

Freedom of association and the effective recognition of the right to collective bargaining

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Freedom of association and the effective recognition of the right to collective bargaining

Armenia

Government

Means of assessing the situation

Assessment of the institutional context

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), were among the international labour Conventions submitted two years ago by the Employment Department of the Social Security Ministry to the Ministry of Foreign Affairs. They will be subsequently brought to the National Assembly for ratification.

The Employment Department of the Social Security Ministry has received written notification from the Ministry of Foreign Affairs stating that the two Conventions have been examined and approved by Government. The procedure for their ratification has therefore started.

The choice of Conventions to be considered for ratification coincided with the drafting of the new Labour Code. Their provisions will be included in the Labour Code thereby making it conform to international labour standards.

Bahrain

Government

Means of assessing the situation

Assessment of the institutional context

The principle is recognized in the form, and within the limits provided for, in the legal system of Bahrain.

The principle is recognized in the Constitution, labour laws and executive decrees.

Workers are represented by the General Committee for Bahrain Workers; employers are represented by the Bahrain Chamber of Commerce and Industry.

The requirements for establishing employers' or workers' organizations are set out in the framework of regulations established by the Government, not by prior authorization.

As regards employers' and workers' organizations, cooperation exists to ensure the fulfilment of common interests.

The exclusion of categories of groups from the application of the principle is a matter that is determined by the rules in force, as stated earlier.

The means of implementing the principle are administrative and legislative as stated earlier.

Assessment of the factual situation

The General Committee of Bahrain Workers is considered to be the representative workers' organization. It is recognized domestically and abroad at international, regional and Arab conferences, as being representative of the workers of Bahrain. Under the Labour Code and the social security insurance legislation, there are also the Higher Council for Vocational Training, tripartite councils and committees in which the Government and employers are represented.

At present, the Government is supporting workers' efforts to form trade unions of their own.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government endeavours to support the labour organization and increase its role, activities and contributions to realize workers' interests, including involving the labour organization in the formulation of labour policies and legislation. The Government also provides material support to the Workers' General Committee. The Workers' General Committee is encouraged to take part in the drafting of labour legislation and policies as well as in consultative councils such as the *shura* (Consultative) Council. It is encouraged to play a role in many labour activities, in the creation of a centre for workers' education, and supporting it materially with books, reference material and publications, as well as in developing and modernizing labour legislation.

The International Labour Organization and the Arab Labour Organization take part in the efforts of the Committee and its activities.

The Government's objectives are to enhance workers' productivity, promote their interests and improve their socio-economic conditions.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of the report were sent to the General Committee of Bahrain Workers and the Chamber of Commerce and Industry.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Trade unions are banned. Only government-controlled Joint Consultative Councils are authorized.

The partially suspended 1973 Constitution recognizes the right to organize, but the 1981 Ministerial Orders make no reference to this right and only authorises the establishment of Joint Consultative Councils (JCCs). After suspending the 1957 Trade Union Act, the Labour Code of 1976 states that consultative councils composed of workers' and employers' representatives may be formed in all private and public companies that employ more than 200 people.

However, the Government must give prior approval before a JCC can be created. In practice, JCCs have been set up in 20 large companies. Consultative councils were created in the textile sector for the first time in 1999, unlike in 1997 when the Government rejected the application.

The workers' representatives on these councils (four workers' representatives for four employers' representatives) are elected, but the elections are organized by company management. The Labour Ministry reserves the right to prohibit any worker from standing in elections to the joint consultative councils.

The JCCs represent the interests of workers in talks with management, in particular with regard to wages; but their role is solely advisory and they have no real bargaining power.

Created in 1983 to coordinate and supervise the JCCs, the General Committee of Bahraini Workers (GCBW) has 11 executive members elected by workers by secret ballot. This Committee is controlled by the Government and cannot recruit members or charge membership fees. Its rules of procedure have to be approved by the Labour Ministry and it has no administrative autonomy or freedom to engage in political activity. The Government requires that a Ministry representative attends and supervises the GCBW's general assemblies.

In recent years the GCBW has asked the Government to reform the legislation to authorize trade union freedom. However, all such requests have been dismissed. [Comment of a complaint-like nature concerning the requests for legislative reform.]

The right to strike is not mentioned as such in the legislation, but the 1974 Security Act bans any action that could undermine existing relations between employers and employees or that could damage the country's economic well-being. This ban is backed up by penalties of up to ten years of imprisonment. There have been no major strikes in recent years but it has proven possible in the past to stage various forms of action, including wildcat strikes, without the Government intervening and these have had the required effect for the workers concerned.

One method often used by the authorities to prevent independent trade union action has been to imprison or remove trade unionists either by banishing them or stripping them of their nationality. [Comment of a complaint-like nature with respect to a trade union official and his family.]

Government observations on ICFTU's comments

With reference to the observations by the International Confederation for Free Trade Unions within the framework of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, the competent authority in the State of Bahrain states the following:

1. This communiqué is not new and has been presented earlier to the ILO Committee on Freedom of Association, and a reply was provided [copy of reply attached, not reproduced].
2. In February 2001 the people of Bahrain voted in favour of the adoption of the National Labour Code with a vast majority of 98.4 per cent. The Code has consolidated democracy and the principles of human rights that have been confirmed by the Constitution of the State of Bahrain, promulgated in 1973. It is worth recalling that paragraph 5 of the first chapter of the Code stipulates that, "the State ensures the right to set up civil, scientific, cultural, professional and trade union organizations".
3. In application of the abovementioned provision, the General Committee for Bahraini workers took the initiative to prepare a statute for the establishment of a genuine trade union for the workers of Bahrain and preparatory steps are being undertaken for the establishment of such a trade union.
4. In his address at the inauguration of the 18th Session of Gulf Cooperation Council (GCC) Labour Ministers, which took place in Bahrain on 9 October 2001, Mr. Juan Somavia, the Director-General of the International Labour Organization, praised the current democratic reforms in Bahrain, which include the establishment of trade unions.
5. During the visit of the Director-General of the ILO to Bahrain (October 2001), the GCC Council of Ministers of Labour and Social Affairs signed a plan of activities to be implemented during the biennium (2002-03) in cooperation with the GCC and the International Labour Organization. This plan includes a range of symposia and programmes aimed at raising awareness about the Declaration on Fundamental Principles and Rights at Work in the countries of the GCC, which include the State of Bahrain.
6. The State of Bahrain has ratified to date four fundamental international labour Conventions, namely:
 - Forced Labour Convention (No. 29), 1930;
 - Abolition of Forced Labour Convention (No. 105), 1957;
 - Discrimination (Employment and Occupation) Convention (No. 111), 1958;
 - Worst Forms of Child Labour Convention (No. 182), 1999.

The competent authority in the State of Bahrain is still considering the remaining fundamental Conventions in order to take the necessary steps.

7. In its efforts to develop its labour legislation, the competent authority in the State of Bahrain has prepared the new Labour Code, which takes international and Arab labour conventions into consideration.

Brazil

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the right to organize as well as the effective recognition of the right to collective bargaining is recognized in our country.

As regards freedom of association, article 5 (paragraphs XVII to XX) of the 1988 Federal Constitution states that:

XVII – full freedom of association exists for lawful purposes; it is prohibited for purposes of a paramilitary nature;

XVIII – the establishment of associations and, under the law, that of cooperatives, does not require authorization, and the State may not interfere in their functioning;

XIX – the obligatory dissolution of associations or suspension of their activities requires a judicial ruling, the former requiring a court hearing;

XX – nobody can be compelled to associate or to remain associated.

(...)

As regards the right to organize, the Constitution states the following:

Art. 8 – Freedom of trade unions or professional associations shall be permitted pursuant to the following:

I – the law may not require State authorization for the establishment of a trade union, with the exception of registration with the competent body. Public authorities shall be prohibited from interfering or intervening in trade union organization.

Union leaders enjoy employment security under the Constitution (article 8 (VIII)) and freedom to carry out their duties (Consolidation of Labour Laws, article 543 (6)). The second provision also protects workers from attempts by enterprises to engage in anti-union discrimination or to restrict the workers' right to join unions and take part in union activities. Such enterprises will be penalised.

It should also be noted that the Common Market of the Southern Cone (MERCOSUR) Social and Labour Declaration, signed by the Heads of States of MERCOSUR member States (Rio de Janeiro, 10 December 1998), deals in article 8 with freedom of association by employers and workers. Article 9 concerning freedom of association, protects workers against anti-union discrimination in employment.

On the right to collective bargaining, the Federal Constitution states the following:

Art. 7 – Urban and rural workers, as well as others who seek to improve their working conditions shall have the following rights:

(...)

XXVI – recognition of conventions and collective labour agreements.”

(...)

Under article 8 (VI), trade unions must participate in collective bargaining. Articles 611 to 625 of the Consolidation of Labour Laws define the nature of collective agreements and the rules to be observed when negotiating them.

The aforementioned MERCOSUR Declaration recognizes the right of employers and workers to negotiate and conclude collective agreements and conventions governing their conditions of work (article 10).

With the exception of members of the military, no category of employers or workers is denied the right to organize. This constitutional right extends to public servants (article 37 (VI)). The prohibition in relation to the military, which includes the armed forces, State and Federal District military service staff, military police and military fire fighters, is embodied in article 42 (5) of the Federal Constitution. It states: “Members of the armed forces may not join trade unions or strike”.

Despite the constitutionally guaranteed freedom of association and the right to organize (article 8 (I)), it cannot be said that there is complete freedom to organize in Brazil. The Constitution itself establishes in article 8 (II) and (IV), the monopoly of one representative union for each economic or occupational category and provides for the “confederative contribution”. The single trade union principle prohibits the establishment of enterprise unions.

The union structure is prescribed by law (Consolidation of Labour Laws, article 533 et. seq.). In order to form a federation, there must be at least five unions per territory and per economic and occupational category. Similarly, at least three federations are required to form a confederation.

Unions are free to affiliate to similar international organizations.

The Federal Constitution abolishes the need for State authorization to form a union (article 8 (I)). It requires only that the organization be registered with the “competent body”. The lack of a regulation to execute this provision led the Higher Court of Justice to decide that the competent body would be the Ministry of Labour and Employment. The Ministry checks to see whether the organization meets the requirements of a single union per territory and occupational category. It also keeps a database with union-related information drawn from the registry.

Article 8(I) of the Federal Constitution explicitly prohibits Government interference in trade unions.

Civil servants do not have the right to collective bargaining. The conditions of work and employment for civil servants are established by law (Federal Constitution, article 37) and consequently, there is no possibility for collective bargaining.

The Upper Labour Court in Case Law Guideline No. 05, endorsed the understanding that civil servants have no right to have their collective agreements and conventions recognized. Therefore, without a legal provision establishing that right, they cannot be involved in a collective dispute.

The labour legislation only establishes that a collective agreement or convention must be deposited, as a national or inter-state instrument, with the Secretariat for Labour Relations; they may also be deposited with the regional bodies of the Ministry of Labour and Employment. The agreement shall enter into force three days after it has been deposited (Consolidation of Labour Laws, article 614).

In a collective bargaining process involving Federal State enterprises, the Government, in accordance with Decree No. 3.735/01, instructs the enterprise to respect the parameters, criteria and indicators laid down in the Law governing collective bargaining, particularly those concerning the activities of enterprises, the wage and salary levels prevailing in the labour market, as well as the impact of salaries on public finance.

Labour inspection is one of the administrative means to guarantee that effect is given to the principle. The Federal Constitution establishes that the Union [federal State] has the right to “organize, maintain and carry out labour inspection” (article 21 (XXIV)). The Ministry of Labour and Employment, acting through the Labour Inspection Secretariat, organizes, maintains and coordinates the Federal Labour Inspection System. The Federal Labour Inspection System has about 3,200 inspection officials, now called labour inspection auditors who are assigned to the Regional Labour Delegations throughout the country. By visiting enterprises, the labour inspection auditors ensure that labour legislation, including collective agreements and conventions, is being respected. They may notify an enterprise, which has been found to be violating the law, so that remedial measures may be taken. They may draw up contravention notices, or even stop activities, or close the workplace where there is a serious risk for workers. The labour inspection auditors, besides their inspection duties, carry out other important activities, such as giving guidance about labour rights and mediating disputes between employers and workers.

The legal institutions responsible for the implementation of the principle of freedom of association and the effective recognition of the right to collective bargaining are the following.

- (a) There is the Labour Justice System to which workers can submit complaints if their rights have been infringed or threatened. It is responsible for conciliating or judging individual and collective disputes between employers and workers. It consists of the Upper Labour Court, the regional labour courts and the labour magistrates.

On several occasions, the labour courts and other bodies in the Judiciary have made statements about the principle. The decisions reaffirm the principle of freedom of association and the recognition of collective bargaining enshrined in the Federal Constitution, labour legislation and national practice. The Federal Supreme Court in Summing-up No. 197 provides that workers who represent the union may only be dismissed after an enquiry has established that they have committed a serious error. The Upper Labour Court also makes statements about the subject in Case Law Guideline No. 114 of SDI-I, providing for an enquiry to be held in the case of the dismissal of a union leader charged with having committed a serious error. The Upper Labour Court also declares null and void any clause in an agreement, accord or standard-setting ruling that obliges non-unionized workers to pay the confederate, welfare or other contribution (Standard-setting Precedent No. 119 and Case Law Guideline No. 17). There are also other Standard-setting Precedents and Case Law Guidelines of the Upper Labour Court on this issue [not specified];

- (b) Under article 128 of the Federal Constitution, the Office of the Chief Labour Prosecutor, which is an entity within the Office of the Chief Public Prosecutor of the

Union, has the task of “ensuring strict compliance with the Federal Constitution, laws and other instruments issued by the public authorities as part of their duties” (Consolidation of Labour Laws, article 736). It is the Chief Labour Prosecutor’s responsibility to defend people’s fundamental labour-related social and individual interests. Supplementary Law No. 75, of 20 May 1993, lists the following tasks among those assigned to the Chief Labour Prosecutor (article 83):

III – to promote civil public action within the Labour Justice System in order to defend the collective interests, when constitutionally guaranteed collective rights are violated;

IV – propose appropriate action to declare null and void any clause in a contract, collective accord or agreement that violates individual or collective freedoms or the essential individual rights of workers.

(...)

Assessment of the factual situation

With regard to freedom of association and the right to organize, data from the Ministry of Labour and Employment show that there were about 10,600 legally recognized unions when the State exercised control over the establishment and running of trade unions in Brazil (from 1931 to October 1988). In the post-constitutional period (1988-2000) it is estimated that about 6,600 unions have been formed. So, today, there are 17,200 union organizations representing occupational and economic categories.

As for collective bargaining, the Collective Bargaining Statistical System, which is organized and maintained by the Secretariat for Labour Relations of the Ministry of Labour and Employment, shows the following trends in the number of collective agreements deposited: In 1997 the number of collective agreements deposited was 9,826; 15,456 in 1998; 16,713 in 1999; and 18,080 in 2000. The same source shows that over the same period, the Regional Labour Delegations carried out 8,258 public mediation procedures in 1997; 10,213 in 1998; 9,700 in 1999; and 10,291 in 2000, to settle labour disputes.

These figures indicate that the mechanisms for reconciling the divergent interests of workers and employers independently have gathered momentum in Brazil, despite the restrictions in law and practice.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

In order to overcome the remaining barriers to complete freedom of association, the Government sent the proposed Constitutional Amendment No. 623/98 to the National Congress. It encompasses the following issues:

- freedom to establish unions irrespective of the occupational or economic category;
- an end to the monopoly of representation under the compulsory single union system, with provision for the drafting of a law that would be essential during the period of transition from the single union system to complete freedom to organize;
- the elimination of the so-called “confederative contribution”, which would be replaced by a contribution decided by the General Assembly;

- reform of the normative authority, maintaining the competence of the Labour Court for optional arbitration of collective economic disputes, at the joint request of the parties, and, in the event of cases of public interest, the possibility of applying unilateral dispute settlement procedures;
- establishment of extra-judicial proceedings prior to mediation and conciliation in individual disputes.

Once the proposed Constitutional Amendment has been passed, the country will enjoy full freedom to organize as provided for in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and will have the institutional machinery required to stimulate collective bargaining.

In recent years, the Executive has sent to the National Congress, several proposed amendments to the labour legislation in order to bring it more into line with the demands of an open and competitive economy. One common thread runs through these proposals: the emphasis on collective bargaining, which is regarded as the best means of determining conditions of work and settling disputes between employers and workers. Therefore, the proposals seek to guarantee that collective rights prevail over individual rights and to strengthen the role of the main actors in the labour relations field. Several of these proposals have already become law.

- Act No. 10.192 of 14 February 2001 which was originally submitted in the form of Temporary Measure No. 1.053 of 30 June 1995, deals with setting wages and other conditions of work through collective bargaining on the basis of available annual data. It also promotes mediation.
- Act No. 10.101 of 19 December 2000 regulates the ways in which workers, through collective bargaining, can share in the profits of the enterprise.
- Act No. 9.601 of 21 January 1998 provides for the conclusion of fixed-term contracts through collective bargaining in any activity undertaken by the enterprise or establishment. It also introduces a time-savings account (*banco de horas*) that will function according to the terms of conventions or collective agreements.
- Act No. 9.958 of 12 January 1998 authorizes enterprises and unions to set up prior conciliation committees. Established to resolve individual labour disputes, they consist of an equal number of members drawn from employers' and workers' representatives.

Other proposed amendments to legislation are still in the form of Temporary Measures, but they have the force of law (Federal Constitution, articles 62 and 84 (XXIV)). Among them, there is Temporary Measure No. 2.164, of 28 July 2001, (originally Temporary Measure No. 1.709) whereby, with prior authorization in a collective agreement, it is possible to establish part-time work arrangements. That system applies to recruitment for working hours of no more than 25 hours a week, and the suspension of the work contract.

Apart from the changes concerning the regulation of the labour market, in recent years, the Brazilian Government, through the Ministry of Labour and Employment and its Secretariat for Labour Relations, has developed, a broad programme of seminars, courses, training modules and similar activities. The purpose of the programme is, to discuss with the social actors, the models of collective agreements that would be the most suitable for

national circumstances, to train public officials and leaders of employers and unions, and to consolidate a culture of negotiation in labour relations. Activities under this programme have brought together members of the Labour Justice System, the Chief Labour Prosecutor, the Ministry of Labour and Employment, organizations representing employers, workers and civil society. In several of these initiatives, the Government had the cooperation of the International Labour Organization (ILO). It sent experts, suggested methods of work, and provided the fruits of its experience as well as financial resources. Among the more recent initiatives, the following seminars are worth mentioning, in particular:

- “Organization of work in the New Capitalism: flexibility and ethics”, held in the city of Belo Horizonte (Minas Gerais) in April 2000 with the support of the ILO, the Federation of Industry of the State of Minas Gerais and private enterprises;
- the “International seminar on collective bargaining”, held in the city of Fortaleza (Ceará) in August 2000, sponsored by the ILO and the Organization of American States (OAS); similar seminars were held in São Luís (State of Maranhão) in June 2001, and in Fortaleza in August 2000;
- the “Federal mediation and conciliation service course”, held in Rio de Janeiro in September 2000, with the support of the OAS;
- the “Course for the training of trainers in mediation”, held in Recife (Pernambuco) in March 2001, as part of the OAS Project – AE 054/99; and
- the “Course for the training of trainers in mediation” held in Belo Horizonte, in February this year [2001].

Furthermore, the Government, again through the Ministry of Labour and Employment and its Secretariat for Labour Relations, has published several handbooks relating to collective bargaining, mediation, and unionization, for example:

- *Manual do mediador* (A Mediator’s Handbook). 1996 (10,000 copies);
- *Manual de mediação de conflitos individuais* (Manual for mediating in individual disputes), 1997 (5,000 copies);
- *Manual de procedimentos para registro sindical* (Manual of procedures for union registration), 1997 (5,000 copies);
- *Núcleo Intersindical de conciliação trabalhista – NINTER: manual básico* (Inter-union core group for labour conciliation – NINTER: basic handbook), 2000 (6,000 copies);
- *Manual do mediador* (Mediator’s Manual), 2001 (in Portuguese) (2,000 copies);
- *Manual de orientação – Comissões de conciliação prévia* (Guide to the Prior Conciliation Commissions) 2001 (5,000 copies).

In the Government’s view, the main conditions for promoting and giving effect to the principles under consideration are the updating of labour legislation and the fostering of the culture of negotiation, which is becoming a main feature of labour management relations. Despite the considerable progress made with regard to freedom of association

and collective bargaining since the introduction of the 1988 Constitution, the country is still struggling with a union structure inherited from the former state-dominated labour relations regime. This makes it difficult to truly represent the interests of employers and workers, and to ensure that there is the voluntary settlement of disputes that may arise in a competitive economic environment.

Technical cooperation, particularly that offered by the ILO, has made an important contribution to the development of labour relations in Brazil. The Government considers that this cooperation, if maintained and intensified, must above all, focus on strengthening the capacity of public and private officials in the field of collective bargaining through training and seminars, the dissemination of negotiation methodologies and techniques, and the international exchange of information on successful experiences in the area of social dialogue.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

In accordance with Article 23 (2) of the ILO Constitution, this report was submitted to the following workers' and employers' organizations for their comments.

