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



There is concern that new legislation will impose limitations on the right to strike.

THE LEGISLATION

The law recognises the right to form and join trade unions. Workers may bargain collectively and employers may not take action against workers for their trade union activities.

Compulsory arbitration

Under the terms of the Employment and Industrial Relations Act, the government can impose compulsory arbitration in the event of an industrial dispute. The ILO has been pointing out for more than 20 years that this is not in line with Convention 87, which states that such recourse should be restricted to public servants exercising authority in the name of the State, essential services, situations of acute national crisis, or cases where both parties request arbitration.

Further limitations on right to strike

The General Workers' Union had expressed concern at a government white paper on new legislation on employment and industrial relations (later incorporated into the new Employment and Industrial Relations Act, 2002). According to the Union, proposed clauses would have drastically reduced the right of workers to support others through sympathy strikes. The new provisions also proposed to ban industrial action in a broadly-defined range of essential services.

After a protracted campaign, the General Workers' Union managed to secure the right to sympathy strikes. The number of services classified as "essential" was also limited to a more realistic level and thus, the right to strike was preserved for a greater number of workers.

RIGHTS IN PRACTICE

The government insists that it only imposes arbitration after all other avenues have been exhausted, and that in practice it rarely has to do so.

Moldova

POPULATION : 4,300,000 / CAPITAL : Kishinev / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



No legal mechanisms ensure the respect of labour standards.

THE LEGISLATION

The right to form or join a trade union is recognised by the Constitution. The Trade Union Law of July 2000 provides for trade union independence and prohibits discrimination on the basis of trade union membership. It also provides for basic trade union rights such as collective bargaining, as well as the protection of trade union assets and the guarantee of trade union activities.

Limitations on the right to strike

Government workers and those in essential services may not strike. Other unions may strike, but only when two-thirds of their members – excessive by ILO standards – vote in a ballot to do so.

RIGHTS IN PRACTICE**Mechanisms for enforcement needed**

There are still no legal mechanisms to ensure the respect of labour standards. There is no labour inspection service, for example, to monitor the respect of workers' rights.

Employers and some public authorities continue to violate trade union rights. The State has set out to prevent the organisation of its workers into trade unions, particularly in the education sector. Regional union structures are still weak as a result, and teachers have had difficulties in collective bargaining and in concluding collective agreements.

In the private sector, some employers have failed to transfer union dues, or have avoided collective bargaining. Most employers also fail to provide the 0.15% of wages to the union to be used for purposes foreseen in their collective agreement, as provided for by the Trade Union Law and the Collective Agreements Act.

Poland

POPULATION : 38,600,000 / CAPITAL : Warsaw / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The Labour Code was amended in a “business-friendly” fashion, with the consequent risk of negative impacts on trade union rights. Some violations were reported, as the law remains inadequate to protect trade unionists.

THE LEGISLATION

All workers, including civilian employees of the armed forces, police and border guards, have the right to form and join trade unions. A minimum of ten people may form a local union and 30 a national one. There is one serious limitation however: workers on individual contracts may not form or join unions.

Right to strike limited

The right to strike is recognised, other than in essential services which are broadly defined (exceeding the ILO definition) to include uniformed services, state administration and local government, where they only have the right to protest. Procedures for calling a strike are long and cumbersome.

Rights denied to civil servants

A 1998 law on the civil service restricts rights in the sector. It divides workers into two categories, civil service employees, employed on the basis of an employment contract, and civil servants, employed by appointment. Civil servants may not, according to this law, “perform functions within trade unions,” which restricts the right of union members to freely elect their representatives. Neither of the two categories may participate in strikes or protest action if this interferes with the normal functioning of the office. This limitation should only apply to those exercising authority in the name of the State, according to Convention 87.

Collective bargaining is a recognised and protected right. Anti-union discrimination is banned.

Labour Code amendments weaken trade union rights

In 2002, a legislative package entitled “First of all – entrepreneurship” was implemented as part of the government’s “anti-crisis” strategy aimed at stimulating the economy. A revised Labour Code was adopted in August 2002, which, among other things, gives employers the possibility of hiring workers on fixed-term contracts without any time limits until Poland’s accession to the European Union in 2004. This, of course, would be very likely to discourage workers employed under such conditions from engaging in any kind of trade union activity. It also allows employers in an extremely difficult financial situation to suspend, by agreement with company trade union organisations, the application of a collective agreement (or other external regulations) for a period which can extend up to three years. The IMF and the World Bank have welcomed the changes, hailing them as a stimulus to the creation of new jobs, whereas the trade unions opposed the amendments.

RIGHTS IN PRACTICE

- Law ineffective** In practice, unions report that employers discriminate against workers who try to organise in the private sector, and that the law has not been sufficiently dissuasive to prevent harassment.
- In cases of unfair dismissal, it has often proved difficult to ensure the reinstatement of the workers concerned. Where courts rule in the union's favour, employers often ignore the reinstatement order. Further legal action by the union is either dealt with inefficiently, or the case is simply closed.
- Individual contracts** Many workers in state-owned enterprises such as the health sector, water and forestry have had their employment contracts terminated and replaced by individual contracts, so that they can no longer be trade union members.
- Legal strikes too complicated** Because of the long and complicated strike procedures, many strikes are carried out illegally. As a result, strikers risk losing their social benefits and union organisations risk having to pay damages.
- Obstructing trade union activity** The national trade union centre NSZZ Solidarnosc reports that many employers do not comply with the legal requirement to provide premises for trade union activities, nor do they supply the company information that unions request and are entitled to. Trade union meetings have been interrupted, sometimes forcefully, or cancelled on the pretext there was no agreement on holding the meeting. Some employers refuse to release union officers from their work duties to carry out trade union activities, despite being required by law to do so. Others do release them but do not pay them, or do not allow them to enter the premises or contact the workers during that time.
- Many employers are reluctant to deduct trade union dues, or they deduct the dues from the workers' salaries but do not pass the money on to the union.

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EVENTS IN 2002

- Background** The country's economy remained depressed, with an unemployment rate exceeding 17%.
- Workers and trade unionists sacked following strike** NSZZ Solidarnosc reported that at the "Zimnik" coal mine the workers decided to go on strike after 4 months without pay. The employer therefore sacked a group of workers, including trade union officers protected by law. Despite a ruling in favour of the workers by the court of first instance, the employer still did not pay his employees and appealed the court's decision. The workers passed several more months without any income.
- Trade unionist beaten up** On February 14, Andrzej Jakubiak, chair of the Enterprise Commission of ICFTU affiliate NSZZ Solidarnosc at the Marriott hotel in Warsaw, was brutally attacked and beaten up by hotel security guards been instructed to escort him to the office of its human resources manager, Ms Maryla Koralewska. On the way to the office, Andrzej Jakubiak was manhandled into an elevator and attacked so viciously that a later surgical examination revealed that he had sustained a severely broken nose. Two other leaders who intervened on his behalf in the office of the human resources manager were subsequently punished for "illegal abandonment of the workplace."
- Anti-union employer** OThe aggression against Andrzej Jakubiak was the culmination of a series of measures and incidents designed to bring an end to union activities within the hotel. Indeed, a campaign of harassment and intimidation against trade unionists has been carried out systematically since the day of the legal registration of a trade union organisation in the hotel on June 21, 2001. Management intimidated workers into not joining the union by forcing them to sign declarations condemning protest actions carried out by the union, and trade union members were transferred to lower-paid jobs or deprived of professional and financial advancement possibilities. They were also forced to work night shifts for over 20 weeks in a row, a clear violation of the labour law. The Polish National Labour Inspector carried out several inspections at the hotel, but the hotel management declared that they had sufficient funds to pay any fines resulting from discrepancies.
- Trial over killing of strikers continue** The trial of Poland's last communist leader, General Wojciech Jaruzelski, continued. He and nine other defendants are charged with giving the order to shoot striking shipyard workers in Gdansk, Gdynia, Szczecin and Elblag in 1970. Forty-four people were killed and over 1,000 injured, 200 of them seriously. If convicted they could face a jail term

of 25 years. Jaruzelski denies ordering the killings. Numerous dilatory legal manoeuvres took place in the course of 2002, but no progress in the trial had occurred by year's end.

Romania

POPULATION : 22,500,000 / CAPITAL : Bucharest / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although trade union rights are fairly well protected in law, the unions reported cases of private sector employers – mainly foreign – seeking to prevent any trade union activity. Although trade union organisations were pressing the government to revise several anti-union provisions, trade union rights were still limited in several key respects at year's end.

THE LEGISLATION

Under the 1991 Trade Union Law, workers can establish and join the trade union of their choice. There must be at least 15 members, who must all be employees of the same enterprise. This right applies to all except high-level government and civil service staff, public prosecutors and judges, as well as military, intelligence and police personnel. No worker may be forced to withdraw from or join a union.

Restrictions on choice of union officials

To be elected to trade union office, a person must be a Romanian citizen, a member of the trade union and employed at the workplace. This restricts the freedom of unions to elect the representative of their choice.

Strike limitations

The right to strike is recognised. Employees in sanitary services, pharmacies, schools, communications, radio and television, transport and the supply of essential services (gas, electricity etc.) must provide a minimum service of one-third of normal activity in the event of a strike.

Strikes may be held only if all means of possible conciliation have failed. The employer must be given 48 hours' warning. Strikes can only be held to defend the economic interest of the workers and must not be used for political reasons. The same people who are prohibited from joining and forming trade unions may not strike.

Collective bargaining

Collective bargaining is a recognised right under a 1996 law which stipulates that collective agreements are to be renewed every year. The State may not interfere in the collective bargaining process. No sector is excluded by law from collective bargaining. Public employees may bargain for everything except salaries, which are set by the government.

Anti-union discrimination is prohibited by law. The protection of trade union leaders is strengthened by the new trade union law. Throughout the duration of the mandate and 2 years after its completion, the working contract of the trade union leader cannot be terminated for unjustified reasons, unless the elected leading committee of the trade union agrees upon this.

RIGHTS IN PRACTICE

Yellow unions

The right to form trade unions is generally respected in practice. However, some employers create "yellow unions" to counteract the activities of independent trade unions. In some cases, the employer seeks to destroy independent trade unions, which is punishable by law but difficult to prove.