Employers' organizations

- National Confederation of Agriculture (CNA)
- National Confederation of Commerce (CNC)
- National Confederation of Industry (CNI)
- National Confederation of Financial Institutions (CNF)
- National Confederation of Transport (CNT)

Workers' organizations

- General Confederation of Workers (CGT)
- Single Central Organization of Workers (CUT)
- *Força Sindical* (FS)
- Social Democracy Union (SDS)

**Observations received from employers'
and workers' organizations**

The Government has forwarded to the ILO, the observations it received from the Single Central Organization of Workers (CUT).

Observations submitted to the Office by the Single Central Organization of Workers (CUT) through the Government

In compliance with the decision of the Governing Body (GB.274/2), the Government of Brazil has sent us its comments on the application of the principle of freedom of association in Brazil. Before proceeding to state our views regarding the application of the principle of freedom of association in Brazil, we wish to address some observations [to the Executive Director for Fundamental Principles and Rights at Work] concerning the manner in which the Government of Brazil, as a Member State of the Organization, deems that this regular obligation should be met.

On 22 August [2001], the Government of Brazil sent us its draft report, indicating 31 August as the deadline for receiving comments from the most representative organizations. [Reference to a ratified Convention.] The ILO deadlines are known to the authorities responsible for complying with this international obligation in accordance with document GB.274/2, which dealt with the follow-up to the Declaration on Fundamental Principles and Rights at Work.

[Reference is made to statements made in the context of discussions in established ILO supervisory bodies.]

Means of assessing the situation

Assessment of the institutional context

Despite the progress made towards freedom of association from a constitutional viewpoint, as was emphasized in the Government's report, the country is far from living under a legal regime of freedom of association and free collective bargaining. The restrictions on achieving a legal regime of full freedom of association are of a constitutional, legislative and administrative nature, as will be seen in the course of our comments, and give rise to serious and far-reaching practical implications for the functioning of Brazil's trade unions. Some of the most significant aspects are as follows:

1. *Monopoly of representation*

Brazil adopted the State corporative trade union model in the 1930s and that system was maintained under the 1988 Constitution. In this system, workers do not have the right to choose freely the union to which they wish to belong, because of the single trade union principle established by the Constitution. Consequently, there is only one legally recognized trade union to represent a particular industrial group or economic sector, referred to in Brazilian legislation as "categories". [Statement of a complaint-like nature about the origin of the model.]

In practice, workers have set up new organizations duplicating those already in existence, but they are encountering various legislative and administrative obstacles in addition to the abovementioned constitutional barrier. The following are a number of institutional obstacles to freedom of association and full collective bargaining:

1.1. *Constitutional control of the trade union monopoly*

In the light of the single trade union requirement laid down in article 8 of the Federal Constitution of Brazil, several decisions of the Superior Court of Justice have limited the

right to form trade unions by recognizing this monopoly of the pre-existing trade unions and by recognizing the Ministry of Labour and Employment's responsibility for registering trade unions. These rulings, in practice, enable the Executive (Government) to control the trade union registration system and the possibilities for forming new trade unions.

The legal concept of "occupational or economic category," and the way in which it represents industrial groups, were in fact determined by the administrative authorities within the Ministry of Labour up until 1985. Although the administrative organ entrusted with applying and interpreting that legal concept, namely the Trade Union Classification Commission, has been abolished, the Federal Supreme Court has maintained the concept by virtue of an interpretation. That Court held the concept to be incorporated in the text of the 1988 Constitution. This ruling was pronounced in the Security Order Review of 1992 (Decision No. 21-305-1 of January 1992). As can be seen, the judicial position adopted by these two Brazilian courts has given legal support to the Ministry of Labour's encroachment on freedom of association.

2. *Restrictions on collective bargaining*

[Statements of a complaint-like nature are made with regard to the system for settling labour disputes and the alleged non-observance of the principle of due process of law.]

By virtue of the authority granted under article 114 of the Federal Constitution of Brazil, the labour courts may, for example, order the stoppage of a strike and even impose large fines on striking unions. [Reference is made to observations by the ILO Committee on Freedom of Association in the framework of a particular complaint.]

The abovementioned constitutional authority is referred to in Brazilian legal literature on labour law as the standard-setting power of the labour courts.

To summarize, the Judiciary is vested with the power to intervene in a dispute without being so requested by the parties or at the request of one party only. [Reference is made to statements by the ILO Committee on Freedom of Association within the framework of a particular complaint.]

[Reference is made to statements by the Conference Committee on the Application of Conventions and Recommendations concerning the application of a ratified Convention.]

3. *Government control of trade union registration*

Following the reinforcement of the aforementioned ruling by the Constitutional Court, the Government has, through the Ministry of Labour and Employment, continued to control trade union registration as it had done since 1931. The exercise of such control is regulated by Decree No. 343 of 23 May 2000. It should be noted that the registration of corporate entities in Brazil generally takes place through the notarial system, i.e. by what are known as *cartórios* or notary's offices, which are supervised by the Judiciary and administered by private individuals. This system would not be incompatible with the application of the principle of freedom of association. However, with the continuation of the trade union monopoly, which is now established in the Federal Constitution, the Judiciary and the Government have maintained the requirement of both notarial registration with the *cartório* and registration with the Ministry of Labour and Employment.

Under the existing regulations, the Ministry of Labour and Employment grants a certain period during which any entity that so wishes may question the legality of a trade union that has applied for registration. Where a trade union has been the subject of such an objection, referred to as a “challenge” in the administrative regulations, registration will be refused. It should be emphasized that, regardless of the circumstances, the final word on the legality of a trade union in Brazil rests with the Judiciary. In practice, under this administrative mechanism, trade unions for which the registration is challenged, receive a legal “deathblow” to their previously granted civil existence. The legal consequences and practical implications of disallowed registration with the Ministry of Labour and Employment are described as follows.

4. *Inability to deposit collective agreements and contracts*

Once its registration has been challenged, a trade union will not be able to deposit any collective agreement or contract concluded with the employer. Several parallel trade union organizations, primarily those affiliated to this Single Central Organization of Workers, are experiencing difficulty in having their collective agreements deposited with the Secretariat for Industrial Relations in the Ministry of Labour and Employment.

5. *Refusal of registration in the General Taxpayers’ Register*

The Ministry of Finance maintains a register of taxpayers for fiscal purposes. All individuals and corporations are required to be entered in this register. Such entries are a prerequisite for various activities, such as opening a bank account and registering employees. In other words, they are necessary in order to perform any acts and to contract any obligations of a legal nature. The Ministry of Finance imposes the requirement that trade unions applying for registration, as taxpayers, must not have had their registration with the Ministry of Labour and Employment “challenged”.

Entry in the National Register of Corporations (CNPJ) is subject to prior registration with the Ministry of Labour and Employment, as laid down in article 39 (5) of Procedural Instruction No. 2 of the Director of the Federal Revenue Secretariat, a body within the Ministry of Finance. Once an entity’s registration with the Ministry of Labour and Employment has been challenged and refused, its civil existence will be denied ipso facto. The control of trade unions’ legal status through the Ministry of Labour and Employment consequently limits not only freedom of association involving trade unions stricto sensu but also freedom of association as a civil right. It can thus be seen that trade union freedom in Brazil is also controlled and restricted by the State by this means.

6. *Non-availability of administrative mediation of collective labour disputes*

The Ministry of Labour and Employment has a constitutional obligation to mediate collective labour disputes through administrative channels. Under Guidelines C.98, recently issued, mediators have ceased to undertake mediations involving trade unions for which registration with the Ministry has been challenged. [Reference is made to a complaint to the ILO Committee on Freedom of Association.]

7. *Denial of public servants' right
to collective bargaining*

The Federal Superior Court has ruled that the exercise of the right to strike requires the prior issue of regulatory provisions in constitutional legislation.

[Reference is made to matters relating to a ratified Convention and to observations by ILO supervisory bodies.]

8. *Threat to the legal protection
of trade union leaders*

Prior to the adoption of the 1988 Federal Constitution, the number of trade union leaders was determined by article 522 of the Consolidation of Labour Laws. The maximum number of leaders allowed for any given trade union under that article was 24, even with a broad interpretation of the given provision.

That article appears within a set of rules establishing the corporatist trade union model and the State's involvement in trade union organization. Following the adoption of the new Constitution, a substantial part of these articles was deemed to be repealed by virtue of interpretations of Brazilian legal doctrine and a number of Court decisions.

On the basis of those interpretations, Brazil's trade unions, with their *interna corporis* freedom restricted, undertook to amend their statutes, increasing the number of union leaders. [Reference is made to the application of a ratified Convention.]

It also served to extend trade unions' degree of representation and their capacity to act, since, for example, a trade union with a membership of over 50,000 was previously not entitled to have more than 24 leaders.

In a recent Decision (13 April 1999) rendered by the Federal Supreme Court, Second Division, in the case of a dispute involving an employers' association and trade union, the Constitutional Court held the aforementioned article to be incorporated in the text of the new Constitution. In practice, this means that Brazilian employers will, on the basis of this precedent, be able to question the functions of trade union leaders when their numbers exceed 24. The more serious aspect is that those leaders will lack the legal protection against dismissal that normally applies to union leaders.

9. *Restrictive confederative system provided
for in Brazilian trade union law*

Article 4 (1) of Ministry of Labour and Employment Decree No. 343, requires compliance with articles 534 and 535 of the Consolidation of Labour Laws. Those articles restrict the freedom of trade unions to establish general representative bodies. The criteria laid down in the articles prevent several federations and confederations of this Single Central Organization from continuing to operate. [Reference is made to statements made by the ILO Committee on Freedom of Association.]

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

It is true that the Government has presented a constitutional amendment bill for the elimination of the single trade union requirement under the Federal Constitution, which would make ratification of the Freedom of Association and Protection of the Right Organise Convention, 1948 (No. 87) possible. Work on this draft amendment was halted in December 2000 without being debated by the parliamentary majority, owing to a technicality. The Government of Brazil has therefore not fulfilled its obligation to submit Convention No. 87 to the Brazilian authorities for adoption and ratification.

All the recent legal changes made on the basis of government proposals either prevent or impede trade union action. This is the case with Act No. 9958/00, which provides for the establishment of the prior conciliation commissions, the purpose of which is to resolve disputes between workers and employers. The law, as adopted by the Government's parliamentary majority, does not guarantee minimum union protection to workers serving on these commissions nor does it provide for the control of the commissions by the trade unions. [Reference is made to matters relating to the application of two ratified Conventions.]

The Single Central Organization of Workers (CUT) hopes that the non-observance, in particular by the Government, of the principle of freedom of association and the right to collective bargaining in Brazil will receive attention and that these adverse conditions will be taken into account by the Governing Body when assessing the effect given to the Declaration on Fundamental Principles and Rights at Work.

**Observations submitted to the Office by the
International Confederation of Free Trade Unions
(ICFTU)**

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Trade union rights violations in Brazil are blatant. Employers and the police rival each other in their attempts to obstruct the work of the trade unions and put an end to demonstrations and strikes. Violence against workers in the rural areas reached alarming new heights.

The State is incapable of protecting workers' rights. The Constitution bans anti-union discrimination, but the authorities are incapable of applying this legislation. Trade unionists are frequently dismissed in total violation of their trade union immunity. According to the Upper Labour Court, 2 million complaints of such dismissals have been recorded every year for the last five years. By the end of the year, 2.5 million complaints (some dating back ten years) were still awaiting a final decision.

There is virtually no freedom of association in the public sector.

[References of a complaint-like nature are made with respect to anti-union action by the Government, including alleged unfair dismissals of public sector union officials

between January 1997 and March 2000.] Unfair dismissals and transfers, harassment, obstacles to union organizing, refusal to recognize unions, or to recognize the right to strike, are just a few examples of the daily lot of public sector trade unions. A ruling by the Supreme Court dating back to November 1996 declares all strikes by civil servants illegal. The government authorities are particularly reticent to enter into negotiations with the unions. At the beginning of May, workers in the central administration went on strike following the Government's refusal to negotiate with the trade unions, who were demanding a pay rise after a six-year wage freeze.

The police often use violence against demonstrators. The ICFTU has reported a great number of strikes or demonstrations repressed by the authorities, resulting in several cases in the death of demonstrators.

Violence against rural workers is also blatant. [Comments of a complaint-like nature are made with respect to the alleged suppression of strikes and action against rural workers and leaders demanding land reform].

The "Unicidade" system

Despite promises of change, the law on the "*unicidade*" system has not yet been repealed. It stipulates that there can only be one trade union per economic or occupational category in each territorial area. The law prevents the creation of trade unions at enterprise level, although in practice this is ignored. A compulsory trade union tax is levied on each worker by the Labour Ministry which distributes the funds to the national trade union federations according to their number of members. This tax coupled with the "*unicidade*" system accentuates competition between the unions.

Government observations on ICFTU's comments

1. General comments

The remarks concerning infringements of trade union rights are of a general nature. In most instances, no evidence has been offered to support them, so they are hard to answer.

As the Government has stated in reports submitted to the ILO, the principle of freedom of association and the effective recognition of the right to collective bargaining and the right to organize are solidly entrenched in Brazil. There are several provisions in the 1988 Federal Constitution that deal with this right. Article 5 provides for comprehensive freedom of association and establishes that the process must be free of any interference from the State authorities (subsections XVII to XIX). Article 8 deals specifically with the freedom to form professional associations or trade unions, makes the organizations thus formed independent of the State, and provides for security of employment for their leaders. Infra-constitutional legislation reinforces these precepts, by guaranteeing union leaders the freedom to carry out their duties (Consolidation of Labour Laws, article 543) and by safeguarding workers against any attempt by enterprises to engage in anti-union discrimination or to restrict their right to join unions and take part in union activities (Consolidation of Labour Laws, article 543 (6)). It should be noted that the Social and Labour Declaration of the Common Market of the Southern Cone (MERCOSUR), signed by the Heads of States of MERCOSUR member States, establishes freedom of association in article 8 and the right to organize in article 9, protecting workers against anti-union discrimination in employment.

There is freedom of association and the right to organize for all, with the exception of the military (Federal Constitution, article 42 (2)). The restrictive constitutional provision also extends to civil servants (article 37 (VI)).

Despite the wide-ranging constitutional and legal guarantee of the freedom to organize and unionize, the Government acknowledges that there is a barrier to the complete enjoyment of that right: the rule whereby there may be only one union for each occupational or economic category and also whereby everyone must pay a compulsory union-confederation contribution. These provisions are enshrined in the Federal Constitution, article 8, subsections II and IV. There are, furthermore, the legal requirements (Consolidation of Labour Laws, 533 et seq.) for setting up employers' and workers' federations and confederations.

In order to overcome these obstacles, the Executive submitted to the National Congress a proposed Constitutional Amendment No. 623/98, introducing freedom to form unions with no compulsory observance of occupational or economic affiliation, ending the monopoly of representation laid down in the mandatory single-union rule, replacing the confederative contribution with a decision by the general assembly, and revising the standard-setting power of the Labour Justice System. Had the proposed Constitutional Amendment been accepted, there would no longer have been a barrier to the full enjoyment of the union rights established in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). However, as a result of the legislature's regulatory provisions, the proposed Constitutional Amendment was shelved at the end of 2000.

In recent years, the Executive has submitted several other proposed amendments regarding labour legislation to the National Congress in order to encourage employment generation, speed up the regularization of those working in the informal sector, and rise to the challenges of an open, competitive economy. These proposals seek mainly to strengthen representative employers' and workers' organizations and to stimulate collective bargaining as regards adapting conditions of work and settling labour disputes.

There are several bodies responsible for monitoring compliance with the constitutional and legal provisions relating to freedom of association and the right to organize. The Ministry of Labour and Employment organizes, maintains and runs the Federal Labour Inspection System that now has a corps of some 3,200 inspection officials spread throughout the Federation. These officials are responsible for monitoring compliance with labour legislation, penalizing enterprises which are in breach of the provisions, giving guidance in labour matters and mediating disputes between employers and workers. Labour inspection statistics show that the number of violations of the right to form trades unions has declined.

If workers feel their rights have been infringed or threatened, they can go to the Labour Justice System, which comprises the Upper Labour Court, the regional labour courts and labour magistrates. These are the entities responsible for providing conciliation services or deciding on individual and collective disputes between workers and employers. These judgments and rulings reaffirm the principle of freedom of association enshrined in the Federal Constitution, labour legislation and national practice.

The latest statistical report of the Labour Justice System (2000) shows that the number of cases on which decisions were taken was 2,266,642 and those settled were 2,399,014. Contrary to what was suggested in the views submitted to the ILO, this figure refers not solely to those that are union-related, but to the total number of labour disputes.

Law No. 9.958, of 12 January 2000, that authorizes the establishment of prior conciliation committees in enterprises and unions, was introduced to settle individual labour disputes more quickly and thus relieve the pressure on the Labour Justice System.

The Office of the Chief Labour Prosecutors, which is part of the Office of the Chief Public Prosecutors of the Union, is there to defend inalienable labour-related social and individual interests.

In sum, the Government feels that in recent years noteworthy progress has been made as far as freedom of association and the right to organize are concerned. It does, however, acknowledge that there are still major obstacles to the full exercise of these rights, particularly in the union structure inherited from the old State-controlled system of labour relations. Social, economic and cultural inequalities restrict the general exercise of these rights. Technical cooperation offered by the ILO has helped greatly in developing a new model of labour relations in Brazil, one based on the independence of the parties and better negotiating skills. The Government has therefore decided to engage in further action of this kind even more intensively over the next few years.

2. *Comments on specific issues*

2.1. *Violence in the countryside*

Violence against workers in rural areas is mainly related to a high concentration of land ownership, disputes about access to land and demands for agrarian reform rather than to union issues, although it is true that workers' leaders are very often among the victims of such violence. Among the Government measures adopted to prevent land disputes, there is the Office of the National Agrarian Special Magistrate (*Ouvidoria Agrária Nacional*) that was established in March 1999. This body acts in cooperation with the Federal and State Prosecutors, the judiciary, the executive, social movements, farmers and the church.

The agrarian reform programme has made significant progress in recent years. The number of families settled was 42, 900 in 1995 and rose to 108,900 in 2000. Over the period 1995 to 2000, 542,300 families were settled. More than 19 million hectares were obtained for agrarian reform programmes between 1995 and October 2001.

2.2. *Freedom of association and the right to organize in the public sector*

As stated earlier, there is a broad constitutional guarantee of freedom of association for civil servants (article 37 (VI)) as well as of the right to strike within the legal limits (article 37 (VII)). Civil servants do not have the right to engage in collective bargaining, since their conditions of work are laid down by law (*ibid.*). The Upper Labour Court, in Case Law Guideline No. 5, approved the decision that, without a written legal provision, civil servants do not have the right to have their collective labour accords and agreements recognized.

2.3. *Dismissal of public servants*

Union leaders, from the time their candidatures have been registered, must be kept in employment for up to one year after the end of their term of office (article 8 (VIII)). This constitutional right also applies to State officials in the same position.

The views submitted make no mention of specific cases of the improper dismissal of union members in the public sector. If such a thing happened, then there was indeed a violation of the constitutional provision, and those affected would without doubt, have a right to return to their occupations by order of the competent authority of the system of justice.

2.4. *Judicial decisions*

The views submitted refer to a judgment of November 1996 by the Supreme Court (sic) which states that all strikes by State employees are illegal.

The Courts have, on several occasions, ruled on the subject under consideration but none of those statements corroborate the opinion expressed. The Federal Supreme Court, the highest court in the land, in a judgment handed down on 18 May 2001, ruled that the right to strike is not absolute, since the union must observe the legal parameters. The Upper Labour Court states, in Summing-up No. 189, that the Labour Justice System is competent to declare a strike legal or illegal. That opinion was also expressed in Standard-setting Precedent No. 29. The same collegiate body established, in Case Law Guideline No. 38, that the determining factor in declaring a strike legal is whether arrangements have been made to meet the population's pressing need for certain essential services.

“A strike is illegal when carried out in sectors that the law defines as essential to the community, if provision has not been made, as established in Law 7.783/89, to meet the basic, essential needs of the users of the service.”

2.5. *The single-union-per-category rule*

See the comments made on the views submitted concerning the rule whereby there can be only one union per category section “1. General Comments”, particularly the fourth and fifth paragraphs.

Canada

Government

Means of assessing the situation

Assessment of the institutional context

Federal

As previously reported, the principle of freedom of association and the effective recognition of the right to collective bargaining is respected and promoted in Canada.

The principle of freedom of association is enshrined in the Canadian Charter of Rights and Freedoms and reflected in the labour legislation of all Canadian jurisdictions.

Industrial relations legislation in all Canadian jurisdictions provides the framework for organizing and collective bargaining, which guarantee workers and employers the right to join organizations and to participate in their lawful activities. The provisions of the Canada Labour Code and equivalent provincial and territorial laws ensure not only that the right to organize exists, but also that it is protected.

Federal and provincial statutes contain provisions that prohibit unfair labour practices, including interference by workers' and employers' organizations in each other's internal affairs. There are mechanisms to ensure the enforcement of these protective measures.

Each jurisdiction has adopted labour legislation regulating collective bargaining in its jurisdiction and has established an independent labour relations board, with equal worker and employer representation, to administer the legislation. The legislation generally promotes free collective bargaining and recognizes the right to strike or lockout.

Measures built into the legislation set conditions for the exercise of strike and lockout rights, and at the same time encourage the parties to engage in meaningful bargaining to achieve an effective collective agreement which will meet their respective socio-economic needs. The importance of conciliation and mediation as a means for helping the parties to come to an agreement voluntarily is recognized across Canada.

Canadian legislation generally does not restrict the right of employers and workers to organize and to participate in collective bargaining. However, while the right to form associations to further interests is universal, not all workers and employers are covered by collective bargaining legislation. Groups such as members of certain professions, when employed in their professional capacities, agricultural workers, and privately employed domestics are excluded from coverage under the legislation in some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis.

The statutory definitions of "employee", "employer", and "bargaining unit", and the relevant case law developed on these issues, determine who can participate in collective bargaining. In the determination of who is an employee for the purpose of collective bargaining, jurisdictions generally exclude workers who exercise managerial functions or who act in a confidential capacity in matters relating to industrial relations, so as to avoid conflict of interest of domination of unions.

Bargaining agents and employers concerned have a duty to meet and bargain in good faith which is understood to mean that they will meet for the purposes of collective bargaining and make every reasonable effort to conclude a collective agreement. A complaint may be made by either party, to the appropriate labour board, where good faith bargaining is felt to be absent, in order to obtain a remedial order. The parties' right to negotiate collectively is thus guaranteed in all jurisdictions.

No prior authorization is required to establish an employers' or workers' organization, although they may be required to demonstrate that they are not dominated. Government intervention in their functioning is not authorized. There are no requirements for authorization of collective agreements by the Government.

Ontario

The principles of freedom of association and the effective recognition of the right to collective bargaining are generally recognized by the Government of Ontario. They are recognized in numerous Acts of provincial legislation including the following:

- Public Service Act;
- Colleges Collective Bargaining Act;
- Hospital Labour Disputes Arbitration Act;

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- Crown Employees Collective Bargaining Act, 1993;
 - Police Services Act;
 - Labour Relations Act, 1995;
 - Fire Protection and Prevention Act, 1997;
 - Public Sector Labour Relations Transition Act, 1997;
 - Public Sector Dispute Resolution Act, 1997;
 - Education Quality Improvement Act, 1997(amendments to the Education Act);
 - Savings and Restructuring Act (Schedule Q);
 - Labour Relations Amendment Act (Construction Industry), 2000;
 - Ambulance Services Collective Bargaining Act, 2001.

Some categories of workers are deemed to have unique situations of employment that are not conducive to the labour relations framework by which others may be covered. The primary rationale for their exclusion is based on the principle that there can be a conflict of interest with respect to some jobs, if a person is a member of a trade union. As a result certain workers are excluded from existing labour relations legislation (e.g. agricultural workers, provincial judges, certain professionals such as lawyers, doctors and managers).

There is nothing to prevent employees who are excluded from existing labour relations legislation from joining together to attempt to bargain with their employer to set wages and other conditions of work. In some instances, such as in the case of the Ontario Medical Association (OMA), these associations will represent their members as regards employment and other conditions. However, there is also no legislated source of recognition for these “collective agreements”.

No prior authorization is necessary to establish employers' or workers' organizations.

The Government cannot intervene in the functioning of an employers' or workers' organization.

In some instances employees are explicitly excluded from collective bargaining under certain labour relations statutes (as noted earlier), while in others it has been determined to be in the public interest to prohibit strikes and lockouts, by sending disputes direct to binding arbitration. Legislation may also limit the scope of issues up for negotiation under collective bargaining.

Categories of employees who are governed under labour relations legislation that is different from the Labour Relations Act (LRA) include, for instance:

- Ontario public service employees [under the Crown Employees Collective Bargaining Act];
- firefighters [under the Fire Protection and Prevention Act];

- workers in hospitals and nursing homes [under the Hospital Labour Disputes Arbitration Act]; and
- municipal and provincial police (under the Police Service Act and Public Service Act, respectively).

In the absence of a statute establishing collective bargaining rights, the rights of employees are governed by common law.

Legislation does not provide for the authorization of collective agreements by the Government.

Administratively, legislation and regulations (under the LRA in particular) provide protection against acts of anti-union discrimination and acts of interference.

Legally, complaints of unfair labour practices are presided over by an independent, quasi-judicial, administrative tribunal – the Ontario Labour Relations Board (OLRB). The OLRB hears and determines disputes that arise under several employment-related statutes.

Quebec

Since the publication of the last report from Canada, in September 2000, the National Assembly has adopted a number of laws on the application of principles related to the right to organize and collective bargaining. The information contained in this report is provided as part of the annual follow-up to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998.

Regulation of collective and industrial labour relations

At the end of June 2001, the National Assembly adopted an Act to amend the Labour Code, to establish the *Commission des relations du travail* (Labour Relations Commission) and to amend other legislative provisions (Bill No. 31, which has become chapter 26 of the Acts (2001)).

This Act aims essentially at bringing the Labour Code into line with laws regulating collective labour relations in other parts of Canada. It has four specific objectives:

1. The creation of a new labour authority.
2. The consideration of changes in the relationship between an employer and his employees.
3. Introducing flexibility in the rule concerning the transfer of an enterprise.
4. Technical changes.

Creation of a new labour authority: The Act establishes the *Commission des relations du travail*, thereby replacing the current three-tier structure for trade union certification – i.e. the certifying officer, the labour commissioner and, in order to be able to appeal against the decision of the latter, the Labour Court; as well as the two-tier structure (Labour Commissioner and the Court) for all other matters concerning the application of the Labour Code.

Following the example of similar bodies in other parts of Canada, the *Commission des relations du travail*, in settling disputes, shall adopt a more flexible approach than that adopted by judicial courts. It shall have the power to carry out inquiries, interventions and administrative reviews, and to issue mandatory and restrictive administrative injunctions, cease and desist orders, and preventive orders. The Labour Court shall be abolished and the decisions of the Commission shall be rendered within specific periods (60 days for certification requests and 90 days for other requests and complaints). Its decisions shall be final.

The establishment of the *Commission des relations du travail* does not mean that the *Conseil des services essentiels* (Board for Essential Services) (art.111.01 to 111.20 of the Code) will cease to exist. Its competence will be extended to include the civil service.

Consideration of changes in the employer-employee relationship: In order to allow the parties to assess the effects that changes advocated by the employer might have on the management of the company with regard to the legal status of its employees, the Commission shall have the power to express its opinion about the consequences of the employer's plans. In concrete terms, if an employer intends to carry out significant changes in work organization, which would, in the employer's opinion, deprive unionized employees of their status as employees to the advantage of the employer, then the employer in question should give the certified association advance notice to that effect.

The association, for its part shall submit within 30 days, a request to the Commission asking it to rule on the impact the proposed changes might have on the legal status of the employees concerned. The Commission shall have 60 days to express its opinion. Until the authority has expressed its views on such a request or the 30 days have expired, the employer will not be able to carry out the planned changes. After that period, however, the reasoned opinion of the Commission shall not prevent the employer from carrying out the plans.

Introducing flexibility in the rule concerning the transfer of an enterprise: The Act also covers situations in which the rule providing for the transfer of a certification and a collective agreement to the new employer, in the case of the sale or concession of a business, is applicable. It extends the protection of collective rights in the event of a sale by court order, as in the case of bankruptcy, or when the employer's decision might entail a change in the legal authority of the business, from the federal to provincial level (Quebec). In these two instances, the "*droit de suite*" ("real right(s)") has been applied since 15 July 2001.

In more specific terms, the Act provides for a prescribed period within which the certified association will have to request the application of the rule governing the transfer of enterprises. It will also allow the parties to collective bargaining to renounce, through a specific and limited agreement, the rule established by section 45 of the Labour Code in the case of a partial concession of the business. Where there is no such understanding, in the aforementioned circumstances, the collective agreement thus transferred shall expire, despite its original expiry date, at the latest 12 months after the transaction took place, except if the Commission considered that the concession had been carried out in order to break up the bargaining unit or to reduce the power of representation of the certified association.

Technical changes: The Act has changed a number of provisions of the Labour Code, in particular with regard to the arbitration system.

- There is the standardization of the maximum duration of an arbitration procedure, in the case of a dispute (three years).
- A new limit of 60 days has been introduced for the arbitrator in a dispute to render an award, and the arbitrator has the power to issue provisional orders to safeguard the rights of the parties.

These provisions came into force on 15 July 2001 at the same time as those which enable the Government to proceed with the first nominations of the president and the two vice-presidents of the Commission, in order to allow them to prepare for the operation of the institution before it is actually set up.

Provisions relating to labour relations after grouping the territories of local municipalities

The Act to amend the Act regarding municipal territorial organization and other legislative provisions (L.Q., 2000, c. 27) provides for various measures designed to bring together the territories of local municipalities. This Act enables the Government to create, before ordering the setting-up of a municipality, a Transition Committee responsible for finding an agreement with all certified associations representing employees of the local municipalities considered by the report, regarding ways of integrating these employees as members of staff of the local municipality that will be set up. The Act provides for the nomination of a mediator-arbitrator responsible for settling any disagreement between the Committee and the associations. The Committee can also suggest other measures aimed at ensuring the transition process, especially as regards procedures for integrating the other employees of the local municipalities considered by the report.

This Act was amended twice in order to specify the provisions concerning the effect of bringing together local municipalities on labour relations. The amended Acts are, the Act to Reform the Municipal Territorial Organization of the Metropolitan Region of Montreal, Quebec and Outaouais (L.Q., 2000, c.56), and the Act to Amend Various Legislative Provisions Regarding Municipal Affairs (L.Q., 2000, c. 25).

These Acts provide for rules enabling the various Transition Committees to proceed with the integration of employees in the new municipalities and the steps to be taken to determine the new bargaining units before the creation of new towns, which is planned for 1 January 2002. Finally, these Acts establish the mechanism for defining the first collective agreement to be signed in the new towns, by letting the existing collective agreements expire on 30 April 2002 at the latest, and by introducing a form of arbitration, based on the system that applies in the case of arbitration concerning a new collective agreement.

Besides the aforementioned Acts, there is an administrative codification of specific legislative provisions regarding labour relations after the reorganization of municipal territories.

Special laws on resumption of work

During the period covered by this report, the National Assembly adopted the Act Regarding the Resumption of Normal Public Transport Service in the Territory of the *Société de transport de la communauté urbaine de Québec* (Quebec Public Transport) (L.Q., 2000, c. 51). This Act, which came into effect on 15 December 2000, provides for the creation of a Mediation Board. Should the parties fail to sign a collective agreement with the assistance of this Board in the prescribed period, the Act also provides for

working conditions to be imposed through the arbitration of the final proposals. In fact, only the issue relating to the salary scale for the new employees was referred for arbitration in May 2001 and the award was rendered in June 2001.

Assessment of the factual situation

Federal

Year 2000: Labour force highlights

The Canadian labour force grew by 278,000 during the year 2000, numbering 15,999,200 by year's end. The national participation rate was 65.9 per cent, up 0.3 per cent from 1999.

Over the year, full time employment grew by 2.2 per cent, or 319,000 jobs, while part-time employment grew by 2.1 per cent, or 56,000 jobs. This represents slower growth of full time employment than that experienced in 1999 (2.8 per cent), but considerably greater growth in part-time jobs, which in 1999 had actually fallen. The year's employment growth was particularly evident in the sales and service sector (up 124,000, or 3 per cent) and the manufacturing sector (up 60,000 or 3 per cent).

In terms of self-employment, 2000 was the first year since 1986 that rates declined, and they fell substantially. Some 146,000 Canadians were own-account workers by the end of 2000, a decline of 6 per cent. About one-third of this decline can be attributed to a decline in the number of self-employed farmers by 50,000.

By contrast, the number of private sector employees grew by 376,000 by the end of 2000, an increase of 4 per cent. The public sector also experienced growth, with 89,000 new jobs by year's end. Most of this increase was provided by health care and social assistance services; public administration and education actually declined in 2000.

The unemployment rate ended 2000 where it began, at 6.8 per cent.

Freedom of association

A survey of union membership conducted by Human Resources Development Canada (HRDC) indicated that in 2001, there were 986 unions in Canada (219 national unions, 47 international unions, and 720 others) covering 4.111 million employees. Over the last 30 years, there has been a major shift away from international unions. Their representation dropped from 24.3 per cent of unions and 72.0 per cent of members in 1962, to 4.8 per cent of unions, representing 29.5 per cent of all union members in 2001. On the other hand, whereas national unions represented 11.5 per cent of unions and 23.5 per cent of members in 1962, they accounted for 22.2 per cent of unions and 65.5 per cent of all union members in 2001.

Table 1. Union membership in Canada, 1988-2001

Year	Union membership (000s)	Civilian labour force* (000s)	Non-agricultural paid workers* (000s)
1988	3 841	13 512	10 963
1989	3 944	13 779	11 340
1990	4 031	14 047	11 598
1991	4 068	14 241	11 679
1992	4 089	14 330	11 414
1993	4 071	14 362	11 303
1994	4 078	14 505	11 310
1995	4 003	14 627	11 526
1996	4 033	14 750	11 764
1997	4 074	14 900	11 802
1998	3 938	15 153	12 031
1999	4 010	15 418	12 295
2000	4 058	15 721	12 707
2001	4 111	15 999	13 146

* Statistics Canada, Labour Force Survey, catalogue 71F0004XCB.
Source: Table annexed to the Government's report.

The same annual HRDC survey reveals that union membership has increased from 3.8 million in 1988 to 4.1 in 2001 but this change has been slower than employment growth in general. As a result, union membership as a percentage of non-agricultural paid workers has fallen slightly from 35.0 per cent in 1988 to 31.3 per cent in 2001.

Table 2. Labour force survey estimates in Canada, 1987-2000

Year	Civilian labour force (000s)	Non-agricultural paid workers (000s)
1987	13 512	10 963
1988	13 779	11 340
1989	14 047	11 598
1990	14 241	11 679
1991	14 330	11 414
1992	14 362	11 304
1993	14 505	11 310
1994	14 627	11 526
1995	14 750	11 764
1996	14 900	11 800
1997	15 153	12 031
1998	15 418	12 295

Year	Civilian labour force (000s)	Non-agricultural paid workers (000s)
1999	15 721	12 707
2000	15 999	13 146

Source: Table annexed to Government's report.

Note: Labour force and non-agricultural paid employment data shown for each year are annual averages of the preceding year; data shown for union membership are as of January of the year shown and as reported by labour organizations.

Workplace information

In an effort to address better the evolving needs and interests of clients, the Workplace Information Directorate of HRDC, has launched two initiatives related to its analysis of the provisions of major collective agreements. The first initiative involves a review of the content and procedures related to the database of major collective agreements in Canada. It updates the breadth and scope of the analysis on collective agreement provisions to reflect better, the content of current collective agreements, including more recent innovative clauses. The second initiative refers to the implementation of a stratified sample of collective agreements to include bargaining units of 100 or more employees. These initiatives result from a series of recent client consultations, which identified the need for information both on smaller bargaining units and on emerging issues in collective bargaining.

Ontario

The labour climate in Ontario over the year 2000 can be characterized as stable and functioning in a robust economy with fairly low unemployment.

For the year 2000 as a whole, the Ontario economy created 184,000 net new jobs. This followed a record job gain of 198,000 in 1999. Ontario's jobless rate averaged 5.7 per cent in 2000, down from 6.3 per cent in 1999.

Between 1998 and 1999, average weekly earnings increased by 0.7 per cent, to reach \$651.55. Wage settlement increases for the private and public sectors rose from 1.7 per cent in 1998 to 2 per cent in 1999.

In 2000, the overall unionization rate in Ontario increased marginally to 28.2 per cent from 28.1 per cent in 1999. Public sector (Government, Crown corporations, government-funded schools and hospitals) unionization rates in 2000 were roughly 3.8 times higher than those in the private sector. Examples of unionization rates in 2000, broken down by various industries/sectors, are as follows:

Table 3. Unionization rates

Industry/sector	Unionization rate (%)
Education	70.0
Utilities	68.7
Public administration	66.9
Health care and social assistance	43.9
Construction	32.4
Manufacturing	31.1

Industry/sector	Unionization rate (%)
Accommodation and food services	7.8
Finance, insurance, real estate and leasing	5.5
Professional, scientific and technical services	4.1

Source: Table drawn up based on information in the Government's report.

The number of collective agreements in force and the total number of employees covered, fluctuate from year to year. However, it demonstrates a likely trend toward union mergers. Estimates show that between 1996 and 2000, the total number of collective agreements has fallen (from 10,004 to 9,735) while the number of employees covered has increased (from 1.48 million to 1.53 million).

As noted in the Ministry of Labour's *2001-2002 Business Plan*, 95.2 per cent of collective agreements were renewed without a strike or lockout last year, bringing Ontario's three-year average rate to 96.3 per cent.

As shown in table 4, it can be seen that the number of stoppages in 2000 was slightly higher than the previous five years average. However, it also shows that the impact, measured in part by the number of employees per work stoppage, is markedly lower. Impacts relating to the number of person days lost per employee were relatively unchanged. The average duration of work stoppages was two days less than the five years average – an improvement that is likely to have had positive economic effects for the employers concerned.

Table 4. Work stoppages

Year	# of work stoppages	# of employees involved	# of employees per work stoppage	# of person days lost	# of person days lost per employee involved	Average duration of work stoppages	Person days lost as a per cent of estimated working time
2000	146	5 267	379.0	649 730	11.8	39	0.05
Average over 5 years (95-99)	136.6	112 931	869.2	1 201 632	11.54	41	0.1

Source: Quarterly Review on Ontario Collective Bargaining Developments. First Quarter 2001. Office of Collective Bargaining Information. Ontario, Labour Management Services.

For historical data between the late 1980s through 1999, the Ministry of Finance's *2000 Ontario Economic and Fiscal Review* offers a considerable amount of Ontario labour force information, including employment figures by gender, occupation, age group and geographic region as well as average weekly earnings and wage settlement increases.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Federal

The Federal Mediation and Conciliation Service (FMCS) of the Labour Program of HRDC provides financial assistance for joint labour management initiatives aimed at improving, through innovative measures, the labour relations climate in enterprises under

federal jurisdiction. In addition, the FMCS has an extensive Preventive Mediation program which facilitates effective labour management relations through training in dispute settlement techniques such as, “relationship by objectives”, “interest-based negotiations”, “committee effectiveness training” and “grievance mediation”.

The Government of Canada actively promotes the principles and rights of the Declaration through the negotiation of labour cooperation agreements designed to promote and protect workers’ rights in the context of trade liberalization. Canada’s most recently negotiated agreement, the Canada-Costa Rica Agreement on Labour Cooperation, which is expressly based on the Declaration, will form the basis for future agreements of this kind.

The Canada-Costa Rica Agreement on Labour Cooperation (CCRALC) includes a commitment by its signatories to embody and provide protection for the principles and rights of the Declaration in their respective labour laws. Furthermore, it incorporates a mechanism to ensure the effective enforcement of these labour laws. The CCRALC also provides for technical assistance programs to improve the institutional capacity of departments of labour, which will contribute to the effective realization of the Declaration at the national level.

In December 2000, the Canadian International Development Agency (CIDA), the Canadian Labour Congress and members of the Labour International Development Committee, the North-South Institute, and HRCD, sponsored a Workshop on Core Labour Standards and Poverty Reduction: International Strategies. The workshop was convened to provide a forum to discuss issues surrounding the role of labour standards and unions in development, and to explore strategies and tools that development agencies might use in implementing core labour standards in developing and transition countries. Central to this discussion was the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

Ontario

The Government of Ontario continues to monitor labour relations legislation to ensure: that it balances the needs of employer, employees and their representatives; that it provides the parties with the tools to negotiate solutions to labour relations problems; and that mechanisms are in place to resolve disputes in a timely manner when the parties are unable to find mutually acceptable solutions.

The Ministry of Labour publishes an annual business plan that outlines its mission for the public and ministry stakeholders (to “Contribute to the prosperity of Ontario by advancing health, safety, fairness and productive relationships in the workplace and the broader community”). It also describes the initiatives of the previous years that have contributed to the advancement of that mission.

The Ministry of Labour participates in, and in some cases sponsors, labour relations networks such as the Toronto Area Industrial Relations Association (TAIRA), a group designed to foster constructive dialogue between unions and employers.

Representative employers’ and workers’ organizations to which copies of the report have been sent

- Canadian Employers Council (CEC)
- Canadian Labour Congress (CLC)

- *Confédération des syndicats nationaux (CSN)*

Annexes (not reproduced)

- Table 1 General Labour Force Statistics ('000s)
- Table 1a General Labour Force Statistics
- Table 2 Labour Force Participation Rates, by age and sex
- Table 3 Employment, by class of workers ('000s and per cent)
- Table 6 National/International Composition of Unions, selected Years
- Table 7 Work Stoppages, 1982–2000
- Figure 1 General Labour Force Trends, 1980-1999
- Figure 2 Union Membership in Canada, 1988-2001 [The Office incorporated this table in the report]
- Figure 3 Work Stoppages, 1982-2000

China

Government

Assessment of the factual situation

According to the latest information provided by the All China Federation of Trade Unions, at present, there are 103 million trade union members in China. By the end of 2000, 67,195 foreign-funded enterprises and 432,704 private enterprises had set up trade unions at the workplace, with a total membership of 5,921,202 and 7,889,900, respectively.

According to data provided by the Department of Labour Relations and Wages, in the Ministry of Labour and Social Security, by the end of 2000, the number of collective contracts signed and registered with the Ministry of Labour and Social Security exceeded 240,000. They covered more than 60 million workers.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

With the cooperation of the International Labour Office, the All China Federation of Trade Unions organized a workshop on training for wage negotiators in March 2001, and held a high-level symposium on International Globalization, Labour Standards and Social Dialogue, in May 2001.