It is reported that the most anti-union employers – usually foreign companies – make employment conditional upon the worker agreeing not to create or join a union.

EVENTS IN 2002

Strikes declared illegal or suspended

The government still failed to respect the recommendation of the ILO Committee on Freedom of Association, which asked the government to reinstate Ion Mihale, a trade union leader from Minmetal SA, who was fired after a court declared a strike illegal. The case has been brought before the European Court of Human Rights in Strasbourg.

Workers sacked without trade union approval

In June, the trade union Colemn Galautasi called a strike to protest against a cut in wages of up to 60-70%, wage arrears, the non-payment of the social security contributions to the relevant State institutions even though the sums were deducted from the workers' wages, and the sacking of 200 workers without the approval of the trade union.

Murderers of a trade unionist answer for their crime

On November 5, Victor Balan, the Romanian director of a factory in Iasi (North-East), and the Czech owner of the factory, Frantisek Priplata, were sentenced to six years' imprisonment each, for their moral responsibility in the murder of a trade unionist, Virgil Sahleanu, in September 2000. They had asked the director of a security company to give Virgil Sahleanu "a good thrashing" to intimidate him, after he had started legal proceedings against the buy-out of the factory by a Czech company, Zelezarny Vessely. Virgil Sahleanu was stabbed to death in the entrance hall of the building where he lived, as he was on his way to the factory. The murderers, two young men hired by the Protect security company, were sentenced to 23 and 21 years in prison, while three other persons, the director of Protect, one of his assistants and an accomplice, received prison sentences of twelve, three and a half, and five years respectively. Virgil Sahleanu's murder had caused commotion throughout the country, and a statue was erected to his memory in Iasi.

Russian Federation

POPULATION : 146,200,000 / CAPITAL : Moscow / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



The legislation still denies many workers the right to strike, such as the air traffic controllers, who had to resort to go on hunger strike instead in December.

The new labour code, that entered into force in February, makes it easier to dismiss workers, makes collective bargaining very difficult for smaller unions and further limits the right to strike. It does make strikes over unpaid wages legal however.

THE LEGISLATION

Workers have the right to form and join trade unions in law.

Strong limitations on right to strike

The right to strike is recognised, but strikes are banned in the railway and air traffic sector, at nuclear power stations, by members of the military, militia and government agencies and by disaster relief organisations. A minimum level of "essential" services must be maintained. The broad definition of these deprives most public sector employees of the right to strike. The procedures for calling a strike are so complex that most strikes are considered technically illegal. The civil court can order the confiscation of union property to settle losses incurred by the employer if the strike is found to be illegal.

Provisions on collective bargaining too weak

The right to collective bargaining is recognised and employers are required by law to negotiate with the union. No time limit is stipulated however, and the law does not require management to sign the agreement.

New labour code enters into force

The new labour code, adopted by the State Duma on December 19, 2001, will enter into force on February 1, 2003. It has been bitterly opposed by many unions for weakening their rights, particularly those of smaller unions. The aim of the new code is to make the labour market more "flexible." It favours short-term contracts, which as well as threatening job stability makes organising more difficult. The new law also permits employers to gather information about workers suspected of involvement in union activity, giving rise to the fear of blacklists.

The new code makes it easier for employers to dismiss workers, not only for absenteeism and alcoholism but also for divulging commercial secrets or causing material damage to the enterprise. The employer no longer needs to seek a trade union's permission to dismiss one of its members, but merely to consult it.

On collective bargaining, the law specifies that the employer will negotiate with the local branch union or other representative. This is not a problem for the larger trade union federations, but some smaller independent unions do not have union locals in their structures. At the same time, the term "other representative" allows for the union to be bypassed. The law also says that "another representative" may negotiate with management where a union represents less than half the workforce. Where there are more than two major unions, they are asked to develop a unified collective agreement. If they fail to do so within five days, the union that represents more than half the workers is considered as the representative of all the workers. Only one collective agreement can be negotiated at the enterprise, effectively excluding most small unions from the process.

There are no clear enforcement measures to ensure that employers engage in good-faith bargaining.

Strike restrictions

Restrictions on the right to strike remain, and procedures have been further complicated. If a workers' representative calls for a strike, the action must be approved by a majority at a general meeting of all workers in the enterprise, regardless of whether they are trade union members. The meeting is only considered legitimate if at least two thirds of workers are present. This places a high barrier on the ability to call a strike, and means that unions representing a minority occupation or profession are denied the right to strike. Federations and confederations may not call a strike.

Strikes can only be called to resolve a collective labour dispute. There is nothing to forbid employers hiring substitute labour during a dispute.

Strikes over unpaid wages made legal

A positive aspect of the new labour code is that it seeks to address the problem of the non-payment of wages. Workers can down tools if they have not been paid for more than 15 days, and cannot be fired for taking such strike action. The law also obliges employers to set wages above the official subsistence level. However, in practice, wage arrears have been increasing in 2002.

RIGHTS IN PRACTICE

Discrimination

Anti-union discrimination is fairly common in practice. Union leaders have been followed by security services, detained for questioning by police, subjected to heavy fines, have lost bonuses and have been demoted.

Collective bargaining rights ignored

Collective bargaining rights are often ignored by employers, who refuse to negotiate or refuse to provide the financial information requested by trade unions.

The management at Moscow Railway has refused to negotiate a collective agreement and other issues with the Russian Trade Union of Locomotive Brigades of Railway Employees (RPLBZh). Any sign of trade union activity by union officials leads to harassment. Members of the union receive differential treatment, such as being refused the free rail travel they are entitled to. Many local branches of the union have been repeatedly refused registration, usually on petty grounds such as a supposed problem with their documentation.

EVENTS IN 2002

Riot police disperse protesting unionists

On May 28, over two dozen demonstrators, including trade unionists, were arrested and beaten up during a protest at the Russia-EU summit in Moscow. Several demonstrators were injured. The rally was declared illegal at the last minute and violently broken up by riot police. The demonstrators were protesting to end foreign debt repayments, against the new labour code, and against enforced rises in rent.

Unionist arrested

On August 20, the secretary of the Siberian Confederation of Labour (SKT), Vladimir Prokhorovich Vorobyov, was arrested one hour before the beginning of a rally of the city Confederation of Labour of Anzhero-Sudzhensk against the communal dwelling reform and the sharp decline in the standard of living of workers. The week before, local and regional authorities, as well as the State Security forces, strongly pressured VP Vorobyov and other organisers of the rally, requesting that the rally be cancelled, threatening prosecution under the new public disorder law. They also warned that the rally could not be held without a permit, although notice was delivered over a month in advance. It appeared that the authorities were especially anxious about a visit by president Putin planned that day.

Compelled to go on hunger strike

In December, the air traffic controllers in Siberia and in the oriental regions of the Federation went on hunger strike to obtain the doubling of their wages. Air traffic controllers, who are denied the right to strike, had to resort to such extreme measures in order to go round the prohibition. Several had to be brought to hospital when doctors ordered they be removed from their workplace on medical grounds.

Trade union leader refused re-entry

On December 30, Irene Stevenson, head of the American Centre for International Labour Solidarity, the AFL-CIO's representation in Moscow, was refused entry into Russia. The Russian Ministry of Foreign Affairs cited Article 27.1 of the Procedures for Exiting and Entering the Russian Federation, which provides that foreigners who are a threat to national security will be denied a visa. The Ministry offered no further explanation why Irene Stevenson presented such a threat. She has lived in Russia since 1989 and has worked at the Solidarity Centre office for ten years. The Solidarity Centre works closely with Russian partners, and conducts seminars on worker rights, supports legal representation for workers and unions in court, provides assistance during negotiations, and offers legal consultation.

Metals giant is anti-union

On December 24, 2002, the trade union representatives of the company had decided to start a collective labour dispute procedure to confront the refusal of management to respect the terms of the collective agreement, as well as to protest against management's systematic harassment, which they said was "clearly intended to undermine the capacity of the trade unions to represent their members." Management had orchestrated a campaign inside the company, as well as in the local media, to discredit the unions. Threats were made against union leaders and activists, employees were openly called upon to leave their trade unions, and isolationist measures were adopted to segregate the union representatives from the main local production teams.

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Serbia and Montenegro (former Federal Republic of Yugoslavia)

POPULATION : 9,900,000 / CAPITAL : Belgrade / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-111-138



Trade unions still need the consent of both the employer and the Ministry of Labour before they can register, and the Ministry can dissolve a union if its registration was made on the basis of "false data." The right to bargain collectively is not adequately protected. There were reports of harassment of union members and obstruction of union activities at some companies.

THE LEGISLATION

1. Republic of Serbia

Authorisation required

All workers except military and police officers have the right to join and form a trade union. Trade unions must be registered in accordance with regulations issued by the Ministry of Labour. The procedure is very complicated, and is handled by the Ministry itself. The Ministry not only receives documentation, it must give its consent. Before applying for registration, the union leader must have a certificate from the employer, or an "authorised person," stating that the leader is in full-time employment at the enterprise. Hence, the employer's consent is also required. Moreover, trade union centres must prove their representativity by supplying members' application forms. The Ministry can dissolve a trade union if false data are supplied during the registration procedure.

Right to strike heavily limited

The right to strike is recognised, although it is restricted for employees in "essential services" who must give at least 15 days' advance warning of strike action, and must ensure a minimum service. The notion of essential services is very broadly defined, and in practice covers 60% of workers, including teachers and postal workers.

Collective bargaining

A new labour law was adopted on December 12, 2001, which improved collective bargaining rights, although it did not make the signing of collective agreements mandatory for employers. Most importantly, it removed the exclusive bar-

gaining position of the SSS, giving the other confederations the possibility of negotiating collective agreements. Under the new law, a union must represent 15% of employees to negotiate with an employer, or 20% of all workers to negotiate with national or local government.

It was not all good news, however. The new law has also made it much easier for employers to dismiss workers, as part of a general trend towards the liberalisation of the labour market.

2. Republic of Montenegro

The Confederation of Independent Trade Unions of Montenegro reported that the new Labour Law was prepared without any consultation with the social partners, and under pressure from the World Bank. The Labour Law would make it easier to dismiss workers and would cancel collective bargaining.