With the cooperation of the International Labour Office, the China Enterprise Confederation undertook a national survey on the role of employers' associations in tripartism, from January to June 2001. Based on the results of the survey, assessment

seminars were held in Beijing and Shenzhen, covering a wide range of issues, such as ways in which to further build employers' associations in China, and to raise their status and improve their roles.

Representative employers' and workers' organizations to which copies of the report have been sent

The report was prepared jointly, by the Ministry of Labour and Social Security, the All China Federation of Trade Unions and the China Enterprise Confederation.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The official trade union exists to serve the interests of the State and carry out its policies. Independent trade unions are banned and anyone attempting to create one is either sent to prison, a psychiatric hospital or a forced labour camp. There is little respect for other fundamental workers' rights.

Freedom of association, guaranteed by the Constitution, does not exist in practice. The law states that this right is subject to the interests of the State and the Communist Party (PC). Only one trade union is recognised, the All China Federation of Trade Unions (ACFTU). It remains under the strict control of the Communist Party, which appoints all its officials. The ACFTU exercises a legal and heavily protected monopoly over all trade union activities. [Reference is made to the role of the President of ACFTU and to the organization itself.]

In recent years, the authorities have urged the ACFTU to set up unions in private enterprises, but there are still very few (less than 10 per cent of them are unionized). Where unions do exist, their congresses usually serve to rubber stamp agreements between management, the PC secretary and the union representative. In small enterprises, including foreign companies, it is not unusual for one person to hold all three posts.

Forced labour for challengers of the single union

The creation of a trade union must be submitted for the approval of the ACFTU. Independent trade unions are illegal, and discovery leads to repression. Those who try to create one are systematically detained under the "re-education through labour" system. It is a form of administrative detention; there is no need for a trial and no appeal. The police can decide on sentences up to a maximum of three years in a forced labour camp. In practice the sentences are renewed as often as the authorities see fit, as several cases have proved. Sometimes, a period of "re-education through labour" is followed by a trial and sentencing to a long period of forced labour. These procedures however are often secret, and the rights of the defence ignored.

[References of a complaint-like nature are made with respect to the alleged treatment of imprisoned independent trade unionists as well as the alleged members of their family.]

Strikes are banned, but on the increase.

The right to strike was removed from the Constitution in 1982 on the grounds that the political system had “eradicated problems between the proletariat and enterprise owners”. Yet more and more strikes have broken out in China in protest at the non-payment of wages, at bankruptcies resulting from mismanagement or the embezzlement of an enterprise’s funds, or to demand respect for the labour legislation. According to some sources, more than 100,000 strikes took place in 2000. ACFTU unions never call strikes. Rather, they are called to the rescue by employers or local authorities to urge workers to return to their posts. The Trade Union Law confers on them the role of mediators or intermediaries with employers when there is a strike. Mediation procedures exist in the event of a dispute, but the Labour Bureau tends to give preferential treatment to employers in these procedures. The number of strikes has forced the local authorities to desist from systematically resorting to violence to stop them (although it still happens), and to at least begin a discussion. In some cases, the authorities have released funds to alleviate the arrears in the payment of wages or social benefits denounced by the demonstrators. In others, they have resorted to force or threats to make the strikers go back to work.

No real collective bargaining

Theoretically, the right to bargain collectively is guaranteed by the first Labour Code to come into force in China, in 1995. According to the Government, the aim is to prevent abuses of workers’ rights in foreign-owned and joint-venture enterprises. The provisions on collective bargaining are not applied in practice however. Employment contracts are drawn up by employers who set wages and working conditions themselves, where they are not defined by law. There have been many examples of employers ignoring this new law.

[References of a complaint-like nature are made with specific reference to the alleged arrest and detention of trade unionists, between May and June 1989, and thereafter.]

Government observations on ICFTU’s comments

The Chinese Government has always been committed to the protection of workers’ fundamental interests and rights. On 24 September 2001, we submitted to the International Labour Office (ILO) our replies to the questionnaire for the follow-up to the Declaration. We provided detailed information on legislation and practice in China relating to the four categories of principles and rights.

It should be recalled that during the discussion of the Declaration, consensus was reached on the promotional nature of the Declaration. It had been further decided that the follow-up should neither constitute a complaints-based procedure nor double-scrutiny. It is therefore our understanding that the compilations of the annual reports will make reference to official information provided by member States rather than other resources and no individual cases should be involved.

The Chinese Government will not make any observations on the substance of the communication from the workers’ organization since it goes against the follow-up procedure.

El Salvador

Government

Means of assessing the situation

Assessment of the institutional context

Freedom of association is recognized in Article 7 of the Constitution, which provides for the people of El Salvador to have the right to associate freely and assemble peacefully and without arms for any lawful purpose.

No one may be forced to join an association. A person may not be hindered or prevented from exercising any lawful activity because he or she does not belong to an association. Finally, armed groups of a political, religious or trade union character are prohibited.

This article recognizes generally and fully the right to associate and the right to assemble. There are forms of organization with respect to which these rights are recognized in a special way (political parties, the Church, and workers' and employers' organizations).

In this sense, freedom of association is understood to mean the right to form groups or organizations in order to develop permanently, some lawful, peaceful activity, be it religious, political, economic, labour, social, community, cultural, etc. Freedom of assembly is the right to assemble peacefully, without arms and for a lawful purpose in any place at any time.

Freedom of association includes the rights of groups to obtain a legal personality, to be legally represented, decide their own regulations, to hold free internal elections and not to be arbitrarily dissolved. These are the minimum guarantees that enable organized groups to exist and develop.

Article 47 of the Constitution recognizes the right to organize, but only for private employers and employees, and employees of autonomous official institutions. It provides that *“private employers and employees, without distinction of nationality, sex, race, religion or political persuasion and whatever the activity or nature of their work, have the right freely to associate to defend their respective interests and form professional associations or unions. Employees of official autonomous institutions have the same right.”*

These organizations also have the right to a legal personality and to be properly protected in carrying out their functions. They may be dissolved or suspended only in the circumstances and according to the procedures provided for, by the law.

The special forms for the formation and functioning of professional and union organizations in the countryside and the city must not restrict freedom of association. All exclusion clauses are prohibited.

Members of union executive committees must be Salvadorian by birth, and during the period of their election and office, and for one year afterwards, they may not be dismissed, suspended for disciplinary reasons, transferred or see their working conditions deteriorate, except for a just reason agreed upon in advance by the competent authority.

Section 204 of the Labour Code recognizes the same right and lays down:

The following have the right freely to associate to defend their common economic and social interests, form professional associations or unions, without distinction of nationality, sex, religion or political persuasion:

- private employers and employees;
- the employees of official autonomous institutions.

The right to collective bargaining is recognized in Article 39 of the Constitution and sections 268 to 301 of the Labour Code, and the procedure for collective bargaining is regulated by sections 480 to 526 of the Labour Code.

Section 268 – The purpose of the collective labour contract and collective labour agreement is to regulate, while they are in force, the conditions governing individual employment contracts in the enterprises and establishments concerned, and the rights and duties of the contracting parties.

Section 301 – If the Director-General considers the application legitimate, he shall propose to the Ministry of Employment and Social Security that the contractual provisions on which it is based be declared obligatory as regards the economic activity concerned.

When the Director-General's proposal is accepted, the Executive Body of the Employment and Social Security Sector shall issue a Decree declaring compulsory the provisions on which the application is based. Such a Decree shall be considered contract law with respect to its employment effects.

The Decree shall be published in the Official Gazette and shall come into force thirty days after publication.

Section 480 – Collective disputes of an economic nature or over interests shall proceed in the following stages:

- (a) direct negotiations;
- (b) conciliation;
- (c) arbitration;
- (d) strike or lockout.

Section 526 – The provisions in this section shall apply to disputes backed by the majority union, where their purpose is indicated in section 528, paragraph 3.

Public employees are excluded from the right to form unions.

In order for a union to be recognized as a legally constituted body, a Ministry of Employment and Social Security decision to give it a legal personality is required, in accordance with section 219 of the Labour Code, otherwise it functions as a *de facto* organization.

Section 219 – In order that unions formed in accordance with this Code may have a legal existence, they shall submit to the Ministry of Employment and Social Security:

- a copy of the minutes of the founding assembly of the union, in accordance with the provisions of sections 213 and 214, which must be properly registered;
- two copies of the union's statutes, with certification of the minutes of the session or sessions at which they were approved.

Within five working days of submission, the Ministry of Employment and Social Security shall, except in the case of a union of self-employed persons, issue a letter to the employer or employers requesting them to certify that the founding members of the union are employees. The employers must reply within five working days of receiving this letter; their silence shall be taken as recognition of the status of employee.

Within ten working days of their submission, the Ministry of Employment and Social Security shall examine the statutes in order to determine whether they comply with the law. This examination shall not be necessary if the union submits statutes following an approved model in accordance with the provision of the preceding article.

If the Ministry of Employment and Social Security finds formal defects or violations of law, they shall be indicated in writing to the interested parties, who must rectify them within fifteen working days. If they do not do so, their application for legal personality shall be considered withdrawn.

If the Ministry of Employment and Social Security does not warn of anomalies or if these are rectified, legal personality shall be granted and the order issued to enter the union in the appropriate register.

If thirty (30) working days have elapsed since submission by a union of an application for legal personality, or since the interested parties rectified any defects indicated by the Ministry of Employment and Social Security without any decision being made, the union shall be considered registered with all the effects of the law and obtain a legal personality.

The decision that grants legal personality, or notes the silence on the part of the administration, or approves the statutes of the union in the Official Gazette, is at no cost to the union.

The union may, at its own expense, publish the decision or notice of the administrative silence in a newspaper with a higher national circulation.

The existence of the union shall be proved by publication of a notice and a document sent by the Ministry of Employment and Social Security specifying: the executive to which the statutes confer legal representation of the union; the number, date and volume of the Official Gazette in which the decision and statutes are published; and the number of the book, and entry of the union in the appropriate register.

Section 256 of the Labour Code provides that: the supervision of unions in order to ensure that they comply with legal requirements in the running of their activities shall be the responsibility of the Ministry of Labour and Social Security.

Financial supervision and control of unions shall be the responsibility of the Ministry of Labour and Social Security and the Ministry of the Economy through the appropriate body.

When exercising their supervisory functions, the public authorities shall refrain from any intervention that might limit the rights and guarantees which the Constitution and this Code accord to trade unions.

The public authorities shall refrain from any intervention that limits the rights and guarantees accorded to unions under the Constitution and this Code. However, the

Ministry of Employment and Social Security and the Ministry of the Economy shall have supervisory powers to ensure that unions comply with the law in the running of their activities.

The Labour Code recognizes collective bargaining to legally constituted unions, as indicated in sections 269 and 270 of the Labour Code.

Section 269 – The collective employment contract shall be concluded between one or more unions, on the one hand, and one employer, on the other.

Where the members of a union work for more than one employer, the union shall conclude an agreement with each of them, whenever they have to negotiate a contract.

Section 270 – Labour unions have the right to conclude and revise a collective contract. In order to exercise the right to conclude a collective contract for the first time, at least 51 per cent of the employees of the firm or establishment must be members. The same applies to employers who in their firm or establishment employ no fewer than that percentage of members of a union.

If in a firm or establishment there are employees belonging to two or more unions, the union which has obtained the percentage of members referred to in the previous paragraph, shall become the party to the contract, replacing the losing union, as having all the rights and duties under the contract and the law. This shall happen only when the wish to replace the union has been approved by the General Assembly, transmitted to the appropriate department of the Ministry of Labour and Social Security, within thirty working days of the date of the agreement.

Using the means it considers appropriate, the National Department of Social Organizations shall verify the points mentioned, and if it finds the document to be in order, it shall declare the capacity of the union concerned, and inform that union, the losing union and the employer, of the effects of the law. It shall also make the entry into the appropriate register.

The legislation reflects the provisions of the Labour Code, which states in section 287: “In order to be valid, any collective contract concluded with an official autonomous institution requires the agreement of the respective Ministry, having sought the opinion of the Ministry of Finance.”

An official autonomous institution that concludes such a contract must communicate the text of that contract to the Audit Court [*Corte de Cuentas*] of the Republic.

The Government of El Salvador guarantees the exercise of these rights through the National Department of Social Organizations and the Labour Inspection Directorate, which are set up in the administrative units of the Ministries responsible for assisting and advising employers and employees about the exercise of these principles and seeing that related employment legislation is in accordance with them.

The material means of applying the principle consist of training, consultancy, guidance, registers of labour inspection activities, inspections and the imposition of fines. They enable the Ministry of Employment and Social Security to require application of the principles.

The legal means are: the Constitution of the Republic; the Labour Code; the Law on the Organization and Functions of the Employment and Social Security Sector; collective employment contracts and the international labour Conventions ratified by El Salvador.

Assessment of the factual situation

In order to assess this situation, several graphs [not reproduced] are enclosed, which show:

- (1) unions and membership per year, and by sector (1996-2000);
- (2) unions by sector, according to union federation and sex (2000);
- (3) unions by category, membership and sex, according to union federation (2000); and
- (4) unions by category, membership and sex according to sector (2000).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Among the measures adopted to promote the principles and rights contained in Convention No. 98 is, in the first place, the tacit recognition at government level of the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference on 18 June 1998 at its 86th Session. This may be considered an adequate model for guaranteeing in practice the principles of freedom of association, the right to organize and effective recognition of collective bargaining, which are the subject of the Conventions that are regarded as fundamental.

This has made it possible to have better records of the number of unions active per category, number and sex of members, federations, economic activity and other indicators referring to various aspects considered in the multipurpose household census.

Similarly, it has been possible to provide labour inspectors with better training in appropriate methods of preventing industrial disputes and developing a more coherent institutional policy for preventing such disputes, and to favour the use of technical recommendations to strengthen the performance of the Inter-institutional Commission for the Handling and Prevention of Disputes in Enterprises in the Free Zones and Tax-Free Areas. They include:

- (1) establishing mechanisms for cooperation between the Labour Inspection Directorate and the General Labour Directorate as regards procedures for facilitating the formation of unions, bargaining and the conclusion of collective contracts with a view to determining equitable employment conditions;
- (2) drawing up a framework proposal for strengthening the role of the Ministry of Labour and Social Security, as having direct responsibility for the application of the principles and rights guaranteed by ILO Convention No. 98;
- (3) programming a general training course for civil servants in the Commission in order to facilitate and fulfil its role in preventing industrial disputes; and
- (4) drafting proposals and harmonizing them in such a way as to boost the effective functioning of the Inter-institutional Commission for the Handling and Prevention of Labour Disputes in Companies in the Free Zones and Tax-Free Areas.

Furthermore, it should be added that Article 7 of the Constitution of El Salvador guarantees freedom of association and assembly.

In the event of violation by the country's civilian or military authorities of any of the rights recognized by the Constitution of the Republic, the Law on Constitutional Procedures guarantees to all citizens the lodging of a protective appeal [*recurso de amparo*], the principal characteristic of which, is the power to suspend the act that is the subject of the plaintiff's complaint. This appeal is universal and may be invoked in any circumstance in which one or more constitutional rights legally protected by the State of El Salvador has been violated. Consequently, this appeal is also applicable in cases of violation of freedom of association, the right to organize and effective recognition of the right to collective bargaining.

The Government of El Salvador declares its willingness fully to support the objectives, principles and rights contained in the Constitution of the International Labour Organization and the Declaration of Fundamental Principles and Rights at Work and its Follow-up. The proposal is to achieve respect for, support, and practical application of those principles for the attainment of the purposes of the Alliance for Labour and, essentially, the Plan to Modernize the Labour and Social Security Sector.

Representative employers' and workers' organizations to which copies of the report have been sent

The Government intends to send a copy of this report to the following social partners shortly:

Government sector

- Ministry of Labour and Social Security (MTPPS)
- Ministry of the Economy (MDE)
- Ministry of Education (MINED)
- Ministry of the Interior (MDG)
- Ministry of Agriculture and Husbandry (MAG)
- Social Housing Fund (FSV)
- Salvadorian Institute for Vocational Training (INSAFORP)

Employers' organizations

- National Association of Private Employers (ANEP)
- Salvadorian Association of Industrialists (ASI)
- Chamber of Commerce and Industry of El Salvador
- Salvadorian Chamber for the Construction Industry (CASALCO)
- National Council for Medium and Small Enterprises of El Salvador (CONAPES)

- Union of Cooperatives resulting from Agrarian Reform: Producers, Shareholders and Exporters in the Coffee Industry (UCRAPROBEX)
- Sugarcane Producers (PROCAÑA)
- Association of Entrepreneurs in Small and Medium-sized Enterprises (AMPES)

Workers' organizations

- Federation of Trade Unions in the Construction Industry and Allied Activities, Transport and Other Activities (FESINCONSTRANS)
- Federation of Independent Associations or Trade Unions of El Salvador (FEASIES)
- National Trade Union Federation of Salvadorian Workers (FENASTRAS)
- Federation of Unions of Workers in the Food, Drink and Allied Industries (FESINTRABS)
- General Confederation of Unions (CGS)
- Trade Union Federation of Workers of El Salvador (FESTRAES)
- Federation of Trade Unions of El Salvador (FESTES)
- Salvadorian Single Trade Union Federation (FUSS-UNTS)

Observations received from employers' and workers' organizations

We have not yet received any observations.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violation of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The Government still refuses to ratify Convention No. 87, on the grounds of the supremacy of the Constitution of El Salvador (the superiority of the Constitution over international treaties). According to the authorities, by granting civil servants the right to form trade unions the Convention is in breach of the Constitution which only grants freedom of association to workers in the private sector and independent official institutions. The Government's reason for excluding civil servants from this right is simple: they provide essential services for the population and giving them this trade union right would enable them to go on strike and therefore place the population in danger. [Reference is made to statements by ILO supervisory bodies concerning the Government's position on organizing civil servants.]

There are a lot of other legislative restrictions. Many trade unions have also been critical of the complexity of the procedures for registration. They note amongst other things the need to obtain prior authorization to form a workers' organization, which is contrary to Convention No. 87. There are other restrictions on the right to strike, including the requirement that 51 per cent 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. Furthermore, the Labour Code prohibits trade unions from taking part in political activities. It also stipulates that members of unions' leadership bodies must be Salvadorian by birth. Trade unionists are also frequently dismissed or persecuted especially in the export processing zones. There are still only 32 trade unions in the 220 or more *maquiladoras* spread across El Salvador's eight EPZs, and there has been no collective bargaining between management and unions. Working conditions remain difficult and the workers, mainly women, are often mistreated. The unions also complain of resistance to strike action in the EPZs.

Government observations on ICFTU's comments

We would like to inform you of the following in connection with the comments by ICFTU.

The Constitution of El Salvador recognizes the principle of freedom of association in the broad sense, not only for employers and private sector workers, but also for workers in independent official institutions, without distinction as to nationality, sex, race or religious or political conviction, whatever their activities or the nature of their work. Basically, it allows them to associate freely, to defend their respective interests, through the formation of professional associations or trade unions.

An equivalent principle is expounded in section 204 of the Labour Code.

It is clear that if the Constitution of the Republic establishes that the exercise of this right is limited to employers and private sector workers, it means that the right cannot be exercised by workers in state services: the legal justification is that the State *offers essential services to the public, which cannot and must not be interrupted on any grounds.*

We find it difficult to understand why these persons are claiming that other legislative restrictions exist, and that most trade unions have criticized the complexity of the procedures and, in particular, the need to obtain *prior authorization* in order to establish a workers' organization.

It should be made clear in this connection, that, in our country, the legal framework regulating relations between employers and workers is the *Labour Code*, adopted on 23 June 1972. It is that Code, and not, as they appear to believe, a whim, that prescribes that, for recognition of a trade union as a legally established entity, a resolution must be issued by the Ministry of Labour and Social Security, granting it legal personality (Labour Code, section 219). Otherwise, it would function as a *de facto* organization.

Legally, a trade union exists from the moment that it is granted legal personality by the Ministry of Labour and Social Security and an instruction issued for it to be entered in the relevant register.

This is marked by the publication in the Official Journal of the resolution granting legal personality or by the prompt recognition [of the trade union] by the Ministry.

We are equally perplexed by the claim that trade unionists are being dismissed or persecuted, particularly in export processing zones, since section 248 of the Labour Code states that: “Members of boards or trade unions with legal personality or in the process of obtaining it shall not be dismissed, transferred, subjected to worse working conditions or suspended on disciplinary grounds during the period of their election or mandate, nor for a period of one year after they have left office, other than on proper grounds with the prior agreement of a competent authority”. Hence, trade union leaders enjoy legal protection against any disruption of their activities by the employer.

It should also be made clear that one of the main functions of the trade unions in El Salvador is to foster good relations between workers and employers on the basis of justice, mutual respect and compliance with the law; cooperate in improving working methods and increasing national productivity; and promote all activities that favour the protection of the economic and social interests and the development of their members. It is considered that, in order for these principles to be upheld, it is necessary and proper that unions should remain *independent* of political parties.

Apart from these allegations, there are certain restrictions on the right to strike, including a requirement that 51 per cent of an enterprise’s workers, whether union members or not, must support the strike.

In our country’s legislation, the term “strike” refers to a collective work stoppage by a group of workers in order to attain a specific objective.

Hence, the Labour Code recognizes strikes which have the following objectives:

1. the adoption or revision of a collective labour contract;
2. the adoption or revision of a collective labour agreement; and
3. *the defence of the workers’ common interests.*

The third objective, by its nature, indisputably involves the *Principle of Justice* that characterizes our Constitution and the Labour Code and other national subordinate legislation.