However, this law had not been adopted by year's end, and a public hearing about it was expected to start at the end of April 2003.

The main labour problem in the Republic of Montenegro comes from the difficulties encountered by workers in organising within small private enterprises and other unprotected sectors, such as the growing informal economy.

RIGHTS IN PRACTICE

Harassment

The Nezavisnost national centre reports that its members are exposed to harassment and persecution, both by private company managers and by government bodies. The problems begin with registration. Out of 300 applications for the registration of local "Nezavisnost" branches, over 200 have been delayed by the authorities for longer than the time limit set by law. At the workplace, it reports that company managers prohibit the operation of "Nezavisnost" unions and ban their entry to the premises, on the grounds that they are not registered. There were many reports of workers having their pay docked, being transferred to lower-paid positions, or being threatened and even assaulted after joining Nezavisnost.

EVENTS IN 2002

Exclusion from delegation to ILO Conference

The government once again sent its tripartite delegation to the International Labour Conference in Geneva in June without consulting the most representative organisations of workers in the country, as required by the ILO Constitution. The most representative trade union organisation of Montenegro, the Confederation of Independent Trade Unions of Montenegro (SSSCG/CITUM) was indeed not consulted about the composition of the Yugoslav delegation, and no representative of this organisation was included in the workers' delegation of the Yugoslav Federation. The SSSCG/CITUM, which represents 90,000 members, should have been considered among the most representative organisations of the country. In 2001, the government had already failed to include both the SSSCG/CITUM and Nezavisnost, the country's second largest trade union organisation and the only one which was independent under the Milosevic regime.

Anti-union companies

The International Metalworkers' Federation (IMF) reported in March that trade union work and activity as well as the collection of union dues were not permitted in Ikarbus-AD and in IMT-Novi Beograd, two factories of the largest bus manufacturer in the Federation. Also, the unions in these enterprises did not have a room or other facilities for trade union activity, and management constantly refused to give any kind of information to the union about work at the plant. Trade unionists, especially members of Nezavisnost, were constantly harassed. Stanislav Glumac, the Director General of Ikarbus-AD, refused on several occasions to allow trade union representatives to enter the factory. The president of the managerial board of the IMT is Dragan Milovanovic, the Minister of Labour and Employment of the Republic of Serbia.

Trade unions kept away from privatisation process

The Confederation of Autonomous Trade Unions of Serbia reported that the Ministry for Privatisation did not allow the trade union to have insight into transparent sales and collective agreements, nor into the social programme offered by potential buyers of enterprises.

Slovak Republic

POPULATION : 5,400,000 / CAPITAL : Bratislava / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although some amendments to the labour legislation were passed, providing for improved protection of trade union rights, some restrictions remain. Proposed new amendments would be prejudicial to the workers.

THE LEGISLATION

All basic trade union rights are recognised in law. Workers are free to form and join trade unions, with the exception of the military, and anti-union discrimination is banned. The new Labour Code, which entered into force in April 2002, provides for the right to collective bargaining but the unions would like the law to contain stronger protections of this right, for example by allowing them to organize strikes when a clause of a collective agreement has not been respected.

Strike restrictions

Previous restrictions contained in the strike legislation were removed in 2001, principally the requirement to provide the employer with a list of all striking workers. There are still many ambiguities in the law, however, with the result that very few strikes actually take place. The right to strike may be restricted in exceptional circumstances and in some services considered as essential. The list of such services exceeds the ILO definition, by including, among others, workers in the oil or gas production sector and in the nuclear sector, officers of the armed forces and fire brigade officers.

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RIGHTS IN PRACTICE

Despite a good legislative framework, there have been some abuses, notably as a result of the privatisation process, which has led to collective redundancies.

Insufficient protection

There have been increasing reports of anti-union behaviour by employers, and insufficient protection of the workers who have been the victims of this discrimination. Collective bargaining is widespread, but some employers seek to obstruct bargaining.

Non-payment of wages continues to be a problem.

Spain

POPULATION : 39,900,000 / CAPITAL : Madrid / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Some limitations on the right to strike remain, while recent legislation concerning “irregular” foreign workers deprives them of all their trade union rights as long as they are not regularised.

THE LEGISLATION

The law recognises freedom of association. All workers can form or join the union of their choice, with the exception of members of the State security forces, the armed forces, judges, magistrates and prosecutors.

Some limitations on the right to strike

The right to strike is recognised. There are limitations, however, in those services the government considers essential. A minimum service must be maintained during a strike. The level of minimum service must be negotiated and agreed between the union and the employers. A union must give five days' notice, and respect the agreed minimum service requirements. Strikes may not be held for political reasons or any reason other than the occupational interests of the workers concerned. Strike action cannot be taken to change the terms of a collective agreement while it is still in force.

**Rights denied to
"irregular" foreign
workers**

The rights of foreign workers not legally registered in Spain were further limited by the Basic Act on Rights and Freedoms of Foreigners in Spain, which came into force on January 23, 2001. The Act specifically states that foreigners may not exercise the right to organise and strike, or freedom of assembly and association (and by extension, the right to collective bargaining), until they "obtain authorisation for their stay or residence in Spain." The government says the purpose is not to discriminate against foreigners but to distinguish between "legal" and "irregular" foreigners. There are no intermediate measures to deal with the "irregular" foreigners already living in Spain who used to enjoy the freedom of association but have been deprived of that by the law.

The unions considered that this restriction of fundamental rights undermined the Spanish Constitution and ILO Conventions ratified by Spain. That interpretation was shared by opposition political parties and some of the autonomous communities, which brought the case before the Constitutional Court, which will be delivering its verdict.

RIGHTS IN PRACTICE**Effect of strike
undermined**

In many cases, the minimum service to be ensured during strikes in essential services is imposed on the workers, owing to a failure to reach agreement on the excessive demands of the employers. As a result, the effect of a strike is often undermined.

EVENTS IN 2002**Strikers clash with
police**

On June 20, trade unions called a one-day general strike – the first since 1994 – in protest against the government's reform of unemployment insurance, on the eve of a European Union summit that took place in Seville. Strikers numbered over 200,000 in Madrid, 400,000 in Barcelona, and tens of thousands in Seville. The government claimed that the strike was a failure. Even so, a government reshuffle followed, with a new Minister of Labour, Eduardo Zaplana, and most of the controversial points of the reform were withdrawn.

The government used large numbers of police to try to prevent the leafleting activities of pickets. The police tried to break up these groups, as soon as they left union offices, through the use of force. Similar police deployments were used during the huge numbers of demonstrations in many Spanish cities.

Manipulation by the State-controlled media should also be highlighted, since they tried to minimise the huge numbers attending the demonstrations.

**Spanish multinational
violates workers' rights
in Peru**

Since the Spanish telecoms multinational Telefónica took over management of the Peruvian telephone network under former President Fujimori, over three-quarters of the total workforce has been cut. When Telefónica dismissed a further 570 workers in June, in clear breach of an April 2001 collective agreement, the remaining 3,000 staff (the majority of whom are members of the Sindicato Unitario de Trabajadores de Telefónica del Peru and FETRATEL) staged a walkout.

Amongst other things, the company tried, under the "tercerización" plan, to force a number of workers to accept to work for other, sub-contracting companies, losing rights that they had built up over many years. This was in addition to arbitrary dismissals, forced early retirement and arbitrary rotation and substitution of workers.

UNI, the Global Union Federation for the telecoms sector, brought the case to the attention of Telefónica de España, the parent company of Telefónica del Peru. Eventually, under UNI pressure, Telefónica de España consented to the opening of a formal "dispute procedure" as envisaged under their mutual framework agreement.

Switzerland

POPULATION : 7,200,000 / CAPITAL : Bern / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The recognition of the right to strike in the civil service at federal level still needs to be extended to certain cantons and communes.

Recognition of right to strike

A new clause in the Federal Constitution (Article 28), which came into force in January 2000, explicitly recognises the right of workers to form and join trade unions. It also recognises the legality of strikes, provided they are related to industrial relations and in line with "requirements to safeguard social peace or to seek conciliation."

Article 357a of the Federal Code stipulates the requirement to preserve social peace in relation to all matters covered by a collective bargaining agreement (CBA). Almost two-thirds of CBAs in Switzerland contain a binding clause on maintaining social peace and exclude, de facto, any recourse to protest during the period covered by the CBA.

The prohibition on strikes by public servants was removed from the Federal Act in 2000. The Federal Council may only restrict or prohibit the exercise of the right to strike where it affects the security of the state, external relations or the supply of vital goods to the country. The changes came into force in July 2002. At the end of 2002, seven cantons and a large number of communes had still failed to adapt the status of their civil servants accordingly.

RIGHTS IN PRACTICE

Too many employers refusing to negotiate

To combat the wage dumping that might occur following the implementation of the free movement of persons between Switzerland and the EU member states, set for June 1, 2004, legal measures have been adopted aimed at facilitating the extension of national CBAs, which currently only cover 50% of jobs. That coverage level is much lower than the EU average of about 90%. The measures were vital, partly since there are large disparities between different cantons and/or sectors. This led to the conclusion of CBAs in the cleaning, road transport, security services and pharmacy sales sectors, and to requests for additional extensions of coverage.

The ICFTU-affiliated Union syndicale suisse (USS) considers that the federal authorities should take other initiatives to promote the development and widespread use of voluntary negotiation procedures, within the meaning of Article 4 of ILO Convention 98 on the right to organise and collective bargaining, which Switzerland only ratified in 1999. The Berne Congress of the USS in October 2002 adopted a series of demands, under the heading of "more rights in the workplace", whereby Switzerland should apply more international labour standards with a view to improving the protection of workers.

The dismissal of workers serving on company committees or pension fund joint committees is allowed in Switzerland. During 2002, some ten dismissals were reported, clearly aimed at discouraging the elected staff representatives from expressing their views freely. Swiss legislation does not provide for the reinstatement of workers' representatives who were unfairly dismissed. Though the maximum legal compensation in the event of unfair dismissal amounts to six months' wages, the courts generally grant only three months' wages.

Ukraine

POPULATION : 50,000,000 / CAPITAL : Kiev / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



High barriers to organising

Many restrictions on the freedom of association and on the right to strike remained on the statute books, while trade unions were still generally discriminated against in practice. Several cases of anti-union harassment were reported during the year.

THE LEGISLATION

The right to join and form trade unions is guaranteed by the Constitution. The principal law governing trade union rights is the 1999 Act on "Trade Unions, their Rights and Guarantees of their Activities." Key articles of this Act are not in line with ILO Convention 87. Article 11 sets excessively high representational criteria at the territorial level. It stipulates that, for a trade union to obtain recognition at the district or national level, it must unite more than half the workers of the same vocation or occupation or should have organisational units in the majority of administrative territorial units of the same district or of the Ukraine. Article 16 requires trade unions to register with the Ministry of Justice and its subdivisions, which check to make sure that the statutes of the trade union comply with the requirements of Article 11. Registered unions with national status may participate in the national collective bargaining agreement, sit on the Social Insurance Fund Board, acquire property, open bank accounts and enter into legally binding agreements.

In December 2000, the Constitutional Court declared Articles 11 and 16 unconstitutional. In April 2001, an ILO expert mission visited the country to advise the government on how to amend the law to bring it into line with the Convention. Finally, a new draft text was passed at first reading by parliament, in December 2001. The Free Trade Union Confederation of Ukraine noted, however, that of the three possible versions that could have gone to parliament, the one introduced by the government of Ukraine was still not in line with the Convention.

Nevertheless, the governmental version was adopted. A year later, the Free Trade Unions Confederation was continuing to demand amendments to the new version of the "Law on Trade Unions", in line with the ILO recommendations.

Public servants denied right to strike

The right to strike is recognised in the constitution, provided it is to "defend economic and social interests." Members of the judiciary, armed forces, security services, law enforcement agencies and public servants may not strike.

Collective bargaining

The Law on Collective Bargaining provides for the right to collective bargaining, but that right is limited to unions registered under the restrictive terms of the 1999 Act.

RIGHTS IN PRACTICE

Discrimination

When the 1999 law came into force, the Confederation of Free Trade Unions of Ukraine (CFTUU) was no longer recognised as a partner at the national level. Even after Articles 11 and 16 were declared unconstitutional, they continued to be applied. State authorities take discriminatory action against trade unions, reports the CFTUU, for example by refusing to enter them in the state register if they are not registered at the Ministry of Justice. Similarly, banks refuse to open bank accounts for unregistered unions, and employers and local administrations will not recognise them. When trade unions are involved in disputes, they have to prove their legitimacy to the court by providing certification of registration at the Ministry of Justice.

EVENTS IN 2002

Union denied recognition: unionists get the sack

When the Independent Miners' Union of Ukraine (NPGU) set up a local unit at the Luganskugol state holding company, V.I.Skubenko, the Director General of the company, refused to recognise the union and to provide it with an office to hold its meetings as long as it was not registered. Subsequently, four NPGU members from the Nikanor-Novaya mine were sacked.

Interference with union dues	At the Krivorozhstal state metallurgical company in Krivoy Rog, the management refused to transfer union dues to the union.
Union denied the right to participate in negotiations	The Lugansk Region Administration refused to let the Confederation of Free Trade Unions of the Lugansk Region participate in negotiations for the regional agreement, saying that the Confederation was not registered with government bodies.
Unionists get the sack	Two NPGU members from the Partizanskaya mine were sacked without consent of the trade union committee.
Intimidation	Intimidation
Police raid union offices	<p>On November 12, the police attempted to forcibly enter the union offices at several mines, as well as the office of the regional Association of the Independent Miners' Unions of the Western Donetsk Coalfield. They seized trade union documents, without showing any authorisation or giving any explanation.</p> <p>Later in November, heavily armed police forces without search warrants stormed into the Donbass regional offices of the NPGU at night and confiscated union documents. The confiscation was apparently ordered by the office of the Pavlograd Prosecutor, AS Gashenko. NPGU President Mikhail Volynets saw in this action a "vicious campaign to paralyse the union in that region, which has been at the forefront of the protest against unpaid wages and other benefits." In June, about 90 coal miners had started a hunger strike to demand months' worth of unpaid wages. The coal miners, who in some months received only a third of their salaries and sometimes nothing, were so desperate that some of them had made out their wills.</p>

United Kingdom

POPULATION : 60,600,000 / CAPITAL : London / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



Although recently adopted legislation introduced major improvements with respect to trade union rights, employers can still easily obstruct union activities.

THE LEGISLATION

The 1999 Employment Relations Act (ERA) recognises many basic trade union rights, after such rights had been denied for years. Workers have the right to form and join trade unions of their choice.

Strikes allowed – with limitations

The ERA provides protection against prosecution for workers taking industrial action, as long as certain conditions are met. These are that strikes must be confined to workers and their own employers, the dispute must be wholly or mainly about employment-related matters, and the decision must be based on a secret ballot of the workers concerned. If striking workers are dismissed within eight weeks of taking part in a legal strike, they can claim unfair dismissal. Secondary picketing is not allowed, and there is no immunity from civil liability for workers taking part in sympathy strikes.

Bargaining – statutory recognition

A trade union may be awarded statutory recognition by the Central Arbitration Committee if the majority of the workforce so wishes. Support for recognition must be shown either by majority membership, or via a workforce ballot, in which 40% of those eligible to vote must vote in favour. A union has to show at least 10% membership in the bargaining unit to trigger a ballot.

Opting out

The legislation still allows employers to offer financial inducements to employees to sign personal contracts, even where they are performing identical work to those who do not sign. However, the government now intends to amend

the legislation to reflect the judgement of the European Court of Human Rights in the "Wilson/Palmer" case. This says that trade union members must not be prevented or restrained from using their union to represent them in attempts to regulate their relations with their employers (see last paragraph below).

Small firms

Companies employing fewer than 21 workers are excluded from the statutory recognition provisions of the ERA.

Seafarers

Seafarers are excluded from certain employment legislation, including the ERA. Offshore workers were included in the recognition provisions. However, this does not address the issue of seafarers, who are excluded if their ships are registered outside the UK, or if they are not normally resident in the UK, or if all their work takes place outside the UK. The government is currently reviewing the employment status of groups of workers, including seafarers. Seafarers are excluded from certain employment legislation, including the ERA. Offshore workers were included in the recognition provisions. However, this does not address the issue of seafarers, who are excluded if their ships are registered outside the UK, or if they are not normally resident in the UK, or if all their work takes place outside the UK. The government is currently reviewing the employment status of groups of workers, including seafarers.

Right to union support

The ERA also gave workers the right to be accompanied by a trade union representative in disciplinary or grievance procedures, even if there is no trade union at the company where the employees work. The TUC would like this to be strengthened so that, instead of just being "accompanied", workers can be "represented." An amendment to the ERA became particularly necessary following the Wilson/Palmer judgment (see last paragraph below).

New legislation

The Employment Act 2002 introduced a number of changes into the labour legislation, including the reform of employment tribunal procedures and workplace dispute resolution mechanisms, and provisions on time off for trade union learning representatives. The Act also introduced new and improved rights for parents, including two weeks' statutory paternity leave and longer periods of paid maternity leave.

RIGHTS IN PRACTICE

There is a long-standing tradition of collective bargaining in the country, and about a third of the workforce is covered by collective agreements. The most outstanding feature of the statutory trade union recognition scheme has been a very significant increase, of more than 300% over the previous year, in the conclusion of voluntary agreements.

A number of shortcomings

The government has sought through its legislation to improve the respect of workers' rights, but still falls short of some international and European standards. The ILO Committee of Experts on the Application of Conventions and Recommendations has in particular found incompatibilities in respect of the continuing ban on all solidarity action; of restrictions on the right of unions to enforce democratically-decided rules; and of prison labour. The government opposed a European Union (EU) directive that would extend information and consultation rights on a range of workplace matters to employees of all national companies in the EU with over 50 employees. However, following a sustained campaign by the Trades Union Congress (TUC) and the European trade union movement as a whole, the directive was adopted by the Council of Ministers in June 2001. A key TUC objective is now to secure a robust transposition of the directive into UK law, in the face of the consistent approach of the government to seek to minimise the positive effects for UK workers of EU social legislation.

Anti-union tactics

A report entitled "Modern Rights for Modern Workplaces", released by the TUC in September 2002, enumerates a number of tactics used by hostile employers during a recognition claim, which include "setting up an in-house staff association, placing workers under surveillance as they walk past union organisers outside the workplace, issuing threats that they will close or re-locate the business rather than face recognition, packing the bargaining unit with new temporary employees before the ballot, packing union access meetings with management personnel, giving workers the option of going home early when there is a union meeting organised, dismissing activists or declaring their

jobs to be redundant, intimidating workers on a one to one basis and 'encouraging' workers to sign personal contracts before or after recognition."

The TUC concluded: "there is a strong argument that existing protection against detriment is not adequate and greater protection is required."

Wilson/Palmer case

In July 2002, in the Wilson/Palmer case, the European Court of Human Rights (ECHR) made a ruling in favour of two trade unionists, which will stop employers from penalising workers who want to be represented by a union at work. The ruling states: "it is the role of the State to ensure that trade union members are not prevented or restrained from using their union to represent them in attempts to regulate their relations with their employers." Although there is legislation in the UK making it illegal to discriminate against employees on the basis of their membership or non-membership of a trade union, this protection does not extend to making use of that union membership, that is, being represented by their union. In the Wilson/Palmer case, a journalist and a dockworker had been denied pay rises for refusing to sign personal contracts de-recognising their unions.

The overall trade union landscape of the Middle East remains bleak, though some important improvements have been noted in Bahrain and, to a lesser extent, Saudi Arabia. In the West Bank and Gaza the new Labour Code came into force, amid hopes that union rights would substantially improve there. But trade unions are not tolerated in many other countries and are banned outright in the United Arab Emirates, Oman and Qatar. In other countries, such as Syria, only a single union is permitted and is kept under the strict control of the ruling party. In all the countries of the region the law imposes constraints on trade union activity. In Libya, for instance, the Labour Ministry controls all aspects of union elections, from the date they are held to the ratification of their results. In Kuwait, legislation provides for a single-union structure, and the same applies in Yemen, though Yemen does have some of the least restrictive laws on union rights in the Middle East.