So how can it be claimed that there are other *restrictions* on the right to strike?

It would have been more accurate to qualify the so-called “restrictions” on which the allegations are based as *necessary requirements, under the provisions of the Labour Code*, for determining the legal or illegal nature of the collective work stoppage announced by a group of workers.

Under the Principle of Justice, if a strike has been decided by a majority of the workers of the relevant enterprise or establishment, it shall be applicable to all of the staff there (Labour Code, section 529).

Where the strike agreement is adopted by less than the absolute majority, the trade union and the workers participating in the conflict are required to respect the freedom to work of those who do not support the strike.

The strike is *presumed to be legal* unless it has been declared otherwise in a separate application (Labour Code, sections 527 and subsequent).

It is also alleged that the Labour Code does not require the re-engagement of workers dismissed illegally, which, in fact, totally contradicts the position established by sections 391 and 414 of the Code referring to conciliation between employers and workers, in which reinstatement is presented as one of the conciliatory measures to settle a labour dispute.

Reinstatement, as a conciliatory measure, may be offered by the employer, requested by the dismissed employee or proposed by the judge if the parties have not been able to reach agreement on settlement of the conflict.

Finally, it is claimed that members of trade union bodies must have been born in El Salvador, which is plainly incorrect since article 47 of the Constitution and section 204 of the Labour Code provide that “employers and private sector workers, without distinction as to nationality, sex, race or religious or political conviction, whatever their activities or the nature of their work, shall have the right to freedom of association in order to defend their respective rights, through the formation of professional associations or trade unions. The same right shall be enjoyed by workers in independent official institutions”.

Such organizations are entitled to possess legal personality and to be duly protected in the exercise of their functions.

The above comments clearly demonstrate the commitment of the Government of El Salvador to respect the fundamental principles and rights at work.

Fiji

Note from the Office

The Office received no report from the Government for the annual reviews of 2000, 2001 and 2002.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights: Context

The violations of trade union rights reported in the year 2000 came about primarily as a result of political events, namely the coup orchestrated on 19 May against the democratically elected government. While the trade union movement launched a strike to demand the return to a legitimate State, a military leader proclaimed himself Head of State, tried to repeal the Constitution, declared martial law and governed by decree. One of these decrees imposed supervision of all public meetings. Violence broke out in many areas and was perpetrated primarily against Indo-Fijians, who represent 47 per cent of the population.

In July 2000, a civilian government backed by the army came to power. A Constitutional Review Commission was established but its work was interrupted in December following a decision by the High Court to keep the 1997 Constitution, which is a non-racist text that namely guarantees the right to form and join trade unions.

Still the same old violations

The post-coup Government did nothing to improve the weak points in labour legislation as regards respecting workers' rights. Many categories of workers are denied the right to strike and join trade unions, especially in the export processing zones. Moreover, labour legislation does not always protect trade unions against acts of interference by employers. There are no provisions requiring reinstatement of workers who have been sacked for carrying out trade union activities.

A 1991 Decree did away with compulsory withholdings on salary for the purpose of paying union dues. This system was not reintroduced because of strong opposition from employers. This is a major obstacle preventing workers from joining trade unions: most workers do not have bank accounts (a minimum deposit of 500 dollars is required to open an account and bank fees are costly), which makes it difficult to organize payment of union dues.

In the workplace, only the most representative trade union has the right to bargain collectively, a right guaranteed by law if the trade union represents more than 50 per cent of the workers. Employers can also recognise minority trade unions for collective bargaining purposes if they wish. As far as the right to strike is concerned, this right is recognised for all matters except those relating to trade union recognition. However, the post-coup government introduced a new definition of strikes, which now includes go-slow strikes, reduced production strikes, and refusal to carry out employer instructions.

Export processing zones (EPZs) are subject to the same laws as the rest of the country. Despite this fact, the FTUC has been unable to enter into a collective agreement for the EPZs.

New post-coup restrictions

Fiji has taken a few steps backwards as far as legislation protecting workers' rights is concerned. As a case in point, supervision of union ballots by the Ministry of Labour, repealed in 1997, was once again imposed by the new Government. The Registrar of Trade Unions has gone back to accepting ethnic trade unions, as a means of dividing workers on the basis of their ethnic background. Trade unions must also submit their accounts to the Registrar of Trade Unions each year.

Faced with an economic crisis, the new Government took the liberty of unilaterally decreasing salaries of state employees by 12.5 per cent as of 1 August. However, the trade unions managed to overturn this decision through an arbitration procedure.

Guinea-Bissau

Government

Means of assessing the situation

Assessment of the institutional context

Although the State of Guinea-Bissau has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the principle of freedom of association and the right to bargain collectively are recognized. There is legislation on the right to organize, namely Act No. 8/91, of 3 October [1991]. As a result we already have two central union federations and many legally recognized trade unions.

The effective recognition the right to collective bargaining is established in the General Labour Act (LGT), art. 164 et seq.

The principle of the right to organize is enshrined in article 45 of the Constitution of the Republic.

The right to collective bargaining is recognized pursuant to art. 164 et seq. of the LGT and the ratification of Convention No. 98.

The Act on the Right to Organise, in article 1, states that employers and workers shall be guaranteed the right to form associations to defend and promote their social, occupational and economic rights and interests. Therefore, no category of workers or employers is excluded.

The Act on the Right to Organise (article 4(1)), states that forming and running workers' and employers' associations shall not be subject to any prior authorization and shall be independent of the State.

Workers' and employers' associations are independent of the State pursuant to the Act on the Right to Organise (article 4(1)).

There is no exclusion, neither in law nor in practice.

Legislation makes no provision for any State or Government authorisation of collective agreements.

Assessment of the factual situation

De facto, the right to collective bargaining is recognised; this can be seen for instance, from the negotiations which led to the collective labour agreement for the banking sector in Guinea-Bissau, and from the enterprise agreement for the telecommunications sector.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

For the moment, the Government is concerned with and endeavouring to rekindle the process of ratifying Convention No. 87. In the review of the General Labour Act, the chapter on collective bargaining will need special attention.

The Government's objective is to address fundamental rights, and in Guinea-Bissau, the State observes the rule of law whereby such values are given first priority.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to the following organizations:

- the Chamber of Commerce, Industry and Agriculture (CCIA)
- the Association of Independent Trade Unions (CGSI/GB)
- the National Workers' Union of Guinea (UNTG)

India

Government

Means of assessing the situation

Assessment of the institutional context

Detailed information was provided in the report submitted for the first annual review for 2000 (see GB.277/3/2). There have been no changes except for the following updates.

Assessment of the factual situation

The number of unions submitting returns in 1995 were 7,309 and they had a membership of 5,613,000.

Growth of trade unions and their membership

Number of registered trade unions	1995	1996
Employers' unions	789	686
Workers' unions	57 163	58 119
Total	57 952	58 805
Numbers submitting returns	1995	1996
Employers' unions	114	10
Workers' unions	8 048	7 299
Total	8 162	7 309
Membership of unions submitting returns	1995	1996
Employers' unions	22 000	7 000
Workers' unions	6 516 000	5 606 000
Total	6 538 000	5 613 000

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

While civil servants still do not enjoy their full rights, the Government wants to amend legislation to the detriment of trade unions. The police are brought in to deal with strikers, sometimes violently.

Discrimination against public sector workers

Current legislation makes a very clear distinction between civil servants and other workers. Public service employees have very limited organizing and collective bargaining rights. According to the Government, the aim of this differential treatment is to protect the neutrality of civil servants.

Restrictions on the right to strike

The Essential Services Maintenance Act 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.

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.

Amendments to Trade Union Act

The Government has announced its intention to change the Trade Union Act, much to the unions’ anger. One of the proposed amendments is that a union should represent at least 10 per cent of an enterprise’s workforce before it can be accepted by the Registrar of Trade Unions. At present, only seven people are required in order to form a union. While the Government’s aim is to limit the proliferation of small workers’ organizations, the unions would prefer that workers be asked to vote by secret ballot to decide which union should represent the staff in collective bargaining. This system would avoid arbitrary decisions about union recognition by the employers.

The new Law proposed by the Government also seeks to reduce the number of foreign workers at the enterprise allowed to sit on the union executive, and would require unions to submit their accounts for auditing.

The Government has set up a labour commission to draw up recommendations for reforming the country’s labour legislation, without consulting the trade unions. Only two national federations are represented on it.

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 organized. Although there is a Government notice permitting the registration of trade unions, a workers' association can only be established after the authorisation of the police and a thorough inquiry [...]. Furthermore, the public also have the opportunity to state their objections to the creation of a trade union, which sometimes can be enough to prevent its registration.

Collective bargaining

Collective bargaining is the usual means of setting wages and resolving disputes in unionised workplaces. Specialised labour tribunals arbitrate in disputes, but there is a long back-log of unsettled cases. Furthermore, many national agreements setting public sector salaries (coal, steel ...) expired in 1998, and despite the national federations' offer of constructive dialogue, there has been no acceptable proposal from the competent authorities. The Government, on the contrary, has ordered that the unions be forced to enter into 10-year agreements, rather than the usual five years.

Only a small minority of workers protected

In practice, the legal protection of workers' rights only concerns some 30 million people in the organized industrial sector, out of a total workforce of 400 million. It is difficult to enforce legislation in the informal sector.

Situation growing worse in the export processing zones

India has seven export processing zones. Entry is restricted to the workers, who are bused in by their employers. They have the right to join trade unions and to bargain collectively, but the fact that trade unionists are not able to enter the zones makes it very difficult to ensure the exercise of these rights.

The Government clearly wants to limit trade union action in the zones as much as it can, and encourages states to apply flexible labour legislation. It has decided that factories operating in the zones are to be considered public utilities, thereby limiting the right to strike.

Government observations on ICFTU's comments

The Constitution of India (Article 19(1)(c)) guarantees all citizens the right to form associations or unions. This is a fundamental right, implying that it cannot be taken away by the legislature or executive. Various labour laws, such as the Trade Unions Act, 1926, the Industrial Disputes Act, 1947 etc., empower workers' unions or associations to negotiate and achieve collective bargaining. The laws are amended from time to time to reflect the demands of changing situations and to protect the interests of workers. These labour laws are more or less in conformity with the international labour Conventions.

Comments of the Government of India on the observations made by the ICFTU are given below:

Violations of trade union rights

Workers' associations or unions are recognized under the Trade Unions Act, 1926. The Act defines a trade union as "... any association, whether temporary or permanent, formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen, or between employees and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions".

The amendment to the Trade Unions Act was primarily aimed at strengthening workers' organizations for effective collective bargaining and good industrial relations. Deployment of police is resorted to at the site of a strike in the rarest of cases, only when there is a need to protect striking workers and public property, and to maintain law and order, and not otherwise.

Discrimination against public sector workers

The Constitution of India provides for freedom of association for all its citizens. However, the civil government servants exercising functions flowing from the sovereign functions of the Government are not treated on a par with industrial workers as far as trade union rights are concerned. Civil servants are treated differently in order to facilitate their functioning in an unbiased manner in an otherwise politically active, free society. Furthermore, this was considered essential in the context of the country where trade unions are highly politicized and affiliated to one of the political parties, and very often, they in turn are formed on the basis of sectarian considerations. In these circumstances, the political neutrality of civil servants is absolutely essential for the functioning of a constitutional democracy. These reasonable restrictions imposed on the civil servants have, on several occasions, been challenged in the highest courts of India and the courts have upheld the constitutionality and reasonableness of these restrictions. Civil servants, however, enjoy a high degree of job security as laid down in the Constitution. It may be noted that the spirit behind ILO Conventions Nos. 87 and 98 have already been implemented in India through domestic laws and regulations.

As far as the association of civil service employees is concerned, the central civil service employees' associations are recognized by the Central Civil Services (Recognition of Service Association) Rules, 1993. Similarly, the State civil service employees' associations are recognized by the respective State Governments. The mechanisms available to civil servants for settling grievances in India are the Joint Consultative Machinery (JCM) and Administrative Tribunal. They provide a forum for the amicable settlement of grievances. The Board of Arbitration under the JCM, which was set up in July 1968, has a panel of members representing staff and officials. During 1999-2000 (up to 31 December), 241 cases were referred to the Board, of which 238 were settled. Central Government employees also have a right to form and join any association. However, workers and employees in the public service, working in public sector undertakings, are covered by the Trade Unions Act, 1926.

Restrictions on the right to strike

The Essential Service Maintenance Act, 1981(ESMA) empowers the Government to declare certain categories of industries/services to be essential services, based on the public utility of the industries/services in the State. For a vast country like India, essential industries/services are determined by agro-economic factors and natural resources available in each of the States in the country. The disputes/demands of workmen engaged

in such industries/services are first taken up to be resolved by the negotiation mechanism under the Industrial Disputes Act, 1947 and even after that process, if they go on strike, only as the last option, they resort to invoking the ESMA in order to prevent a loss in production and maintain the barest minimum public utility services for ordinary citizens and civil society. It must be noted that the ESMA does not take away the legal mechanism to negotiate and resolve disputes through the process of collective bargaining.

Only trade unions functioning in industries that are included as Public Utility Services under the Industrial Disputes Act, 1947, are required to give 14 days' notice to the employer and the appropriate authorities of the Government before they resort to strike.

Amendments to Trade Unions Act

The Trade Unions Act, 1926 has been amended to provide that no trade union shall be registered unless 10 per cent or 100 of the workers, whichever is less, (subject to a minimum of 7), engaged or employed in the establishment or industry with which it is connected, are members of such trade unions on the date of making the application for registration.

The proportion of office bearers to be connected with the industry of a registered trade union must not exceed one-third of the total number of office bearers or five office bearers, whichever is less, and shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected. Recent amendments to the Trade Unions Act provide for strengthening internal democracy, and to ensure the orderly growth of trade unions. The Trade Unions Act, 1926 gives workers effective recognition of the right to collective bargaining.

The Government of India has set up the Second National Commission on Labour consisting of members from the Central Trade Union Organizations, which have the largest membership, to represent workers and protect their interests.

A State excluded from the system: Sikkim

The Trade Unions Act, 1926 is applicable to the whole of India including the State of Sikkim. For various reasons the State Government of this small hilly State, which is industrially backward, has been unable to bring the Act into force. The matter is now under active consideration. The Government is informed that more than ten workers' associations have been registered under the relevant local law and the State Government is liberal in granting registration to such associations as they are meant to safeguard the interests of the workers.

Collective bargaining

Collective bargaining is one of the means of setting wages and resolving disputes in unionized workplaces. The Government of India has decided to have a ten-year agreement, instead of the five-year agreement, on wages and terms and conditions of services etc., only after bilateral dialogue with the Central Trade Union Organizations.

It may be noted that increased awareness among workers, and assertion of their rights in a democratic system, have led to the growth of the number of disputes for adjudication by the Industrial Tribunals. The details of disputes for adjudication, given below, are those referred to the Central Government Industrial Tribunals during the years 1998-2000:

Year	Received	Disposed	Pending*
1998	1 280	447	7 968
1999	2 051	896	9 649
2000	2 327	849	12 132

*Cases carried forward.

While there has been an increase in the number of disputes, there has also been increase in the rate of disposal of cases.

Only a small minority of workers protected

Labour legislation does not distinguish between the organized and unorganized sectors in so far as the protection of workers' rights is concerned. The Government has been organizing special task force and crash programmes of inspection to implement the labour laws in the unorganized sectors. Trade unions are free to organize the unorganized instead of concentrating on the organized sector alone. However their presence in the unorganized sector in urban and rural areas is negligible.

Situation growing worse in the export processing zones

As rightly observed by ICFTU, workers in the export processing zones (EPZs) have the right to join trade unions and to bargain collectively. Any establishment declared a public utility for the purpose of the Industrial Disputes Act, 1947 and the provisions in Section 22 thereof, does not restrict the rights of workers, rather it ensures that there is adequate time for conciliation/mediation etc. before the actual strike takes place. The export processing zones (EPZs)/special economic zones and Zone Units (SEZs) are governed by normal labour laws and rules which are enforced by the State Governments and there is no restriction on trade union activities. There is a workforce of approximately 95,000 in EPZs, one third (i.e. around 33,800) are women workers. The State labour authorities inspect all the units in EPZs periodically and action is taken against the defaulting units wherever warranted. A joint team, comprising State Labour Departments, the Central Government's Labour Ministry and representatives of trade unions of the EPZs, has also been inspecting the industrial units in EPZs regularly to assess and improve the conditions of workers. This process is a continuing one.

Iran, Islamic Republic of

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the right to collective bargaining is recognized in the Constitution of the Islamic Republic of Iran and in the Labour Code.

The relevant articles in the Constitution are articles 26, 104 and 106, and those in the Labour Code are sections 131, 140-146 and 178.

All workers and employers are free to establish their own organizations without any restriction. Military and the police are excluded.

Workers and employers do not need authorization to form associations. However, with the assistance of the Ministry of Labour and Social Affairs, and once the relevant elections within the association have been held, the documents of the association will be registered at the Ministry of Labour and Social Affairs.

The Government does not interfere in the functioning of workers' and employers' organizations. The organizations themselves are responsible for making decisions with respect to their establishment and functioning. Decisions will be made on the basis of a majority vote. If the members of an organization bring to the Ministry of Labour and Social Affairs a grievance against their board or representatives, stating that the representatives of the organization are not abiding by the laws and regulations that govern the organization, the Ministry of Labour and Social Affairs shall only provide guidance to members with grievances and ensure that the matter is dealt with in accordance with the appropriate legal procedures.

With regard to the right to collective bargaining, the Labour Code of the Islamic Republic of Iran does not exclude any group of workers or employers. Equal rights are guaranteed to everyone.

The current national legislation does not allow the Government to interfere with arrangements regarding collective agreements. However, in order to protect the legal rights of workers and employers, the Ministry of Labour and Social Affairs can provide observations on the compatibility of the agreement with national laws and regulations. These observations should be made available to both parties to the agreement within 30 days. If the Ministry of Labour and Social Affairs fails to do so within the stated period, the agreement will remain in force.

The principle of freedom of association and the right to collective bargaining are implemented in the following ways:

- Each organization shall prepare its own constitution and have it adopted by its membership. It shall also elect its own representatives and a governing council. Thereafter, the documents and credentials of the organization will be registered at the Ministry of Labour and Social Affairs.
- Article 26 of the Constitution and section 131 of the Labour Code ensure the right to organize.
- Upon the election of the governing council of an organization, workers and employers can announce the establishment of the organization through announcements in the newspapers.

Assessment of the factual situation

Statistics on workers' and employers' organizations as well as collective agreements.

Islamic Labour Councils	2 727
Provincial Centrals of Islamic Labour Councils	27
National Central of Islamic Labour Councils	1

Elected workers' representatives	1 503
Workers' and employers' unions	463
National Employers' Confederation	1
Provincial Federation of Employers	3
Provincial Federation of Workers' Trade Unions	3
Organizations of retired workers and managers	40
Number of collective agreements on compensation and productivity	400
Number of collective agreements on increased general wage level	Over 100

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The measures mentioned earlier in the report guarantee freedom of association and the right to engage in collective bargaining.

The following means are deployed by the Government and the social partners to strengthen freedom of association and the right to collective bargaining:

- Government: Provision of training and supervision.
- Organizations: Workers' and employers' organizations through collective agreements.
- Other authorities: In keeping with section 78 of the Labour Code, the competent courts ensure that freedom of association is respected.

The goals of the Islamic Republic of Iran are the development and expansion of workers' and employers' organizations with a view to promoting and realizing these principles and rights and the provision of a legal framework to facilitate dialogue between the organizations.

Conditions of employment, both at the level of the enterprise or at the level of any trade or industry, can be determined through collective bargaining and collective agreements between workers' and employers' organizations. Any work-related conflict can also be the subject of collective negotiations. This further strengthens the legal rights of workers and employers, and facilitates the application of the Labour Code.

Workers' and employers' organizations, according to their own constitutions, can submit to the Ministry of Labour and Social Affairs, observations and suggestions on legal issues and on the implementation of regulations. Their suggestions and observations, after being thoroughly examined by the relevant committee, are presented to the Islamic Consultative Assembly or the Council of Ministers. Thus, for example, the subparagraph of article 2 of the regulations regarding the organization of workers' and employers' unions was approved in the Council of Ministers on the basis of the proposal submitted by the employers' associations.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

In accordance with article 23(2) of the ILO Constitution, a copy of the report has been sent to the representative workers' and employers' organizations.

**Observations submitted to the Office by the
International Confederation of Free Trade Unions
(ICFTU)**

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights: New restrictive law

On 27 February 2000, the Iranian Parliament adopted a law exempting companies employing no more than five people from having to respect labour legislation for a period of six years. The move was prompted by conservative leaders keen to revise the social legislation introduced after the Islamic Revolution of 1979, believing that as it stood it would not encourage investment. Only last year they attempted to push a similar bill through Parliament, but the advocates of economic liberalization were forced to back-pedal in the face of popular discontent.

Among other things, this new law, which will affect 3 million workers, makes it easier to hire and fire.

According to official figures, 16 per cent of workers are unemployed and no fewer than 70 per cent of people live below the poverty line. Iranian workers have been up in arms to complain about unpaid wages, setting up road-blocks and staging sit-down protests and all-out strikes. At least 400,000 workers from some 500 companies are suffering from wage arrears stretching back between 3 and 24 months.

Only the official union is tolerated

While, theoretically at least, the Government does allow trade unions, only the Workers' House, the authority of which extends to the various Islamic works councils, is actually tolerated as a national trade union organization.

The rules on the operation, statutes and elections of Islamic works councils are drafted by the Ministries of the Interior and Social Affairs, as well as by the Islamic information organization. The Council of Ministers then has to approve these rules.

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.

The law does not give workers the right to strike, but they can down tools as long as they remain at the work place, or operate a go-slow. In the past, the Government has called in the forces of law and order to break up strike action. A 1993 law prohibits public sector strikes and any contact between civil servants and foreign nationals.

Social legislation does not apply in the export processing zones.

In large companies, especially in the oil and metal working sectors, there have been reports of workers managing to elect their own representatives, and in recent years, going on strike to demand bargaining rights.

Iraq

Note from the Office

The Office received no report from the Government for the annual review of 2002. Reports were received for the annual reviews of 2000 and 2001.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The single trade union is under the Government's control.

The only authorized trade union federation in Iraq is the General Federation of Trade Unions (GFTU), created by the law of 1987. Although free union elections are held, the role of the GFTU, which operates under state control, is to promote the Ba'ath party policy [Reference is made to the activities of the GFTU.] Public sector workers have very limited rights when it comes to trade union membership.

While there is a consultation mechanism for setting the minimum wage, wages are nevertheless fixed unilaterally. There is no law guaranteeing civil servants' collective bargaining rights. [Comments concerning an Iraqi trade union situation are made with respect to observations by the ILO's supervisory bodies.]

The right to strike is also limited, with any striking worker facing imprisonment or detention in a labour camp. Workers may only strike if the employer fails to respect a labour court's ruling in the workers' favour.

Jordan

Government

Means of assessing the situation

Assessment of the institutional context

With regard to the follow-up to the principle concerning freedom of association and the effective recognition of the right to collective bargaining, no amendments have been made to existing legislation and no new legislation has been enacted.

The Government is still considering the possibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We will keep you informed of the outcome, in due course.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

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.

Although trade unions are not obliged to affiliate to the General Federation of Jordanian Trade Unions (GFTU), all of them affiliate to it in practice.

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.

Civil servants, domestic staff, gardeners, cooks and agricultural workers are not covered by the Labour Code. Moreover, the over 1 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.

[Reference is made to matters relating to the introduction and enforcement of minimum wage legislation.]

Jordan's labour inspection service is ineffective; the law is not always enforced.

Government observations on ICFTU's comments

We [have already] replied to the observations received from the ICFTU in letter No. S/109070 dated 26 October 2000 (GB.280/3/2). We would like to add the following.

The powers of the Registrar of Associations is limited and restricted to the fulfilment of the requirements provided for under sections 102 and 108 [of the Labour Code]. The request for registration is in fact a request for consignment and registration, for announcement and control purposes. Thus, trade unions are protected against any interference by public authorities.

Any person who has been adversely affected as a result of the registration of a trade union may appeal to the Supreme Court of Justice. Trade unions have all [the] freedom

with regard to affiliating to the General Federation of Jordanian Trade Unions. The role of the General Federation of Jordanian Trade Unions is restricted to the formulation of by-laws of the General Federation and of trade unions, in accordance with section 100 of the Labour Code.

The Labour Code No. 98 of 1996 provides for the protection of workers. It stipulates that penalties shall be imposed on an employer who shall make the employment of a worker subject to the condition that he does not join a trade union or withdraw from the membership of a trade union. The Code also provides that the abusive termination of a worker by reason of membership of a trade union shall require the reinstatement of the worker or the payment of compensation. Section 27(a) provides that an employer may not terminate the employment of a worker or give him a letter of notice during his leave, or on leave agreed by both parties to take up trade union office.

Section 111 of the Labour Code provides that no officer or member in a trade union may be punishable or liable to any legal or judicial proceedings by reason of an agreement concluded by members of the trade union in respect of any lawful purposes of the union. The Minimum Wage Decree of 1999 covers all workers regardless of their nationality or whether or not they are affiliated to trade unions.

With regard to agricultural workers, the entity responsible for the Interpretation of Laws issued Decree No. 2 of 1997, in its interpretation of section 3 of the Labour Code, which states that agricultural workers exempted from the application of the provisions of the Labour Code, are those who work in agriculture, in technical, legal and factual terms. Thus, many persons employed in the agricultural sector are subject to the provisions of the Labour Code. Consequently, they have the right to join trade union organizations.

The Labour Inspectorate of the Ministry of Labour fully discharge their duties. The provisions of the law apply to all workers. The Government's annual report for 2001 stated that the inspection services have taken the following legal measures against enterprises and establishment[s]:

- (a) Advice and guidance (15,042 cases);
- (b) Warning (2,198 cases);
- (c) [there were] 4,269 cases of violations [of the Labour Code] referred to the competent courts.

Kenya

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Kenya.

Section 80(1) of the Constitution of Kenya provides for freedom of assembly and speech for all citizens.

Kenya has also ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Industrial Relations Charter (Revised) 1984 which is a tripartite document, recognizes the principle of the right to association and collective bargaining, and provides a mechanism under which the principle can be put into practice or observed.

The Industrial Relations Charter (Revised) 1984 provides for the categories of employees in an organization who are excluded from belonging to any workers' organization (union). These include managerial, secretarial and security staff and their assistants or their understudies.

Management, in consultation with workers' organizations, may also determine further categories which may be excluded from joining a workers' organization because of the nature of their duties and responsibilities.

Prior authorization is necessary before the establishment of an employers' or workers' organization.

The Government can intervene in the functioning of employers' or workers' organizations under the following circumstances.

According to section 17(1) of the Trade Unions Act, the Registrar of Trade Unions can cancel or suspend the registration of a trade union if:

- registration was obtained by fraud, misrepresentation or by mistake;
- the objects of a trade union are unlawful;
- a trade union is being used for unlawful purposes;
- a union has wilfully, and even after notice from the Registrar, contravened any provisions of this Act or any regulations made under this Act or any rules of the trade union;
- funds are used in an unlawful manner or [for an] unlawful object or objects not authorized by this Act and any regulation made under this Act;
- objects carried by the union would have caused denial of registration, had they been disclosed at the time of registration.

Section 48 of the Act (Cap. 233) authorizes the Registrar of Trade Unions or an officer authorized by him to inspect the books of accounts at any reasonable time.

Section 49 of the Trade Unions Act Cap. 233 provides for penalties to be imposed on any person who opposes, obstructs or impedes the Registrar or any person authorized by him from inspecting the books of accounts. The penalties involve a fine not exceeding KShs.5,000 or imprisonment for a term not exceeding six months or both.

Section 50(1) of the same Act further gives the Registrar of Trade Unions the power to call at any time, the treasurer, the Committee of Management, or other proper officer or officers of a trade union, to render detailed accounts as required of the funds of the trade

union or branch thereof, in respect of any particular period. The accounts shall show, in particular, the information as required.

Section 50(2) provides for penalties for any person who fails to comply with the provisions of Section 50(1). The offence carries a fine not exceeding KShs.5,000 or imprisonment for a term not exceeding six months, or to both.

Section 54(1), gives the Minister power to make regulation for the purpose of carrying out or giving effect to the principles and provisions of this Act. The Minister may make regulations for or in respect of all or any of the following matters:

- (a) conduct and supervision of the election of officers and their duration in office;
- (b) books and registers to be kept by the union;
- (c) the manner in which trade union rules shall be registered and the fees payable on registration;
- (d) the manner and the qualifications of persons by whom the accounts of registered unions or any class of such unions shall be audited;
- (e) conditions subject to which the inspection of documents kept by the Registrar shall be allowed, and the fees which shall be chargeable in respect of these inspections;
- (f) the disposal and safe keeping of funds and money of a trade union;
- (g) the creation, administration, protection, control and disposal of benevolent funds of registered trade unions and all matters connected therewith or incidental thereto;
- (h) appointment, termination of appointment and terms of office of members of a trade unions tribunal and regulating the proceedings of and any matter in connection with that tribunal;
- (i) generally for all matters, incidental to or connected with the matters specifically mentioned in this subsection;
- (j) at the moment with regard to civil servants, there is no union representing them;
- (k) the Trade Disputes Act Cap. 234 provides for the registration of collective bargaining agreements by the Industrial Court before implementation by the employer (section 11 (2)(3));
- (l) the Trade unions Act Cap. 233 which provides for registration and control of trade unions and connected purposes;
- (m) the Trade Disputes Act Cap. 234, which provides for the settlement of trade disputes generally, and for essential services, the establishment of boards of inquiry, the Industrial Court, control and regulation of strikes, lockouts and also with regard to the collection of union dues and for related purposes.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government is committed to the promotion of the principle of freedom of association and the effective recognition of the right to collective bargaining.

Of the two Conventions covered by the principle, the Right to Organise and Collective Bargaining, 1949 (No. 98) has already been ratified. The ratification was registered in 1964 and the Government has respected and implemented the provisions of the Convention, ever since.

The right to freedom of association and assembly is fully recognized and protected by the Constitution of the Republic of Kenya Section 80(1).

The Industrial Relations Charter which is a voluntary tripartite document, i.e. between employers, workers and the Government, provides for the respect of the workers' right to freely associate and negotiate their collective interests with employers.

The means deployed by the Government to promote the principle are the following:

- provision of arbitration and conciliation services to disputing parties (workers and employers) and reference of such disputes to the Industrial Court for final arbitration;
- reviewing existing laws to amend legal provisions that inhibit the full application and respect of the principle by all workers;
- capacity building amongst government officials involved in law enforcement and labour administration in general, through the holding of seminars and workshops.

The means deployed by the Organization to promote the principle is undertaken through the regular request for reports under the annual follow-up to the ILO Declaration and the Fundamental Principles and Rights at Work.

Furthermore, ILO specialists at the field office (the East Africa Multidisciplinary Advisory Team (EAMAT)) have on several occasions sent missions to assist the Government with its reporting obligations under the follow-up to the Declaration.

The specialists have also helped in capacity building, by organizing, and participating as resource persons in seminars and workshops on the promotion of the Declaration. Examples of this are the recent workshops on the promotion of the Declaration held in Kampala, Uganda in May 2001, for senior labour officials and judges of the Industrial Court from East Africa.

The ILO has been providing financial and technical support for the Taskforce for the Review of Labour Laws that was appointed by the Attorney-General in May 2001. The Taskforce aims to review the labour laws to harmonize them with the provisions of ratified Conventions as well as with the fundamental principles.

The means deployed by another body to promote the principle is the following. The United States Department of Labour in collaboration with the ILO, is funding a project known as SLAREA (Strengthening of Labour Relations in East Africa) that seeks to develop the human and institutional capacities of tripartite partners in East Africa, to

facilitate the promotion of the principle and the ratification [of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)].

The objective of the Government is to achieve industrial peace and harmony, which are essential for the economic development and prosperity of the country as a whole. The Government realizes that social justice can only be achieved in conditions of freedom, equity and economic prosperity.

The country's labour laws need to be reviewed to incorporate the provisions of ratified Conventions and those of the fundamental rights and principles.

There is a need to set up a National Productivity Centre to help with the measurement of outputs of industry and the determination of disputes which are economic in nature.

There is also a need for intensified technical cooperation between the ILO and the Government as well as workers and employers to help with the promotion of the Declaration beyond the confines of the Ministry of Labour and Human Resource Development.

Representative employers' and workers' organizations to which copies of the report have been sent

The Federation of Kenya Employers (FKE) and the Central Organization of Trade Unions (Kenya) (COTU).

Observations received from employers' and workers' organizations

No observations or comments were received from the employers' and workers' organizations, on measures that have been taken or need to be taken with respect to the Declaration, with regard to freedom of association and the effective recognition of the right to collective bargaining.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Basic trade union rights are still denied to certain workers.

All employees working for companies with at least seven employees have the right to join the trade union of their choice. In practice, however, the Trade Union Registrar has abused its prerogatives by denying this right to several categories of public service employees. Apart from civil servants, university professors, teachers, doctors and dentists are also denied basic trade union rights and police officers are not allowed to join trade unions.

In cases where the law does permit trade union freedoms, these freedoms are seldom respected: in small-sized companies and companies situated in export processing zones (EPZs), for instance, anti-union discrimination is rampant. There are many cases where workers have been sacked simply because they participate in trade union activities

Although the legislation authorises the right to strike, this right is subject to major restrictions. The procedure is discouraging. 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. This has been the case in past years during which the majority of strikes have been declared illegal, such as the strikes involving bank employees, health care staff, and teachers.

Government observations on ICFTU's comments

The Government has taken careful note of the observations made by the International Confederation of Free Trade Unions (ICFTU) and would like to make the following comments.

Violations of trade union rights

The Government is not aware of any cases where trade unions rights have been violated.

Section 45(1) of the Trade Unions Act, Cap 233, Laws of Kenya, provides for the unionization of employees in any organization provided they are no fewer than five in number and the conditions set out under section 5(2) of the same Act are fulfilled.

Section 80(1) of the Constitution of Kenya provides for the exercise of freedom of association and assembly by all Kenyan citizens.

The Registrar of Trade Unions is a public official charged with the administration of the Trade Unions Act, Cap 233, which provides for rules, regulations and conditions under which trade unions are to be registered. If the prospective union does not meet the conditions for registration set out under the Act, Cap 233, then the Registrar has no choice but to deny registration to that particular union.

It should however be understood that the decision of the Registrar is not absolute or final and is subject to appeal to the High Court of Kenya, as has happened many times in the past.

Unions like the Kenya Guards and Allied Workers' Union, Kenya Hotels and Allied Workers' Union, Kenya Shipping Clearing and Warehouses Workers' Union, and the Bakeries Manufacturing and Allied Workers' Union, were all registered after lodging appeals to the High Court against the Registrar's decision not to register them. Therefore any individual or group of persons dissatisfied with the actions of the Registrar can have recourse to such action.

The ban on the Civil Servants Union imposed in 1980 due to security reasons was lifted by the Head of State several years ago. The National Tripartite Labour Advisory

Board has recommended the reinstatement and recommencement of activities of the Civil Servants Union, and a memorandum providing for the Union's formal registration is under consideration by Cabinet. Parliament has on two occasions discussed and passed motions recommending the reinstatement of the Civil Servants Union.

The social partners, i.e. the Federation of Kenya Employers and the Central Organization of Trade Unions, have been assured that the matter of civil servants is receiving serious and favourable attention from the Government and that a final decision will be made soon.

The issue of unionization of university professors, doctors, and dentists is also being considered alongside the Civil Servants Union as they are also public servants, like mainstream civil servants. It is noted that except for the university professors and teachers, the other categories used to belong to the defunct Civil Servants Union.

As regards the denial of the right of teachers to join a union, the Government would like to state that teachers are represented by two unions, namely, the Kenya National Union of Teachers (KNUT) and the recently registered Kenya Union of Post Primary Teachers (KUPPET).

The former has represented teachers (both primary and post-primary teachers) since the early 1960s up to today and has a membership of over 240,000 teachers.

The latter was registered in 1998, and represents post primary teachers in secondary schools and tertiary institutions. It is a relatively new union and has fewer members than the KNUT.

Finally, it must be emphasized that the functions of the Registrar are clearly stipulated in the Trade Unions Act, and as has been stated in our previous reports (GB.277/3/2 and GB.280/3/2), the Act contains sections, which are in conflict with certain provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). As such, the exercise of the powers of the Registrar are bound to be seen as excessive when viewed against the letter and spirit of the Convention. This is precisely the reason for which the Government has not yet ratified this fundamental Convention, as the machinery for its enforcement and implementation does not exist. The same argument applies to the issue of unionization of the police force and indeed all other sections of uniformed forces.

The Government expects, however, that the Task Force on Labour Law Review will come up with appropriate recommendations that will address conflicts existing between the Act and the Convention, thereby paving the way for considering ratification.

The law fully protects the enjoyment of trade union freedoms in all of places of work irrespective of the size of the enterprise and including the export processing zones (EPZs). Whereas there may be pockets of resistance to unionization in EPZs, this is largely due to ignorance of the laws on the part of management. The law provides for compensation of a maximum of 12 months' salary plus reinstatement if it is determined that an employee has been sacked or victimized because of his/her trade union activities.

Cases of victimization do arise from time to time but they constitute a small proportion of the overall number of cases or disputes reported to the Minister for Labour for action. However, dismissal or termination on account of alleged union activities can

only be determined after dealing with the dispute through the dispute settlement machinery.

Right to strike

The Trade Disputes Act, Cap 234, provides for procedures to be followed before a union can call on its members to strike. Pertinent to the strike issue is the requirement for the union to serve the Minister with 21 days' notice of the intention to call the strike. In the case of essential services, the strike notice is 28 days.

During this notice period, the Minister is required to put in motion the necessary machinery to settle the dispute. He is therefore obligated by law to inform the union and the employer of the action he intends to take to solve the dispute threatening to cause the strike. The parties are therefore barred from taking industrial action during this time, as efforts are being directed at solving the dispute. Instead, they are supposed to cooperate with the Minister in his endeavours to achieve a settlement.

Consequently, the right to declare a strike illegal is not discretionary, as the legal position is very clear. Once the Minister acknowledges the strike notice and puts in motion the necessary machinery for the settlement of the dispute as provided by law, then strike action is deferred indefinitely.

The strikes referred to by the ICFTU such as the ones involving, the bank employees, health care staff and teachers, were carried out in complete disregard of the foregoing legal procedures. In all the cases, the Minister for Labour acted by acknowledging the relevant strike notices and resorted to the legal procedures to resolve the dispute. This notwithstanding, the affected workers went on strike, resulting in the declaration of the strike to be illegal.

Finally, the Government would however wish to state that it is in the process of reviewing all the labour laws in the country, including provisions of the Trade Disputes Act, Cap 234, referred to in this observation, through a Task Force appointed in May 2001. It is confident that the views of all the stakeholders in this regard will be incorporated in the final recommendations. The Task Force is expected to finalize its work by August 2002.

Kiribati

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and, to a lesser extent, the effective recognition of the right to collective bargaining is recognised in Kiribati. Chapter II of the Constitution of Kiribati specifically refers to the "Protection of the Fundamental Rights and Freedoms of the Individual." In particular, section 13 of the Constitution states, "13(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with

other persons and in particular, to form or belong to associations for the advancement or protection of his interests.”

This provision is specifically addressed in the Trade Unions and Employer Organisations Act, 1998. Section 21 states:

21(1) No employer shall make it a condition of employment of any worker that such a worker shall neither be nor become a member of any or a particular trade union or other organization representing workers in any trade or industry, and any such condition in any contract of employment entered into, before, or after the commencement of this Act, shall be void.

and

21(2) Nothing contained in any law shall prohibit any worker from being or becoming a member of any trade union or cause a worker to be dismissed or be otherwise prejudiced by reason of that worker’s membership or participation in the activities of a trade union.

Section 21(3) provides penalties for the breach of any of the provisions cited in sections 21(1) and 21(2).

Neither the Industrial Relations Code, 1997 nor the Trade Unions and Employer Organisations Act, 1998 specifically addresses the issue of collective bargaining. However, section 41 of the Industrial Relations Code states: “Nothing in this Code shall affect the right of trade unions or of other associations representative of employees to conclude collective agreements with employers or organizations of employers.”

Section L8 of the National Conditions of Service states:

L8 (a) Except as provided in (b) of this Condition, any employee, may hold office in a recognised staff association or Union. L8(b) Employees in the Public Service Division and officers occupying posts where they are likely to represent Government in negotiations with staff associations should not hold office in such associations. No administrative officer or employee drawing salary in Level 9 or above may hold office in an Association or Union without the approval of the Secretary to the Cabinet.

Section 5 of the Trade Unions and Employer Organisations Act 1998, states: 5(1) No trade union or employer organization or any member thereof shall perform any act in furtherance of the purposes for which it was formed unless such trade union or employer organization has first been registered.”

Section 8 states that registration of trade unions and employer organizations is compulsory. The Act prescribes the steps to be taken for registration of trade unions. The Registrar of Trade Unions and Employer Associations may refuse an application for registration in terms of section 10 of the Act. However, in accordance with section 13, any person aggrieved by the refusal of the Registrar to register a trade union or employer organization may appeal to the High Court.

Section 11 of the Trade Unions and Employer Organisations Act 1998 grants certain powers to the Registrar, to cancel the registration of trade unions and employer organizations. Subsection 2 requires the Registrar to give at least two months’ notice in writing, specifying the grounds of the proposed cancellation and subsection 3 provides the organization with the right to show cause in writing against the proposal. Any decision made by the Registrar in this regard may be appealed to the High Court under section 13.

Part VI of the Industrial Relations Code, 1998 regulates the protection of Essential Services, Life and Property. Workers in essential services, under certain circumstances, may not break their contract of service or engage in industrial action until the fulfilment of certain conditions (sections 34 and 35).

The Industrial Relations Code, 1998 provides for the regulation of trade disputes, however it does not provide, specifically, for the authorization or registration of collective agreements. Section 41 of the Code states that: “Nothing in this Code shall affect the right of trade unions or of other associations representative of employees to conclude collective agreements with employers or organizations of employers.”

The legislation does not contain any further provisions for regulating or concluding collective agreements.

The Ministry of Labour, Employment and Co-operatives is responsible for the administration of the legislation and other measures identified for implementing the principle of freedom of association and the effective recognition of the right to bargain collectively. There is also recourse to the Supreme Court and the High Court.