The most notable change in the region was the recognition of trade union freedom in Bahrain, through the adoption in September of a Law on trade unions, signalling the end of a repressive system. However during the period under review it has not been possible to evaluate the practical impact of the law. Another development deserving a cautious welcome was the demonstration of some openness by Saudi Arabia, which has one of the most conservative and repressive systems, when the country allowed Saudi and foreign workers to establish workers' committees at workplaces employing over 100 people. However, trade unions remain strictly banned in Saudi Arabia, although some associations, e.g. of journalists, have been established albeit with no proper union rights.

Middle East



In Iran, the trend toward progressive respect of freedom of association stagnated in 2002. Whilst the regime does tolerate some organisations in addition to the Workers' House, very restrictive legislation has remained in place and workers' protests have sometimes been harshly repressed.

Many governments have repeated promises to change their repressive legislation, whilst doing nothing in practice to do so. Oman has been promising new laws since 1994, for instance.

The workers who suffer most in the region are migrant workers, who in the Gulf States account for up to 90% of the workforce. In many countries, such as Saudi Arabia and Kuwait, government policies of replacing migrant workers with their country's nationals have been in breach of the most basic human rights. Most migrant workers are badly paid and strictly controlled by their employers, who often confiscate their passports and proceed to exploit them in conditions of near slavery. That particularly applies to domestic workers, who are frequently subject to sexual abuse and have virtually no chance of defending their rights. In Israel, too, migrant workers are vulnerable to abuse, in particular Chinese workers in the building sector. The latter are employed by middlemen who confiscate their passports, leaving them no opportunity to defend their rights.

Once again the escalating Israeli-Palestinian conflict has dominated events in the region, with the biggest impact being on the rights of Palestinian workers. Faced with high employment, many Palestinian workers are obliged to look for

work in Israel, where they may not form or join trade unions, though they are entitled to protection under collective agreements negotiated by the national trade union centre Histadrut. Often, Palestinian workers cannot even get into the country because the borders are sealed. When the borders are open, they have to run the gauntlet of draconian and humiliating border checks. In January, the General Secretary of the Palestinian General Federation of Trade Unions (PGFTU) was arbitrarily arrested for over four and half hours, on his way to a ceremony marking the entry into force of the new Palestinian Labour Code. Another official had to turn back after trying in vain for two days to cross the border to attend a course organised by Public Services International (PSI) in Beirut. Moreover, during the Israeli military operations in the occupied territories in response to Palestinian suicide attacks, the PGFTU offices in Ramallah and Nablus were partly destroyed.



Middle East

Bahrain

POPULATION : 600,000 / CAPITAL : Manama / ILO CORE CONVENTIONS RATIFIED : 29-105-111-182



An important step forward was made during the year with the adoption of new legislation recognising the freedom of association and lifting the ban on strikes, although some restrictions still apply. It remained to be seen how the new legislation would be applied in practice.

THE LEGISLATION

Freedom of association introduced into the law

Legislative Decree No. 33 of September 24, 2002 promulgated the Workers Trade Union Law, which introduces freedom of association in Bahrain. Workers in the private sector, workers subject to the provisions of the Maritime Code and workers in the civil service sector may freely form and join trade unions. The Law prohibits anti-union discrimination. It establishes the General Federation of Workers Trade Unions of Bahrain (GFWTUB), to which all the trade unions are affiliated.

Only one trade union may be formed at each establishment. No prior authorisation is required to form a trade union. The only requirement is that the union's constitution must be communicated to the Ministry of Labour and Social Affairs, together with the names of the founding members.

Trade unions are not subject to administrative dissolution.

Trade unions may not engage in political activities.

Right to strike recognised... with limitations

The Law also provides for the right to strike, which is another step forward. There are some restrictions, however. Workers may only proceed to a strike after approval, in a secret ballot, by three-quarters of the members of the general assembly of the trade union - an overly high barrier compared to ILO standards. The employer must be notified of the strike no less than two weeks in advance, and the Ministry of Labour must also be notified. Strikes aim at achieving the social and economic demands of the workers. Strikes are prohibited in "vital and important facilities," the list of which includes security, civil defence, airports, ports, hospitals, transportation, telecommunications, electricity and water, thus exceeding the ILO definition of essential services.

Further requirements must be observed before a strike may be called. Workers and the employer must have sought amicable settlement of the dispute through conciliation. If this fails, the dispute is referred to conciliation and arbitration by a Committee of Conciliation and Arbitration, which is composed of three judges of the High Civil Court, a representative from the Ministry of Labour and Social Affairs, a representative from the Ministry of Commerce and Industry, a representative from the Civil Service Bureau, a representative from the GFWTUB, and a representative from employers' organisations. Upon the request of both parties, the Committee delegates one of its members to settle the dispute through conciliation. If the parties refuse the conciliation or if the conciliation fails, the dispute is settled through arbitration within a period not exceeding a week.

The Law does not specifically provide for collective bargaining, although the Minister for Labour says it does.

RIGHTS IN PRACTICE

Before the adoption of the Workers Trade Union Law, there was no freedom of association in Bahrain, and therefore no trade unions, and the penalty for leading strike action was up to ten years in prison. A step towards democratic change was made in early 2001, when the population voted overwhelmingly in favour of the National Charter of Action, which provided for the establishment of a bicameral parliament, and the full separation of the legislative, judicial and executive arms of the state. Bahrain became a constitutional monarchy in February 2002.

First trade union established

During the general assembly of the General Committee of Bahrain Workers in June, a historic and democratic vote was taken to establish the first free trade union in the Gulf, the General Federation of Bahrain Workers

(GFBW). However, the Ministry of Labour demanded that the vote be rescinded. In September, King Hamad bin Issa al-Khalifa decided that the 1st of May would be a national holiday.

In spite of the important improvements brought into the legislation, it is a little early to determine how the newly recognised trade union rights would be applied in practice.

Cyprus

POPULATION : 800,000 / CAPITAL : Nicosia / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182



The Turkish Cypriot authority continued its repressive behaviour. It restricted freedom of movement, preventing trade unionists from attending meetings. There were no trade union rights problems in the rest of the island.

THE LEGISLATION

All workers, other than the police and the military, have the right to form and join trade unions without prior authorisation.

Strike limitations

All workers have the right to strike, but with limitations. The Council of Ministers has the discretionary power to prohibit strikes in services that it deems essential. The government has promised that it will draw up a framework law defining "essential services," further to complaints that the current definition is open to abuse. In the northern (Turkish Cypriot) part of the island, employers have the right to hire replacement workers, which limits the effectiveness of the right to strike.

Bargaining and discrimination

Trade unions are free to conduct collective bargaining throughout Cyprus. Anti-union discrimination is illegal in the government-controlled area but not in the Turkish Cypriot community.

Labour law applies to the small export processing zones in the port of Larnaca and in Famagusta.

RIGHTS IN PRACTICE

Harassment in Turkish Cypriot north

Unions report that, in the area controlled by the Turkish Cypriot authorities, trade unions and their members are the target of harassment. The Denktaş administration has made no secret of its hostility towards Türk-sen and has actively sought to discredit it. It has fostered political divisions within the organisation, and directed some member unions not to pay their subscriptions. Türk-sen has been left nearly bankrupt as a result. There has been a smear campaign in the press, much of it aimed at the Türk-sen president, Onder Konuloglu, claiming financial irregularities.

Private sector employers are able to discourage union activity because the enforcement of labour regulations is sporadic and penalties for anti-union practices are too weak to be an effective deterrent. Some employers have set up their own organisations and put pressure on workers to join these.

EVENTS IN 2002

Obstructions to the freedom of movement of trade unionists continue

The Denktaş government continued to impose restrictions on the freedom of movement of the Turkish Cypriot trade unionists. It refused to give permission to the Türk-sen, an ICFTU affiliate, to attend the 25th Congress of the Cyprus Workers' Confederation (SEK), another ICFTU affiliate, which took place in the "Greek" part of the island. In January, the All Cyprus Trade Union Forum, comprising trade unions from both sides of the divided island, had to abandon plans to hold their 4th session on the island and had to meet in Brussels at the invitation of the ICFTU and the ETUC.

Iran

POPULATION : 69,200,000 / CAPITAL : Teheran / ILO CORE CONVENTIONS RATIFIED : 29-100-105-111-182



The strong restrictions on trade union rights remained in place. The year was again marked by many workers' protests over unpaid wages, poor working conditions and changes to the labour law that made it easier to fire workers. In some cases, the demonstrations were suppressed by the police, resulting in protestors being arrested and injured.

THE LEGISLATION

Islamic labour councils Iran's 1990 labour code states that workers in any unit can establish an Islamic labour council, a guild society, or appoint a workers' representative. However, the code gives a central place to Islamic societies and associations. It says that "in order to propagate and disseminate Islamic culture and to defend the achievements of the Islamic revolution ... the workers of production, industrial, agricultural, service and guild units may establish Islamic societies and associations."

The rules for the functioning of the Islamic labour councils, their constitutions and elections, are drawn up by the Ministry of the Interior, the Ministry of Labour and Social Affairs and the Islamic Information Organisation. The Council of Ministers then has to approve these rules.

The Islamic Labour Councils are overseen by the Workers' House. However, the Workers' House has been excluded from tripartite meetings, where the Islamic Labour Councils now represent the workers.

Government control All collective agreements have to be submitted to the Labour Ministry for examination and approval. The government maintains that this is to prevent these agreements from undermining the minimum rights established by law.

No strikes allowed The law does not give workers the right to strike, but they can down tools so long as they remain at the workplace, or operate a go-slow. A 1993 law prohibits public sector strikes and any contact between civil servants and foreign nationals.

Export processing zones Labour legislation does not apply in the export processing zones.

Small companies exempt A law adopted in February 2000 exempts companies employing no more than five people from having to respect labour legislation for a period of six years. This law, which affects some 3 million workers, also makes it easier to hire and fire.

RIGHTS IN PRACTICE

For a long time, the authorities tolerated only one national organisation claiming to represent workers - the government-sponsored Workers' House. This situation has changed in recent years, however. Representatives of the Workers' House report that there is more tolerance of workers' organisations and that there are now four nurses' organisations, a health workers' union and a textile workers' union.

Protest activity Despite the ban on strikes, there have been numerous protests and work stoppages in recent years.

Obstacles to organising Obstacles to organising include the presence of security and intelligence forces in workplaces, and the increasing trend towards temporary contracts.

EVENTS IN 2002

President Mohammad Khatami's government continued the liberalisation of the economy, encouraging domestic and foreign private investment. Many protests were staged during the year over unpaid wages,

which remained a serious problem. Unemployment stood at around 16%, totalling 3.2 million people. Over 70% of the population is estimated to live below the poverty line.

**Protesting workers
beaten up and arrested**

Between mid-January and the end of January, a number of demonstrations and sit-ins were organised by teachers in Tehran and other cities. Teachers were denouncing the lack of rights and demanding better salaries, better working conditions and the right to form independent unions. Clashes with the police ensued. Demonstrators were beaten up and a number of them were arrested.

On July 16, about 15,000 workers, many of whom had not been paid for months, gathered outside the Ministry of Labour and Social Affairs in Tehran to protest against poor working conditions, low pay and changes to the labour law that made sackings easier. The police suddenly started to attack the demonstrators with wooden sticks and fired teargas canisters to disperse them. Several workers were injured, and some of them were arrested.

Iraq

POPULATION : 23,100,000 / CAPITAL : Bagdad / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



There was no change in Iraq, where the single trade union remained under government control, and the regime remained as repressive as ever.

THE LEGISLATION

**Single trade union
structure**

A 1987 law establishes the General Federation of Trade Unions (GFTU) as the sole trade union organisation. It is closely linked to the ruling Ba'ath party and is used to promote party policy among workers.

No collective bargaining

Workers in private and mixed enterprises may join local union committees. These are affiliated with individual trade unions, which in turn belong to the GFTU. There is a consultation mechanism for setting the minimum wage, but no collective bargaining. Wages are fixed unilaterally.

Public sector workers and workers in state enterprises cannot form or join trade unions or bargain collectively. The state sets their wages.

No protection

The law does not protect workers against anti-union discrimination.

**Virtually no right to
strike**

Workers may strike only if the employer fails to respect a labour court's ruling in the workers' favour. All other strikes can be punished by imprisonment or detention in a labour camp.

Iraq has in the past responded to ILO criticism of its restrictive labour legislation by promising to draft amendments. So far no amendments have been seen.

RIGHTS IN PRACTICE

No independent trade union activity is tolerated in Iraq. There have been no known attempts at organising independent trade unions, and no strike has been reported for the past two decades.

Israel

POPULATION : 5,900,000 / CAPITAL : Jerusalem / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



Discrimination against Palestinian workers

The trade union rights of Israeli workers are fairly well respected. Palestinian workers still suffer discrimination in law, and in practice can rarely get to Israel to work. Other foreign workers, notably Chinese construction workers, find their rights completely ignored and face appalling working conditions.

THE LEGISLATION

Israeli workers are free to join and establish trade unions and have the right to organise and bargain collectively. Palestinians from the West Bank and Gaza Strip who work in Israel are not permitted to join Israeli trade unions or organise their own unions in Israel. Similarly, Palestinian trade unions in the West Bank and Gaza Strip are not permitted to carry out trade union activities in Israel.

Palestinian workers are entitled to protection under Israeli collective bargaining agreements negotiated by the national trade union centre Histadrut in exchange for paying one per cent of their wages to the Histadrut. Since the intifada, however, maintaining any links between the Histadrut and PGFTU has become impossible.

There is no law specifically prohibiting anti-union discrimination but the existing law against discrimination (in all its forms) can be used to prevent any discrimination based on union membership.

Strikes are permitted, but unions must give 15 days' advance notice unless otherwise specified in the collective bargaining agreement. Strike leaders are protected by law.

Restriction on right to strike

The government or authorised Ministers may pass emergency measures to "defend the country," ensure public safety and guarantee the supply of "essential services." Such measures, which can remain in force for up to three months, allow the government to issue back-to-work orders to strikers and impose severe penalties for failure to comply.

RIGHTS IN PRACTICE

Israeli workers can and do exercise their trade union rights widely. No anti-union discrimination has been reported.

Palestinian workers in Israel face a very difficult situation. Daily border crossings between the West Bank and Gaza Strip and Israel are tedious. In addition to the travelling time involved, they are frequently subjected to harassment and humiliation by border guards. Moreover, following the renewed intifada, the occupied territories have been sealed off on countless occasions and for extended periods of time by the Israeli authorities. It has become extremely difficult, often impossible, for Palestinian workers to get to their jobs in Israel.

An ILO expert sent on mission in the region in April and May 2002 reported that Palestinian workers were expelled from Israel and replaced by workers from Asia or Eastern Europe. As a result, the number of Palestinians working in Israel was reduced to almost zero, compared to 150,000 before the crisis.

A detailed report on the living and working conditions of the Syrian inhabitants of the Golan Heights, under Israeli occupation since 1967, delivered to the ILO mission by the Syrian Minister for Labour and Social Affairs, indicated that a segregation policy was imposed by the Israeli authorities on Arab inhabitants, and cited the imposition of unjust taxation, unfair dismissals, arrests, land confiscation and water theft.

Other foreign workers also face exploitation and little or no protection in Israel, such as the Chinese "guest" workers in the construction industry, working long hours for poverty wages. They are often recruited by

Chinese intermediaries who confiscate their passports and cheat them out of their legal wages. Most are too scared to take any action. When workers at the A.Dori contracting company went on strike in March 2001 in protest at their appalling conditions, they were threatened with deportation.

The government has proposed to cut the number of licences for guest workers.

EVENTS IN 2002

Background

2002 was marked by a tragic escalation of the Israeli-Palestinian conflict. Military operations intensified in the occupied Arab territories. In response, there were systematic terrorist suicide attacks against the Israeli population. The economic situation continued to deteriorate, and the unemployment rate has risen to a record-breaking 10.4%.

Trade unionists delayed upon arrival in Israel

On May 12, a four-member delegation from LO-N, a Norwegian ICFTU affiliate, headed by Finn-Erik Thoresen, was denied access to Israel upon arrival at Tel Aviv airport. Their passports and tickets were confiscated. They were told that the reason was that they represented an organisation hostile to Israel. After heavy political pressure from the Norwegian Foreign Ministry, they were finally let through after four hours. The delegation had come to Israel to visit the Israeli and Palestinian trade union representatives.

Jordan

POPULATION : 4,800,000 / CAPITAL : Amman / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-138-182



Restrictions on the freedom of association remain and certain categories of workers, notably foreign workers, are still denied their trade union rights.

THE LEGISLATION

Obstacles to freedom of association

Workers employed in private corporations and in some public corporations have the right to form trade unions. However, there are many obstacles to freedom of association. Trade unions must obtain approval from the Ministry of Labour in order to become officially registered. Registration is directly linked to 17 professions and sectors in which trade unions already exist, making trade union pluralism effectively impossible.

Right to strike heavily curtailed

The right to strike is considerably limited by the fact that permission must be obtained from the government before a strike can take place. The government can also impose cumbersome arbitration or call for independent court proceedings, during which strikes are prohibited. The law prohibits employers from dismissing a worker during a labour dispute.

Unions have the right to bargain collectively

Civil servants, domestic staff, gardeners, cooks and agricultural workers are not covered by the labour code. Moreover, the more than one million foreigners working in Jordan are barred from trade union membership, collective bargaining and strikes.

The labour code does not confer any real protection against anti-trade union discrimination.

RIGHTS IN PRACTICE

Jordan's labour inspection service is ineffective and the law is not always enforced.

Migrant workers exploited.

Some 50 Indian workers were exploited by their employer. The workers said their boss at the Al-Tajamout Qualified Industrial Zone refused to pay them for three months, refused to feed them for a week and then fled

from Jordan to the Philippines. Their factory, Tamashi Industries, manufactured the Simply Basic line of children's clothing for Wal-Mart (USA).

They tried to file a complaint against their employer. Apparently, their grievance fell on deaf ears.

Kuwait

POPULATION : 1,800,000 / CAPITAL : Kuwait City / ILO CORE CONVENTIONS RATIFIED : 29-87-105-111-138-182



High barriers to trade union organising are still in force, together with many other restrictions on union rights. A new draft labour code had not been adopted by the end of the year.

THE LEGISLATION

Single trade union system

The law provides for a single trade union system. Only one general confederation is allowed for each sector of activity and only one trade union is allowed per establishment. Trade unions are only allowed to create a federation if they represent workers of the same trade or sector who produce the same goods or provide similar services.

Barriers to organising

At least 100 workers are required in order to organise a trade union. The founding members must include at least 15 workers of Kuwaiti nationality. In effect, this restricts the workers from organising in the private sector, as the majority of workers are migrants. This is the case in the building industry and the domestic employment sector. For a trade union to be officially recognised, the Ministry of the Interior must deliver a statement certifying its approval of the list of founding members.

Government supervision

Government authorities have wide powers of supervision over trade union finances and records. If a union is dissolved, its assets are turned over to the Ministry of Labour and Social Affairs. Trade unions may not engage in political or religious activity and the courts can dissolve any union which violates the labour laws or threatens public order and morality.

Excluded from labour law

Domestic workers and maritime workers are excluded from the field of application of the law and are not permitted to either found or belong to a trade union.

Foreign workers, who make up about 80% of the workforce, must have resided in Kuwait for at least five years and must obtain a certificate of moral standing and good conduct before they are allowed to join a trade union as non-voting members. They are not permitted to run for any trade union post.

Restrictions

The law limits the right to strike and imposes compulsory arbitration if the workers and employers are unable to resolve a conflict.

Collective bargaining is recognised in law.

New draft labour code

In the new draft labour code, the provisions for a trade union monopoly have been removed, together with several other provisions that infringed international labour standards. There are still many discrepancies, however, including the ban on political activities. The new code had not been adopted by the end of the year.

RIGHTS IN PRACTICE

In practice, reports indicate that foreign workers have joined a trade union before the period of five years has expired, and that these workers make up one-third of the registered members.

Despite the trade union monopoly imposed by law, two unions exist outside of a confederation, namely the Bank Workers' Union and the Kuwait Airways Workers' Union. However, several applications to form trade unions have been rejected over the years by the authorities.