Assessment of the factual situation

In practice, there is little collective bargaining between organized labour and employers in Kiribati. In reality, the Kiribati Overseas Seamen’s Union (KIOSU) and the South Pacific Marine Services (SPMS) provide the only current example of genuine bargaining over wages and conditions. It should be noted that KIOSU members are employed on overseas vessels and, as such, the collective bargaining does not actually occur within the Kiribati domestic labour market.

The reasons for lack of collective bargaining in Kiribati are many and are largely shared by other Pacific island-states. The influence of traditional culture over collective bargaining and the role of the State in the economy are two factors which should be considered in this regard. Other factors include the lack of legislative regulation and support for collective bargaining, a small private sector, the absence of a strong union movement and the consequences of the failure and mass dismissals of the industrial action by the BKA TM [not specified], in the 1980 general strike.

Any introduction of collective bargaining in Kiribati, and by implication, the ratification of this Convention [Right to Organise and Collective Bargaining Convention, 1949 (No. 98)] may have implications for the Kiribati economy and industrial relations in the country.

Kiribati does not currently have the capacity to collect statistical information on the labour market in general, and on the status of collective bargaining and freedom of association, in particular. Kiribati is in the process of establishing a Labour Market Information System and has submitted an application for funding for this project. A Pilot “National Employment Survey” was conducted by the ILO (PACLAB), in Kiribati, in December 1995. The resultant report contains some statistical information on the labour market situation as well as other information, which may be useful in allowing for a better assessment of the situation in the country with regard to the principle of freedom of association and the effective recognition of the right to collective bargaining. The National Development Strategy 2000-03 is also attached to this report to provide further information (not reproduced).

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

While not specifically targeted at freedom of association and the effective recognition of collective bargaining, Kiribati has commenced a programme aimed at the ratification of the “fundamental” ILO Conventions. This programme has started with the translation of these ILO Conventions into the vernacular, under the guidance of a tripartite committee.

It has been proposed that consultations with the public at large, government ministries and non-governmental organizations should follow the translation exercise. A tripartite seminar will be held after these consultations and it is hoped that the Conventions will then be ratified. This process towards the ratification of the Conventions has been put in place with the assistance of the ILO Office for the South Pacific. The ILO has also extended financial assistance for the translation of the Conventions.

There is no information available at present on the means deployed by other bodies to promote freedom of association and the effective recognition of the right to collective bargaining.

Kiribati is committed to the ratification of the fundamental ILO Conventions, including those addressing freedom of association and collective bargaining. Kiribati is also committed to the principle of tripartism and fostering a relationship with the social partners.

As indicated earlier, there is little recognition of collective bargaining in the legal system and almost no actual collective bargaining is practised by employers and unions in Kiribati. The assistance of the ILO would be needed in assessing the implications for Kiribati if it were to adopt the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

**Representative employers’ and workers’
organizations to which copies of the
report have been sent**

- Kiribati Chamber of Commerce
- Kiribati Trade Union Congress

**Observations received from employers’
and workers’ organizations**

Kiribati Chamber of Commerce

The Kiribati Chamber of Commerce (KCC) is generally in agreement with the Government’s report. We fully support the Government’s statement that “any introduction of collective bargaining in Kiribati, by implication, the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), may have implications for the Kiribati economy and industrial relations in the country.”

However, in response to the Government’s statement that “there is also recourse to the Supreme Court and the High Court ...” (as a means of implementing the principle of

freedom of association and the effective recognition of the right to collective bargaining), we believe that the Supreme Court mentioned here does not exist.

KCC is cooperating fully with the Ministry of Labour, Employment and Cooperatives in its labour-related activities. However, we request that the Ministry consider having full consultations with the private sector, when implementing the fundamental Conventions of the ILO (especially those relating to the principle of freedom of association and the effective recognition of the right to collective bargaining) and for the Ministry to implement these Conventions in the most careful manner as the size and vibrancy of the private sector are quite small and vulnerable.

Kiribati Trade Union Congress

We have the following comments to make:

Effective recognition is only given to the establishment of trade unions in Kiribati but not to collective bargaining.

Freedom of assembly and association (where trade unions can be formed) is well provided for in the Kiribati Constitution, sections 13 and 13(1).

The specific legal procedures for the formation of unions are also well addressed in section 21 of the Trade Unions and Employer Organisations Act, 1998.

Neither the Trade Unions and Employer Organisations Act, 1998 nor the Industrial Relations Code, 1998 specifically recognises the issue of collective bargaining.

The fact that nothing in the Industrial Relations Code, 1998 (IRC) shall affect the right of trade unions or other associations representing employees to conclude collective agreements with employers or employers' organizations is strictly meaningless and not helpful in any way, as in effect it does not provide any legal force or alternative remedy for cases where a party refuses to bargain collectively.

Section 41 of the IRC has failed to allow specifically or guarantee (to a full extent) the strong need for collective bargaining, which is one of the important aspects of the principle of freedom of association. Collective bargaining should have been recognised and applicable at the same time that the established unions were first introduced and recognised in Kiribati. However, this was part of the old trick of our former colonial masters to ensure that in reality trade union recognition would be always limited to registration only.

There has been a significant change in the situation today, in comparison with the past, within the new trade union movement and in the leadership style. Obstacles to colonial legislation and Government policy must be removed and updated where necessary, to meet the challenging demands and future development aspirations of the workforce. As unions, we are fully conscious of the fact that collective bargaining, as an important development tool and process, needs to take place only within the existing parameters and limits of our social, economic and political context. No one could dare go beyond those limits since collective bargaining between the social partners is significantly based only on the actual national situation within the real financial strength of existing major employers and our overall economic ability. The present leadership believes that no union can bargain beyond any nationally agreed limits fixed by the tripartite partners.

Collective bargaining would not pose any significant threat, especially to the Kiribati major employers, as smaller employers can be given special or preferential treatment. The state of a trade union, which has only been allowed to be formed but not to evolve beyond that state, is comparable to the state of an incapacitated person. The unions are now ready, through their national council, and following a series of international and local meetings, to proceed with collective bargaining, as they are convinced of its major benefits especially in the development of better methods to improve terms and conditions at work. The Government (as an employer) together with other major private employers, who are highly skilled and more advanced than the unions, do not have to be reminded about the importance or the impact of collective bargaining on national development. They have already made dynamic efforts to streamline their activities in relation to our national industrial relations system.

As globally recognised, collective bargaining is an important criterion for the effectiveness of our industrial relations system in Kiribati. It is also the only fair and legal way of bargaining with an employer for better awards for our true values and worth, in terms of our overall productivity. How long will there continue to be obstacles to collective bargaining, as these obstacles prove to be very serious developmental constraints that cannot be tolerated any more by the new trade unions?

Where there are hardly any specific legal provisions for collective bargaining, how much further could one expect it to be effectively seen and practised between organized labour and employers in Kiribati? In fact, trade unions, other than the Kiribati Islands Overseas Seamen's Union (KIOSU), cannot proactively pursue their demands for their members in an effective manner, if their right to collective bargaining continues to be legally denied.

In reality, the influence of traditional culture is, again, only a colonial misconception that is no longer applicable in the present situation in the workplace. Nowadays, it has no major impact on workers and their conditions of employment over collective bargaining.

We believe that as workers, the social norms within which people must work and behave in the workplace have been more strongly influenced by the "organization culture" than our "traditional culture."

More educated people have joined the workforce and more educational awareness programmes on freedom of association have been organized nationally since the last BKATM strike. So, the conduct and behaviour of workers have changed rapidly and improved in a positive manner.

The role of the State in the economy must not be seen, prematurely, as an immediate threat to collective bargaining. This is a wrong prediction, for in cases where prior consultations or dialogue are first initiated with social partners, serious conflicts or threats can be easily recognised and rectified immediately.

Regardless of the unqualified assumptions and speculation over the present image of the new trade union leadership and movement, specific provisions for collective bargaining as a level playing field must always be provided in the first instance. Since assuming our ILO membership, this part of an integrated legal framework has been missing, even though the social partners could all equally and effectively perform their significant roles within the Kiribati context of development in the field of industrial relations. We are already in the process of trying to improve further, trade union development initiatives, in order to be more capable, institutionally and legally at all levels, than in the past.

The phrase “absence of a strong union” in Kiribati, at the present time, is an exaggerated assessment of the trade union movement that needs to be qualified. What development indicators were used by the Government to attain this assessment? The strength of the union cannot be effectively measured without some form of officially recognized yardstick or indicator. A sound institutional framework, created by an improved national framework, would not be a serious obstacle to Government business with regard to collective bargaining in the country.

A union, in order for it to become a strong movement, regardless of whatever limited existing resources it may have, needs to be fully convinced that all existing barriers from past practice, have been removed and replaced with the well instituted important legal tools needed for effective work.

The consequences of mass dismissals and the failure of industrial action by the BKA TM in the 1980 general strike, were simply caused by the continuing lack of recognition and the legal absence of their right to bargain collectively. Had the system of collective bargaining been successfully tackled by the former union leaders and introduced into our national laws prior to the dispute, the strike could have been more successfully prevented and managed. We have to tackle this issue of collective bargaining now, for the first time in the history of Kiribati, through a collective but gradual process with the social partners.

The present union movement strongly believes it cannot develop overnight, especially with the loss of credibility, the “remains” of unfortunate problems and the image gained by the leadership of the BKA TM strike. The people’s experience of the last BKA TM strike has presented two sides of the image of the leadership, to the new trade union generation.

The failure of the leadership immediately distorted the real fate of the current trade union leaders and activists, with regard to their future roles in the community. The new union generation has no choice but to focus simply on, and gradually adopt, new changes which are more compatible with the current as well as future developmental problems and issues.

Unions must seriously deal with “first things first,” employing a systematic approach as trade unions obviously deal with highly important human issues. Therefore, let us not get things mixed up, in a completely disorganized manner. We therefore completely disagree with the idea that any introduction of collective bargaining in Kiribati, and by implication the ratification of this Convention, may have implications for the economy and the industrial relations in the country. Present union leaders are now more collectively mature and better equipped to face the realities of their roles and functions in society. The way to respond to current social, economic and political circumstances in any industrial relations issue is obviously a dynamic and challenging development. We need to re-explore and regain better opportunities to bolster trust between the social partners and stronger commitments to achieve practical results in our constructive social partnership.

Industrial strikes are no longer easy tasks, as one may have wrongly believed to be the case in a country like Kiribati. The present trade unions are always subject to precautionary measures as stipulated in the IRC. What should the State be afraid of in the end? We, therefore, strongly feel and recommend that, under the present circumstances, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) be ratified immediately. Collective bargaining is the only true means by which trade unions can survive and it could only prove its worth and place within the working community.

Collective bargaining also helps to sustain legal improvements on the current outdated employment agreements given to the workers. Employers who are currently not obliged by law to review clauses, which unions may wish to have reviewed, will open up their doors for the first time in the history of Kiribati, to accept collective bargaining as a more genuine and ongoing process of settlement between employers and the unions. Legal provision for collective bargaining is therefore urgently needed, without delay, to strengthen significantly our current institutional capacity for the betterment and interest of the working society we serve.

No one, according to the Kiribati Constitution, section 13(1), shall be hindered in the enjoyment of his freedom of assembly and association. In furtherance of this ideal, the Trade Unions and Employer Organisations Act, section 5(1), provides an explanation for the registration of unions.

L8 of the National Conditions of Service (NCS), because of its mandatory limits not to accept employees at certain levels to hold office, has contradicted the whole purpose behind the highest law in the country, the Kiribati Constitution section 13(1). There is no specific Public Service Act and the NCS is only a guideline, which unlike the Constitution, has limited or no legal force. The Constitution should always prevail where the right to freedom of association of an individual has been otherwise affected by other existing laws, and by the approval of the Secretary to Cabinet to make distinctions between individuals.

There is no authorization or registration of collective agreements by the Government for, as has already been stated, there were no specific legal provisions for the proper conduct of collective bargaining.

Collective bargaining will be very helpful for the development of better wages and other important areas dealing with terms and conditions of employment. The decision to have, or not to have collective bargaining, is always a political one. It is not the ILO's decision.

It is that of our national Government, and based on tripartite consultations with the social partners.

We agree with this section of the Government's report:

Section 5 of the Trade Unions and Employer Organisations Act 1998, states, 5(1) No trade union or employer organization or any member thereof shall perform any act in furtherance of the purposes for which it was formed unless such trade union or employer organization has first been registered.

Section 8 states that registration of trade unions and employer organizations is compulsory. The Act prescribes the steps to be taken for registration of trade unions. The Registrar of Trade Unions and Employer Associations may refuse an application for registration under section 10 of the Act. However, in accordance with section 13, any person aggrieved by the refusal of the Registrar to register a trade union or employer organization may appeal to the High Court.

Section 11 of the Trade Unions and Employer Organisations Act 1998 grants certain powers to the Registrar, to cancel the registration of trade unions and employer organizations. Subsection 2 requires the Registrar to give at least two months' notice in writing, specifying the grounds of the proposed cancellation and subsection 3 provides the

organization with the right to show cause in writing against the proposal. Any decision made by the Registrar in this regard may be appealed to the High Court under section 13.

Part VI of the Industrial Relations Code 1998, regulates the protection of Essential Services, Life and Property. Workers in essential services, under certain circumstances, may not break their contract of service or engage in industrial action until the fulfilment of certain conditions (sections 34 and 35).

However, we believe that the Government's statement "while not specifically targeted at freedom of association and the recognition of collective bargaining, Kiribati has commenced a programme towards the ratification of the "fundamental" ILO Conventions", should begin as follows: "While specifically targeting freedom of association and the recognition of collective bargaining, Kiribati has commenced a programme towards the ratification of the "fundamental" ILO Conventions."

Annexes (not reproduced)

- Extracts from the National Conditions of Service.
- Laws of Kiribati Revised Edition, 1980. *Constitution of the Republic of Kiribati*.
- The ILO–AusAID project to support labour departments in the Pacific (PACLAB/ILO), 1995. *Pilot Labour Market Information Survey* (1995).
- Republic of Kiribati, 2000. *National Development Strategies 2000-03 Uataboan Te Rikirake Ao Te Rau – Working Together for Prosperity and Peace* (October 2000).
- Republic of Kiribati (No. 1 of 1998). *An Act to Regulate Trade Unions and Employer Organisations I Assent* (Sgd. T. Tito) Beretitenti 09/07/98 (*Trade Unions and Employer Organisations Act, 1998*).
- Republic of Kiribati, 1998. *An Act to make Provision for the Settlement of Trade Disputes and the Regulation of Industrial Relations to Consolidate and Amend the Law relating to Services and for Matters Incidental Thereto and Connected Therewith (Industrial Relations Code, 1998)*.

Korea, Republic of

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the right to collective bargaining is recognized in Korea.

The principle is recognized in:

- the Constitution:

“To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action” (article 33, paragraph 1).

■ Trade Union and Labour Relations Adjustment Act (TULRAA):

“Workers are free to establish or join a trade union, except for public servants or teachers who are subject to other legislation” (article 5);

“The representative of a trade union has the authority to bargain with employers or employers’ association, and to conclude collective agreements for the trade union and union members” (article 29, paragraph 1);

“A trade union and an employer or employers’ association shall bargain, in good faith and sincerity with each other and conclude a collective agreement, and shall not abuse their authority” (article 30, paragraph 1).

Article 33, paragraph 2, of the Constitution states that “only those public officials who are designated by the Act, shall have the right to association, collective bargaining and collective action”. Article 66 of the State Public Officials Act and article 58 of the Local Public Officials Act ban the labour activities of public officials, except for those public officials practically engaged in manual work.

*Scope of the public officials practically engaged in manual work: public officials employed for elementary jobs in the Ministry of Information and Communications, the National Railroad Administration and the National Medical Centre (article 28 of the Regulation on Duties of the State Public Officials).¹

The Act concerning the Establishment, Operation, etc. of the Workplace Association of Public Officials (24 February, 1998) allows public officials of grade six or lower (teachers, police officers and firefighters excluded) to organize a workplace association in each administrative agency and to negotiate the improvement of their working conditions and working methods and the effective resolution of their grievances.

The establishment of an additional trade union, whose membership overlaps with an existing union in an enterprise, will be banned until 31 December, 2006.

The (TULRAA) of March 1997 adopted the principle of union pluralism with the reservation that at the enterprise level it will be effective from 2002 onwards. Until then, the social partners shall provide for methods, procedures, and other necessary measures for a new collective bargaining system (article 5, paragraphs 1 and 3 of the TULRAA).

However, the Act was revised on 28 March 2001, following the decision of 9 February 2001 of the Tripartite Commission, to put off the introduction of union pluralism until 2007.

No prior authorization is required to establish trade unions under the principle of freedom of association stipulated by article 22 of the Constitution. A trade union shall only

¹ All text following the (*) is supplied by the Government for clarification of the text that immediately follows.

submit a notification of union organization to the competent authority, in accordance with article 10 of the TULRAA, to be protected by the Act.

Since trade unions will be organized and operated autonomously by workers, in principle, the Government will not intervene in their functioning. However, the following cases allow the Government's involvement in the functioning of trade unions to the extent of supporting union activities.

- When the representative of a trade union deliberately neglects or avoids the convening of the general meeting and when more than one-third of the union members or delegates submit to a competent authority, a request for the nomination of a person to convene the meeting, the authority shall ask the Labour Relations Commission to make a decision and, upon the decision of the Commission, nominate the person who will convene the meeting of the trade union (article 18, paragraph 3 of the TULRAA);
- In case there is no person entitled to convene a general meeting or a council of delegates, the competent authority shall nominate a person when more than one-third of the union members or delegates submit a request for the nomination of a person who will convene the meeting with agenda items to be referred to in the meeting (article 18, paragraph 4 of the TULRAA);
- When the by-laws of a trade union violate the labour laws, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to correct the flawed parts to remedy the defects of the by-laws (article 21, paragraph 1 of the TULRAA);
- When resolutions or measures of a trade union violate the labour laws or by-laws of the trade union, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to correct the problems to remedy the defects (article 21, paragraph 2 of the TULRAA).

*The order to remedy defects in the resolutions or measures which violate the bylaws of the trade union shall be issued only when the interested party lodges an appeal with the competent authority.

Upon the request the administrative authorities, a trade union shall report a statement of accounts and the status of their operations to the authority (article 27 of the TULRAA).

Disputes at essential public services may be subject to compulsory arbitration following certain procedures. Essential public services, defined in article 71(2) of the TULRAA, include railroad services, water, electricity, and gas supply, oil refinery and supply services, hospital services, and telecommunications services.

*In January 2001, banking services and inner-city bus services were dropped from the list.

Yet, compulsory arbitration should not be interpreted as automatic arbitration of a dispute, leading to restrictions on the right to strike. Only after the Special Mediation Committee of the Labour Relations Commission decides that a labour dispute in the essential public services is unlikely to be settled through mediation, the Committee may recommend to the Commission to refer the case to compulsory arbitration (article 74 of the TULRAA).

On receiving this recommendation, the Chairman of the Commission shall decide, after consultations with the members of the Commission representing public interests, whether the case shall be referred to compulsory arbitration (article 75 of the TULRAA).

According to article 40 of the TULRAA, in the event of collective bargaining or other industrial action, a trade union or an employer may be supported by:

- (1) industrial federations or a national confederation of which the trade union is a member;
- (2) an employers' association of which the employer is a member;
- (3) a person who has been notified to the administrative authorities by the trade union or the employer; or
- (4) a person who is entitled to provide support under other relevant laws or regulations.

Trade unions set up under the TULRAA are guaranteed the right to collective bargaining by the Constitution. However, the right does not apply to organizations of non-workers, trade unions disregarding procedures prescribed by the TULRAA, and public officials other than those engaged in manual labour.

Collective agreements are concluded for a maximum term of validity of two years (article 32 of the TULRAA). There are no laws and regulations providing for the Government's authorization of collective agreements.

Article 81 of the TULRAA provides that any act of employers which infringes on the three most important workers' rights shall constitute an unfair labour practice. The law contains provisions for criminal penalties against employers who commit such unfair labour practices and fail to fulfil the order issued by the Labour Relations Commission to remedy the unfair practices.

*Article 81 (unfair labour practices) of the TULRAA (quoted at length).

Employers shall not commit an act which falls within any of the following subparagraphs (hereinafter referred to as "unfair labour practices"):

- (1) dismissal of, or discrimination against, a worker on the grounds that the worker has joined, or intended to join a trade union or to establish a trade union, or has performed a justifiable act for the operation of a trade union;
- (2) employment of a worker on the condition that the worker should not join, or should withdraw from a trade union, or should join a particular trade union. However, in cases where a trade union is representing more than two-thirds of workers employed in the same business, the conclusion of a collective agreement under which a person is employed, on condition that he/she becomes a member of the trade union, shall be allowed as an exception. In this case, the employer shall not discriminate against the worker because he was expelled from the trade union;
- (3) refusal or delay of the conclusion of a collective agreement or of collective bargaining, without justifiable reasons, with the representative of a trade union or a person who has been authorized by a trade union;

- (4) domination of, or interference with, the formation or operation of a workers' union and wage payment for full time officials of a trade union, or financial support for the operation of a trade union. However, employers may allow workers to take part in consultation or bargaining with the employers during working hours, and may provide subsidies for the welfare of the workers, or for the prevention and relief of financial difficulties and other disasters, and may provide a union office of the minimum size; or
- (5) dismissal of, or discrimination against a worker on the grounds that the worker has taken part in justifiable collective activities, or has reported the violation of the provisions of this article by the employer to the Labour Relations Commission, or has testified about such violations or has presented evidence to administrative authorities.