Migrant workers exploited

The government policy of reducing reliance on migrant workers has not been effective. They still make up over 80% of the workforce, according to figures issued during the year. These workers are still exploited, even though the government has sought to improve their legal protection. Domestic workers, mainly women, are particularly vulnerable. They are subject to prosecution if they leave their employer, who often confiscates their passports, and are frequently the victims of physical and sexual abuse.

Lebanon

POPULATION : 3,400,000 / CAPITAL : Beirut / ILO CORE CONVENTIONS RATIFIED : 29-98-100-105-111-182



Strong restrictions on trade union rights remain in force. The government consistently interferes in trade union affairs.

THE LEGISLATION

Broad powers of interference

The law confers broad powers on the Ministry of Labour, whose authorisation is required prior to the setting up of a trade union of any kind and which, moreover, controls all trade union elections, including the date of the election, the procedure to be followed and the ratification of the results. The law also permits the administrative dissolution of the unions and forbids them to engage in any political activity. The approximately 150,000 government employees are forbidden to set up or belong to trade unions. Furthermore, the labour code excludes from its field of application domestic workers, day workers and temporary workers in the public services as well as some categories of agricultural workers.

High hurdles for collective bargaining

Collective bargaining is recognised in law. However, a minimum of 60% of the workers must agree before a union can engage in collective bargaining, and collective agreements must be ratified by two-thirds of union members at a general assembly.

Further limitations

The right to strike is limited and the law does not adequately protect workers against anti-union discrimination. Sanctions have become more dissuasive, however. In the Budget Act of 2000, fines for infringing labour legislation were multiplied by 25. Furthermore, a draft amendment to the Labour Code prohibits any discrimination on grounds of trade union membership. It had not become law by the end of the year.

The freedom of trade unions to organise demonstrations is limited by the obligation to establish the number of participants in advance and the requirement that 5% of the union's members be assigned to maintain order. The organisers must sign a document whereby they assume full responsibility for all damage occurring during the demonstration.

RIGHTS IN PRACTICE

Government interference

The government has often interfered in trade union affairs, instigating or aggravating conflicts within the trade union movement.

Migrant domestic workers suffer

Domestic workers, notably Ethiopian migrant women workers, suffer badly from their lack of legal protection. Many are held in conditions of near-slavery, and some have even been killed.

EVENTS IN 2002

Union leader harassed and imprisoned

It was reported that Yasser Nehmé, Vice-President of the Union of Printers and Bookbinders in Lebanon, and former General Secretary of the General Workers' Confederation of Lebanon (Confédération Générale des Travailleurs du Liban – CGTL), had been continuously harassed ever since he wrote a letter describing the political violence and oppression the union movement had to suffer. The letter also cited the internal difficulties of the CGTL, allegedly infiltrated by militia of different groups which openly defend Syrian positions rather than workers' issues. This letter, and others, led to his imprisonment. He has since been released, but he was expected to be sent to jail again for a longer period for operating against the interests of the State.

Oman

POPULATION : 2,500,000 / CAPITAL : Muscat / ILO CORE CONVENTIONS RATIFIED : 29-182



The trade union rights situation in Oman remained as bleak as ever. The promised new labour code had still not come into force by the end of the year.

THE LEGISLATION

No unions, no strikes

The law does not allow workers to form or join trade unions. Strikes are banned. A 1973 decree states that "it is absolutely forbidden to provoke a strike for any reason whatsoever". Workers can be dismissed for striking or inciting others to strike.

Enterprises with more than 50 employees must set up grievance procedures. The Labour Welfare Board acts as mediator in cases where these procedures fail to resolve the individual grievances of Omani and foreign workers. If this fails, a report is sent to the Director of the Labour Department, who imposes binding arbitration.

No collective bargaining

The right to collective bargaining is not recognised in law. Pay and working conditions are generally defined by law or by individual contracts in accordance with government directives. Temporary workers are not covered by law. Enterprises with more than 50 employees must set up a joint labour-management committee as a communications forum. They may not discuss pay or working conditions.

Still no new labour code

The government announced that it would draw up a new labour code when it joined the ILO in 1994, to bring its law into line with international labour standards. From time to time, it announces progress in the drafting process, but by the end of the year the code had still not been promulgated. The government reported during the year that it had created a Ministry of Social Development and a Manpower Ministry.

RIGHTS IN PRACTICE

Migrant workers

Half of the country's workers are foreigners, who constitute cheap, vulnerable labour. Most are from southern Asia (Bangladesh, India, Pakistan and Sri Lanka) and they have a particularly strong presence in the construction sector. Like most of the Gulf countries, the Sultanate of Oman wishes to create more jobs for its own nationals, particularly in the private sector, where at present there are more than 10 foreign workers to each worker of Omani nationality.

Qatar

POPULATION : 600,000 / CAPITAL : Doha / ILO CORE CONVENTIONS RATIFIED : 29-111-182



The ban on trade unions remains in place. The government is apparently prepared to revise its labour legislation.

THE LEGISLATION

Unions and bargaining banned

Trade unions are prohibited in Qatar. The law provides for joint worker and employer consultative committees to be set up for the purpose of discussing working conditions. The government intervenes in these consultative committees by requiring prior approval by the Ministry of all committee members and by appointing a government delegate to observe meetings. Collective bargaining is also prohibited and wages are set unilaterally by the employers.

Severe limitations on the right to strike

The government recognises the right to strike, but places severe limitations on it. Civil servants and domestic workers may not strike. No worker in a public utility, health or security service may strike if it would harm the public or cause damage to property. In the private sector, although most workers have the right to strike, they may do so only after a conciliation board has ruled on the dispute, which effectively neutralises the purpose of striking. In contrast, under the same conditions, employers are authorised to lock out or sack workers.

Changes ahead?

In 2001, the government of Qatar asked the ILO for technical assistance to review its legislation in order to bring it into line with international labour standards.

RIGHTS IN PRACTICE

Migrant workers

Three-quarters of the workforce is composed of migrant workers. Most work in the private and semi-private sectors, where they often fall victim to abuse from their employers. Migrants can do nothing about this, as they depend on their employers for their work permits.

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Saudi Arabia

POPULATION : 19,600,000 / CAPITAL : Riyadh / ILO CORE CONVENTIONS RATIFIED : 29-100-105-111-182



Trade unions, strikes and collective bargaining are still banned. Progressive legislation was introduced during the year to allow the creation of Workers' Committees, but with limited powers. Also, a journalists' association was set up, with narrow attributions. These steps can, however, be considered an improvement in the very conservative Kingdom.

THE LEGISLATION

No basic rights

Trade unions and strikes are banned by royal decree. Whoever tries to form a union can be dismissed, imprisoned or (in the case of migrant workers) deported. Protest action is made difficult by the heavy limitations on the freedom of association. Public demonstrations of a political nature are prohibited, for example. Collective bargaining is also prohibited. Salaries are determined by employers, according to the nature of the work and the nationality of the worker. There is no minimum wage.

Workers' committees

In April 2002, new labour rules were introduced to allow both Saudi and foreign workers established in the Kingdom to set up Workers' Committees in workplaces where more than 100 workers are employed. These Committees aim at "finding means of dialogue between the employees and employers in order to improve the level of work performance and eliminate technical and material obstacles impeding that.

Allowing the creation of any kind of workers' organisations is a significant step forward, but the draft regulations for these committees fall far short of international labour standards.

Limited powers

Only one committee can be formed in each enterprise employing more than 100 workers, with between three and nine members. Only Saudi workers, at least 25 years of age, having worked for more than two years at the same enterprise, may be members of a Workers' Committee. The main tasks of the committees are limited to providing recommendations on issues such as the improvement of working conditions, health and safety standards and training, as well as increasing productivity. The Minister and the management both have the right to send a representative to meetings of the committees. Minutes of the meetings are to be submitted to management.

According to the Rules relating to the Workers' Committees, the Minister approves the incumbent members and substitute members of the Committee, who are chosen by the workers. At its first meeting, the Committee elects its President and Reporter, and decides on the other members' positions, and keeps the Minister informed.

RIGHTS IN PRACTICE

Associations

A regional collective of taxi drivers has existed for several years, and professional associations grouping computer experts, economists and engineers also exist. Their scope of action is very limited, however.

Work stoppages

Despite the ban on strikes, there have been occasional work stoppages in recent years, usually to protest at non-payment of wages.

In August 2001, 160 Egyptian and Asian employees went on strike at the Badra biscuit factory in Jeddah, in protest at the company's failure to pay outstanding salaries totalling millions of riyals for seven months. The workers filed a complaint at the Labour Office, which found in their favour, ordered the owner of the company to pay outstanding back pay in full, fined him 4,000 riyals, and recorded his specific violation – issuing dud cheques – at the Jeddah Chamber of Commerce and Industry. As a result, the employer simply disappeared. In January 2002, the workers launched a last-ditch appeal to the Court of Appeals.

Plan to reduce foreign workforce

Over 60% of the workforce is still foreign, working primarily in the private sector. Under its "Saudiisation" policy, the government actively discourages the employment of migrants, and is seeking to replace foreign workers with Saudi workers. An estimated 20% of the Saudi workforce is unemployed, and the government has taken measures to prohibit employment of foreign workers in certain occupations or sectors, such as the grocery trade, and to fix quotas in others. A further 34 occupations were to be included in the list of occupations prohibited to aliens. In April 2002, the government decided to accelerate the replacement of migrant workers by Saudi citizens in the civil service, in particular in higher education. Expatriates with more than 10 years' service in Saudi universities were to be retired, while those with less than 10 years' service were to be transferred to other sectors. Other measures under study included the introduction of a minimum wage in the private sector, which would discourage employers from recruiting low-paid migrants, and imposing a new tax on migrant workers' income. The current Saudi Development Plan for 2000-2004 aims to create 817,000 jobs for jobless Saudi citizens, 782,000 of which would be in the private sector. At the same time, 471,000 expatriates would be replaced by Saudis.

Abuse of migrant workers

Abuse of migrant workers, particularly women, is widespread. This includes restrictions on their movement, forced confinement and lack of food, as well as physical and sexual assault. It is not unusual for employers to refuse to pay wages and other entitlements owed to their employees. The numerous reports of serious cases of abuse towards domestic migrant workers continued during the year. Some have even been killed in the past for trivial motives. Some countries have prohibited their citizens from accepting work in Saudi Arabia.

EVENTS IN 2002

Journalists' association: limited attributions

In February, a circular of the Ministry of Information authorised for the first time the creation of a journalists' association, aimed at defending journalists' interests and welfare. The association is open to foreign journalists who work in Saudi Arabia. Members of the association are bound to strive in favour of the Kingdom's development and to call on citizens to collaborate with the government to safeguard the nation's unity and stability. The association is kept strictly under Ministry control: the Ministry of Information has the right to be represented at the association's general meeting, and to oppose its recommendations or decisions. The Ministry also has a right of inspection of the association's accounts. The association cannot receive foreign funding or aid. The circular also concerns the adoption of a new law relating to the organisation of press enterprises, according to which a press organisation will only be authorised provided that it employs a minimum of thirty Saudi nationals and that its editor is at least 30 years of age.

The journalists' association later requested to be registered as a workers' committee, but has been told that it does not fulfil the conditions.

Syrian Arab Republic

POPULATION : 15,800,000 / CAPITAL : Damascus / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138



The government has removed a few of the legal limitations on trade union rights, such as the ban on strikes in the agricultural sector and the power of veto over collective agreements. It is still not possible to form free and independent unions, and strike restrictions remain.

THE LEGISLATION

Trade union monopoly

The law outlaws independent trade unions. All workers' organisations must be affiliated with the country's sole official trade union federation, the General Federation of Trade Unions (GFTU), which is strictly controlled by the ruling Ba'ath party. Acting simply as a cog in the political machine used to control workers, the GFTU controls most aspects of union activity and determines which sectors or areas of activity can have a union or a federation. It has the power to disband the executive committee of any union.

The single union system also applies to associations of craftsmen and peasants' cooperatives.

Only workers with Arab nationality can stand for election to trade union office.

Severe strike restrictions

The right to strike is severely restricted by the threat of punishment, fines and jail terms of up to one year. Strikes involving more than 20 workers in certain sectors and any strike action which takes place on the public highways or in public places, or that involves the occupation of premises, are punishable by fines and prison sentences. Civil servants who disrupt the operation of public services risk losing their civil rights. Forced labour can be imposed on anyone who causes "prejudice to the general production plan".

No unions in EPZs

There are no trade unions in the seven export processing zones (EPZs), and employers there are not subject to any legislation on hiring or firing workers.

Some restrictions lifted in 2000

At the end of 2000 the government repealed some of the provisions that contravene freedom of association, the right to organise and the right to collective bargaining:

- The provision that foreign workers can only join a union if there is a reciprocal agreement between their country of origin and Syria has been removed.
- Workers no longer need to have been union members for over six months before standing for election to

union office.

- The broad powers of the Ministry of Labour and Social Affairs to intervene in matters of trade union finance have been removed.
- The ban on strikes in the agricultural sector has been lifted, together with the penalties for striking, ranging from three months' to one year's imprisonment.
- The Ministry no longer has the power to refuse approval of a collective agreement or quash any clause liable to harm the country's economic interests.

RIGHTS IN PRACTICE

Collective bargaining rights have not yet been practised in any meaningful way. Workers dare not exercise the right to strike, given the heavy penalties foreseen and memories of past repression.

United Arab Emirates

POPULATION : 2,600,000 / CAPITAL : Abu Dhabi / ILO CORE CONVENTIONS RATIFIED : 29-100-105-111-138-182



No trade union rights are recognised.

THE LEGISLATION

Trade unions and strikes prohibited

The law does not recognise freedom of association, the right to collective bargaining and the right to strike. Wages are fixed in individual contracts, which are reviewed by the Labour Ministry or, for domestic staff, most of whom are foreign nationals, by the Immigration Ministry.

Individual workers' claims can be taken to the conciliation boards controlled by the Labour Ministry or to specially designated courts.

Labour legislation does not cover public service workers, domestics or anyone working in the agricultural sector. Employees in the latter two sectors are particularly exposed in the event of a dispute with their employers.

RIGHTS IN PRACTICE

Migrant workers exploited

According to figures for 2001, migrants account for 91% of the workforce. They risk expulsion if they try to organise trade unions or take strike action. Generally hired for three- to five-year periods, they often work in very harsh conditions. A recent study by the Ministry of Labour and Social Welfare revealed that garment workers, hired from India, Pakistan, Sri Lanka and the Philippines, are among the lowest paid, and have to endure poor standards of accommodation and sanitation.

Domestic employees, especially women, are often mistreated. Theoretically, they can turn to the courts, but more often than not, legal fees and the fear of reprisals or even expulsion deter them from taking any official action.

West Bank and Gaza



The new Palestinian Labour Code came into force in January. In November, the Palestinian General Federation of Trade Unions (PGFTU) became the first ICFTU-affiliated Palestinian trade union. However, given the dramatic situation in the territories, it was virtually impossible to carry out any trade union activity.

THE LEGISLATION

The new Palestinian Labour Code entered into force on January 8, 2002

The new law was the subject of extensive tripartite consultations, and is expected to considerably improve the protection of trade union rights. It will, for example, allow public sector employees to organise and to bargain collectively at sectoral level.

A public service law that came into force in 1998 regulates employment benefits and salaries for public servants, including postal workers, teachers and doctors.

RIGHTS IN PRACTICE

The lack of a legal and institutional framework for industrial relations has meant that social dialogue and tripartite activities have been sporadic

EVENTS IN 2002

Background

In an interview at the ICFTU headquarters on January 21, Shaheer Sae'd, General Secretary of the Palestinian General Federation of Trade Unions (PGFTU), described the evolution of the situation in the Palestinian occupied territories. 400,000 workers had been unemployed for over a year, out of a working population of 845,000 people. Palestinians with jobs in Israel did not have the right to go to work, because the towns and villages had been sealed off by the Israelis. The West Bank was divided into 63 separate zones and the Gaza strip into six zones. This was reinforced by 10,000 military checkpoints. 7,000 homes and buildings had been destroyed, including the airport, and the infrastructure of the Palestinian State had been ruined.

According to an ILO report based on the findings of a mission to the Palestinian occupied territories in April and May, the percentage of the population living in poverty (less than US\$ 2 per day) increased from 21 per cent in 1999 to 33 per cent in 2000 and 46 per cent in 2001, and it was thought that it might reach 62 per cent in 2002.

Trade union leader detained

On January 9, Shaheer Sae'd was arbitrarily stopped at a checkpoint for four and a half hours when he was on his way to the ceremony for the new Palestinian Labour Code.

Trade union headquarters bombed out

On February 17, attacks by Israeli F-16 fighter aircrafts and Apache helicopters destroyed nearly 40% of the PGFTU headquarters in Nablus City, a building which had been constructed with the support of the international labour movement. Miraculously, no trade unionists were killed in the attacks.

Trade union office attacked by Israeli army

In April, the Israeli army attacked the PGFTU Rammalah office, destroying infrastructure, and removed three computers, telephones and files.

Trade unionist prevented from travelling

In October, the PGFTU reported that the Israeli military had prevented Ms. Anan Qadri, a PSI official, from travelling via Jordan to Beirut in order to attend a course organised by PSI. After spending two days trying to pass to Jordan, during which time she was interrogated twice, she had to return home.

**First ICFTU-affiliated
Palestinian trade union**

In November, the PGFTU, which counts 215,000 members, became an ICFTU affiliate. Any trade union activity in the occupied territories is virtually impossible, given the civil war context. The PGFTU, which committed itself to strive for peace, called for the reopening of the negotiations in favour of peaceful coexistence between the two States.

Yemen

POPULATION : 17,600,000 / CAPITAL : Sana'a / ILO CORE CONVENTIONS RATIFIED : 29-87-98-100-105-111-138-182

**A new labour law came into force.****THE LEGISLATION****New labour law**

A new labour law came into force at the end of 2002. It meets most of the provisions of ILO basic standards. However, it still contains several restrictions.

**Single trade union
system**

The law recognises the right to organise, but imposes a single trade union system. Civil servants may not join trade unions, nor may migrant workers. Trade unions must be officially registered.

**Strict conditions on the
right to strike**

The law recognises the right to strike, but imposes strict conditions. Strikes may only be called after the completion of dispute settlement procedures, and disputes may be referred to compulsory arbitration at the request of only one of the parties, in which case the strike can be suspended for 85 days. The strike call must be signed by two-thirds of members and must concern more than two-thirds of the workforce of the employer concerned. Three weeks' notice of the intention to strike must be given.

Strikes are banned in some sectors, such as ports, airlines and hospitals.

RIGHTS IN PRACTICE

In practice, other trade unions exist outside the GFWTU structures. Strike action does take place, without reprisals, and can lead to the satisfaction of workers' demands.

**Anti-union
discrimination**

However, the GFWTU reported that there are still cases in which the authorities arrest and detain trade unionists for their trade union activities. The lack of protection in law for trade unionists is felt through the discrimination against them, which takes the form of transfers, demotions and dismissals, particularly in the private sector.

**Employer resistance to
organising and
bargaining**

Many private sector employers refuse workers the right to organise, while in both the public and the private sector, many employers do not allow trade unions to negotiate collective agreements, Al-Yamania Airlines being a case in point.

**Union property still
in state hands**

The property of the GFWTU was confiscated following the 1994 civil war and taken over by the government, the police and the ruling party. Much of it has still not been returned.

Appendix

ILO CONVENTIONS ON FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE, 1948 (N° 87)

- Article 1** Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.
- Article 2** Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
- Article 3**
1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.
- Article 4** Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.
- Article 5** Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.
- Article 6** The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.
- Article 7** The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.
- Article 8**
1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
 2. 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.
- Article 9**
1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
 2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.
- Article 10** In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.
- Article 11** Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

ILO CONVENTION ON THE RIGHTS TO ORGANISE AND COLLECTIVE BARGAINING, 1949 (N° 98)

- Article 1**
1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
 2. Such protection shall apply more particularly in respect of acts calculated to:
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.
- Article 2**
1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.
- Article 3**
- Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.
- Article 4**
- Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.
- Article 5**
1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
 2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.
- Article 6**
- This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.