Any violation of the above provisions will be punished by imprisonment of up to two years, or by a fine of up to 20 million won (article 90 of the TULRAA).

Assessment of the factual situation

Union organization for the year 2000:

- number of trade unions: total of 5,698, including 46 federations and 5,652 unit trade unions;
- number of union members: 1,526,995;
- number of workers eligible for union membership: 12,701,000;
- unionization rate: 12 per cent.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The principle of union pluralism was adopted by the enactment of the TULRAA in March 1997.

However, an enterprise will only have multiple trade unions from 2006 onwards.

With the Act concerning the Establishment, Operation, etc. of the Workplace Association of Public Officials in place (enacted on 24 February, 1999), public officials of grade six or lower are allowed to organize a workplace association at the level of an individual administrative agency and to negotiate ways in which working conditions and working methods can be improved and other grievances can be handled effectively.

The Act on the Establishment and Operation, etc., of Trade Unions for Teachers, which was enacted on 29 January, 1999 and entered into force on 1 July 1999, grants teachers the right to organize and bargain collectively.

The Ministry of Labour is working on the improvement of the legal system, in order to guarantee freedom of association and the effective recognition of the right to collective bargaining. The Tripartite Commission set up by the Act concerning the Establishment, Operation, etc. of the Tripartite Commission enacted in 1999, has discussed institutional improvement as a mechanism to promote social dialogue. The Commission complements

efforts of the Government, which actively reflect the agreements reached in the Commission as regards the implementation of government policy.

As a result of the Government's devoted efforts to stimulate dialogue among the social partners in the Tripartite Commission on the promotion of freedom of association and the right to collective bargaining, the Tripartite Commission has agreed on the following two-phase agreement to recognize the right of public servants to organize.

First phase: legalization of Public Officials' Workplace Associations (POWAs);

Second phase: full recognition of trade unions of public officials after considering public opinion and institutional reform;

The Government will continue to make efforts to ensure the effective establishment and operation of POWAs. This will contribute to the eventual establishment and operation of public officials' trade unions.

The Tripartite Commission placed the item "Measures to guarantee basic labour rights of public servants" on its agenda for discussion, and has consulted experts and conducted surveys. The Subcommittee on Basic Labour Rights of Public Servants under the Tripartite Commission has thoroughly dealt with this issue in earnest.

Starting in 2002, the Tripartite Commission will conduct surveys on types and practices of union pluralism, and discuss a new bargaining structure under union pluralism.

The Tripartite Commission has discussed other issues such as changing the scope of essential public services to improve basic labour rights.

The Government will request, when necessary, technical cooperation and assistance of the ILO to promote tripartite dialogue, which often faces obstacles due to experience in this field. Experience is of great importance in improving the industrial relations system.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the following employers' and workers' organizations:

- Korea Employers' Federation (KEF)
- Federation of Korean Trade Unions (FKTU)
- Korean Confederation of Trade Unions (KCTU)

Observations submitted to the Office by the Korea Employers' Federation (KEF) through the Government

Freedom of association and the right to bargain collectively are generally recognized in Korea, with the exception of public servants. The text that follows, addresses issues relating to partial restrictions on freedom of association.

Recognition of the right to organize by public servants

On 6 February 1998, the Tripartite Commission reached an agreement on the right to organize by public servants. Public servants were allowed to organize a works council as from January 1999. Trade unions will be allowed at a later stage in line with public opinion and following the reframing of related laws and regulations.

On 19 July 2001, the Tripartite Commission set up a Subcommittee on the trade union rights of public servants. The Subcommittee is being convened twice a week to discuss: (1) the scope of trade union rights; and (2) the scope of union membership.

Trade union pluralism at the enterprise level

On 9 February 2001, labour, management, and the Government agreed at the Tripartite Commission to postpone the introduction of trade union pluralism at the enterprise level, by five years. This agreement was based on recognition of the negative impact that exhaustive arguments and conflicts over the topic could have on industrial relations.

As a matter of fact, labour demanded such a postponement. Trade unions in Korea, both the FKTU and the KCTU, have been very much concerned about the multiple union system at the enterprise level. They want to avoid the situation in which several unions might divide the unity of the workers in a single company and employers might use the multiple union system wilfully to hamper the operation of already existing trade unions. They were concerned that a multiple representation system would run the risk of fragmenting workers' voices.

Actually, multiple unions at the enterprise level are prohibited only when union membership overlaps with that of an already existing trade union. In fact the courts interpret the law very strictly in order to minimize the scope of overlapping. [References are made to trade unions in particular sectors.]

Labour rights of teachers

Following the adoption of the Special Act on Teachers' Trade Union, teachers' trade unions have been recognized since 1 July 1999. [There are references to a particular trade union.] Collective action by teachers should be restricted to a certain degree in order to protect students' right to learn.

The issue of trade union rights of professors is being discussed in the Committee of Industrial Relations of the Tripartite Commission.

Restrictions on collective action in essential services

Trade unions argue that labour disputes in essential services are always referred to compulsory arbitration and that the right to strike is totally blocked as arbitration awards are automatically given to such disputes. This is far from the truth.

Labour disputes in essential services are subject to compulsory arbitration only when the Special Mediation Committee of the Labour Relations Commission recommends to the Chairman of the Labour Relations Commission to refer a case to arbitration after failure of the due mediation process by the Committee. [Reference is made to a matter pending before the ILO Committee on Freedom of Association.] The compulsory arbitration system

for essential services should be understood as a minimum restriction to minimize damages from strikes in the sectors by encouraging the settlement of labour disputes through negotiation.

Arrest of union officers

[Reference is made to a matter pending before the ILO Committee on Freedom of Association.]

Observations submitted to the Office by the Korean Confederation of Trade Unions (KCTU) through the Government

1. *Regarding the indication that “Public officials practically engaged in manual labour are not denied rights to organize”:*

In principle, public officials practically engaged in manual labour are guaranteed three basic labour rights according to the Constitution and the relevant laws (the State Public Officials Act (SPOA) and the Local Public Officials Act (LPOA)). But things are different in reality.

Article 66(2) of the SPOA states that the scope of public officials who are engaged in manual labour shall be determined by the National Assembly Regulations, Constitutional Court Regulations, and the National Election Management Commission Regulations. However, no provisions in the laws mentioned above actually define the scope.

The Regulation on Duties of the State Public Officials defines “the public officials practically engaged in manual work” as public officials employed for technical and elementary jobs in the Ministry of Information and Communications, the National Railroad Administration and the National Medical Centre. The Supreme Court Regulations provide that employed public officials engaged in five categories of work, including confidential documents and security matters are “the public officials practically engaged in manual work.” Public officials of the two categories are guaranteed the right to organize.

Article 58, paragraph 2 of the LPOA specifies that the scope of public officials engaged in manual labour shall be determined by the relevant Public Ordinances, and article 2, paragraph 3(4) prescribes that “those who are engaged in simple labour activities” are included in “public officials in special career service.” However, no local autonomous agency among the 248 regional agencies sets the scope of “the public officials practically engaged in manual work” in the Public Ordinances.

[Reference is made to matters regarding public officials that are pending in the ILO Committee on Freedom of Association.]

Public officials have formed the Federation of Public Officials, Workplace Associations (POWAs) ... [References of a complaint-like nature.]

The Federation and other bodies for public officials are not participating in the Tripartite Commission that has discussed the issue of trade unions of public officials.

[Reference to matters involving public officials, teachers, bans on multiple trade unions, alleged intervention in the functioning of trade unions and in collective bargaining, all pending in the ILO Committee on Freedom of Association.]

Multiple unions are allowed only at the level of industry federations and confederations. [References of a complaint like nature.] The Supreme Court rules that practical standards such as organizational activities and the demarcation between the scope of existing trade unions and newly established ones are the basis for deciding whether the membership overlaps or not. However, the Ministry of Labour (MOL) and the agencies following the administrative interpretation of the MOL, under the Ministry's auspices, stick to formalities, so a trade union with no problems to be established is rejected when it files a complaint with the court. [References of a complaint-like nature.]

Enterprise-level unions have been the norm in Korea. But nowadays, non-enterprise-based unions at the regional, industry, and different occupational levels are emerging in large numbers. The KCTU has also decided to turn its members into industry-based unions and is in the process of doing so. In this changing environment, the rigid administration of the MOL has resulted in increasing restrictions on multiple unions compared to before 1997 when the laws were revised and enterprise-base unions were the norm.

[Reference is made to the alleged intervention by Government in the functioning of a workers' organization, compulsory arbitration and essential public services, all matters now pending in the ILO Committee on Freedom of Association.]

Third party intervention

The provision concerning the ban on third party intervention remains in article 40 of the TULRAA. Also, article 89 of the TULRAA provides that any violation of the provisions of article 40 will be punished with up to three years of imprisonment and fines of 30 million won.

[References of a complaint-like nature regarding, inter alia, alleged intervention of the Planning and Budget Office and relevant Government departments in collective bargaining at affiliated agencies and government-invested bodies.]

In contrast to what the MOL states, unfair labour practices are at a serious level, but employers engaged in these practices are rarely punished. The employers, when punished, are mostly fined. So, the effect of punitive measures is very limited. The biggest problem lies in the lack of determination on the part of the Government, but there are also structural problems. Currently, criminal cases related to labour issues are dealt with by the Public Security Division of the Prosecutor's Office, which handles criminal acts of an anti-state or anti-establishment nature. This proves that cases related to strikes are treated as anti-state criminal acts. Unfair labour practices by employers are the responsibility of the division employing the most politically-oriented and conservative prosecutors. It is therefore not surprising that the prosecutors are not active in punishing employers. The problem is compounded by insufficient investigations of unfair labour practices by the MOL.

[Reference of a complaint-like nature to the number of arrested workers.] Such unfairness in law enforcement is deepening labour's mistrust of the Government.

The statistics compiled by the Central Labour Relations Commission (LRC) show that only 10.1 per cent of cases of unfair labour practices calling for remedies are

recognized. Extremely serious cases are recognized to be subject to remedy procedures, therefore this low rate of recognition gives little merit to the current system.

Regarding the indication by the Government that the Tripartite Commission is promoting effective recognition of freedom of association and the right to collective bargaining, the Tripartite Commission in Korea is just a presidential advisory body and a consultative organization for formality's sake, rather than a social dialogue mechanism like in [other] countries.

There is no guarantee that the items agreed in the Commission will be implemented because there is no legally binding force for their implementation. The Government is selectively implementing what is in its interest. In fact, on issues such as layoffs and the introduction of a leased work scheme agreed upon at the first session of the Tripartite Commission, the Government enacted laws immediately after the agreement, while it has not provided a proposal on issues related to basic labour rights such as the right of dismissed and unemployed workers to join non-enterprise-level trade unions, legalization of trade unions for public servants, and reduced working hours. Now, more than three years have passed since the agreement.

The Tripartite Commission also decided to delay the introduction of union pluralism for five years, which is against the principle of social dialogue, which it should advocate.

Decisions of the Commission are based on majority vote, including votes from persons representing public interests appointed by the Government. Thus, the decisions naturally reflect the positions of the Government. [Statements of a complaint-like nature.]

The Government neglects its responsibilities by using the Commission as a justification for delaying action on important issues.

Government observations on KCTU's comments

The Korean Government supports the basic principle of the Declaration on Fundamental Principles and Rights at Work and its Follow-up discussion on the Global Report, and technical cooperation of the ILO secretariat.

As is stated in its Annexes, the aim of the Declaration is to encourage the efforts made by Members of the Organization to promote the fundamental principles and rights.

In line with the objective of the Declaration, the follow-up should be of a strictly promotional nature, and for technical cooperation, which will help ILO Members to implement core Conventions effectively.

In this regard, the KCTU's observations on this year's Annual Report on unratified core Conventions are not compatible with the basic principle of the Declaration on Fundamental Principles and Rights at Work and its Follow-up discussion on the Global Report.

The issues the KCTU argued as problematic in terms of freedom of association have already been raised by the KCTU through the complaints it forwarded to the ILO Committee on Freedom of Association (CFA) and dealt with by the Committee. The materials the KCTU presented this time have also been delivered to the CFA.

Thus, raising the issues being discussed at the CFA in the context of the Declaration on Fundamental Principles and Rights at Work and its Follow-up discussion on the Global Report violates the basic principle of the Declaration, that the Declaration and its follow-up should not work as a double supervisory mechanism for member States.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Obstacles to the right to strike, arrests and violence against trade unionists, a ban on union membership for most workers and other violations of trade union rights persist in Korea.

Government fails to respect international commitments.

Korea's admission into the Organisation for Economic Co-operation and Development (OECD) in 1996 was subject to one condition: "that it reforms its legislation in compliance with internationally accepted standards, including essential rights such as freedom of association and collective bargaining". The Republic of Korea had already promised to do so when it joined the ranks of the ILO a few years earlier, but had not taken any steps in this direction. In 1997, international pressure obliged it to make some improvements to its labour legislation, but it continued to violate trade union rights in both law and practice. The OECD has introduced a special procedure to monitor the country's behaviour on these issues, an unprecedented move by the Organization.

Civil service virtually devoid of trade union rights

Broad categories of civil servants remain deprived of the right to belong to professional associations: out of a total of 930,000 civil servants, only 338,000 can exercise this right. The ban on teachers' unions was lifted in 1999, but organizing at school level is still prohibited, as are all political activities.

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.

The right to strike is broadly denied. The 1997 Trade Union Labour Relations Adjustment Act (TULRAA) and public service legislation ban strikes by persons 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. [...] Teachers are also refused the right to strike.

Arrests of trade unionists are frequent in Korea (528 in 2000), although people are usually only held for short periods. Article 314 of the Penal Code, which considers strikes as an "obstruction to business" is often used as a pretext to arrest trade union leaders, as is

infringement of the obligation to go through arbitration procedures before calling a strike in an essential service.

There are also some export processing zones (EPZs) in Korea. The Government considers enterprises in the zones as being in the public interest, and workers' organizing rights are more restricted than elsewhere.

Government observations on ICFTU's comments

Responding to the comments made by the ICFTU on the annual report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, the Korean Government notes that the comments overlap with the issues being dealt with by the Committee on the Freedom of Association. [Reference is made to a specific case.] In this regard, it recalls the basic principle of the ILO Declaration on Fundamental Principles and Rights at Work, to make it clear that it should not be used as a double supervisory mechanism.

This response is not intended to go into detail of each issue raised by the ICFTU, as was mentioned above, because the issues are already being dealt with by the Committee on Freedom of Association. Instead, it will briefly present the progress being made with respect to labour rights in Korea, since Korea's accession to the OECD, and point out the wrong information [in the comments] as regards the situation of labour rights in Korea.

1. *Progress on labour rights in Korea since Korea's accession to the OECD in 1996*

The Korean Government has made relentless efforts to improve labour rights in Korea to meet internationally accepted standards, while actively cooperating with international organizations such as the ILO and the OECD.

It revised labour laws in March 1997 to recognize political activities of trade unions and multiple umbrella unions; and to repeal the provision banning third party intervention.

The Tripartite Commission, a social dialogue mechanism launched in February 1998, has enabled the establishment of Public Officials' Workplace Associations (POWAs) (in 1 January 1999) and the trade union for teachers (in July 1999). The Korean Confederation of Trade Unions (KCTU) has acted as a National Centre with the Federation of Korean Trade Unions (FKTU) since it was recognized in November 1999. Tripartite representatives in the Commission have discussed other measures for institutional reform including the issue of trade unions for public officials and the reduction of hours of work, with a view to improving workers' rights and their quality of life.

2. *Labour rights of the public sector*

The ICFTU made an argument that is far from the facts, when it stated in its comments that [workers] in the civil service, including state enterprises and the defence industry were deprived of the right to collective bargaining and the right to strike. Officials in the public sector enjoy the same labour rights as workers in the private sector, and officials in state enterprises (railway stations, postal offices, hospitals, etc.) who are involved in manual work, face virtually no restrictions on their exercise of labour rights, including the right to strike.

The issue of trade unions for public officials, except for the aforementioned officials involved in manual labour, has been discussed in the Tripartite Commission, although public officials are allowed to organize only POWAs at present.

3. *The right to strike of workers in the defence industry*

Regarding the comment of the ICFTU that workers in the defence industry may not exercise the right to collective bargaining and the right to strike, the Government would like to reiterate that current labour laws do not restrict the right to collective bargaining in any circumstances. Yet, the right to strike is limited to two categories of workers in the defence industry: workers in charge of the production of the defence goods, and workers in electricity and water supply services directly related with the production of defence goods. [Reference is made to statements made by the ILO Committee on Freedom of Association.]

4. *Labour rights of workers in export processing zones (EPZs)*

Workers in the EPZs in Korea are not in a different situation from those in other areas in terms of the exercise of labour rights, although the ICFTU has maintained that the right of workers in EPZs to organize is more restricted it is for workers elsewhere.

Kuwait

Government

Means of assessing the situation

Assessment of the institutional context

The Government of the State of Kuwait notes that it ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Consequently, this report deals only with the principle of the right to organize and collective bargaining, relating to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government of the State of Kuwait notes that it is undertaking a study aimed at comparing the provisions of the Right to Organise and Collective Bargaining Convention (No. 98) with the legislation in force, with a view to ratifying the Convention. The State of Kuwait is committed to the fundamental principles and rights such as the right to organize and collective bargaining, pending the results of the study.

The social partners, represented by the Ministry of Social Affairs and Labour, the General Federation of Trade Unions of Kuwait and the Kuwait Chamber of Commerce and Industry, met to discuss the content of the present report and expressed a positive opinion with respect to the ratification of the Right to Organise and Collective Bargaining Convention (No. 98). They unanimously recommended that the competent authority ratify this Convention.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

Copies of this report have been sent to:

- Kuwait Chamber of Commerce and Industry (representing the employers)
- General Federation of Trade Unions of Kuwait (representing the workers)

**Observations submitted to the Office by the
International Confederation of Free Trade Unions
(ICFTU)**

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

[Reference is made to alleged violations arising under a ratified Convention.]

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 per cent of the workforce, must have resided in Kuwait for at least five years and must obtain a certificate of good conduct and morality before they are allowed to join a trade union as non-voting members. They are not permitted to run for any trade union post. In practice, reports indicate that foreign workers have joined a trade union before the period of five years has expired, and that, in fact, these workers make up one-third of the registered members.

Single trade union system and strike restrictions

[Reference is made to alleged violations arising under a ratified Convention.]

The law limits the right to strike and imposes compulsory arbitration if the workers and employers are unable to resolve a conflict.

The Government has announced that it has drawn up a bill to change the Labour Code. This would make it possible to annul the provision which excludes certain categories of workers from the scope of application of the Labour Code and also to remove the obligation for each founding member to obtain a certificate of good conduct from the Ministry of the Interior, as well as the current provision transferring a union's assets to the Ministry of Labour and Social Affairs in the event of its dissolution.

Lao People's Democratic Republic

Government

Means of assessing the situation

Assessment of the institutional context

The Labour Act of the Lao People's Democratic Republic was approved by the Supreme People's Assembly No. 24/PR on 21 April 1994. It had been promulgated by Presidential Decree No. 002/NA on 14 March 1994.

The content of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) is compatible with the Government's policy on Lao labour issues. Convention No. 87 is compatible with section 3 of the Lao Labour Act.

Section 3 of the Lao Labour Act states that workers and employers shall have the right to adopt their rules independently and to belong to any mass and social organization that has been formed lawfully.

Such mass and social organizations shall have the right to adopt their rules independently and to belong to any labour federation or confederation within the country. Procedures concerning the establishment, functions and activities of these organizations shall be determined by regulation.

Assessment of the factual situation

Although we have not ratified Convention No. 87, we have implemented it in practice.

Representative employers' and workers' organizations to which copies of the report have been sent

- National Chamber of Commerce and Industry
- Lao Federation of Trade Unions

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The only authorised trade union is controlled by the only legal political party.

Trade union freedom does not exist in Laos. The Lao Federation of Trade Unions (LFTU) is the only authorised national centre. The LFTU, which must submit annually an activity report to the Government, is directly controlled by the LPRP, the only legal

political party in the country which founded the centre in 1966. All trade unions must belong to the LFTU. Congresses are held every four years. It elects the members of the executive committee who, in turn, select their chairman. All of this takes place with the authorisation of the LPRP. [Comments are made concerning the source of financing of the LFTU's activities.]

It should be noted that the LFTU representatives in the public sector or in state-run companies tend to be members of the LPRP or the management. There is practically no labour representation for joint ventures funded with foreign capital.

New labour legislation was enacted in 1994. In theory, it protects workers by establishing a certain number of minimum labour standards. However, the right to collective bargaining is considerably limited. While strikes are not outlawed as such, they cannot take place without Government approval. The Government prohibits all "subversive" activities and "destabilizing" demonstrations.

Lebanon

Government

Means of assessing the situation

Assessment of the institutional context

Convention No. 98

The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) was ratified by Lebanon in Executive Order No. 70 dated 25 June 1997.

Our national legislation recognizes the right to collective bargaining through the Collective Agreements, Conciliation and Arbitration Act, No. 17386, dated 2 September 1964. On 22 October 1999, the Ministry of Labour transmitted to the ILO detailed information on the legal provisions pertaining to collective bargaining and collective agreements covered by the Act.

Since Convention No. 98 is now ratified, it is excluded from the reports required under the ILO Declaration on Fundamental Principles and Rights at Work. Our replies therefore refer only to the principles contained in Convention No. 87.

Convention No. 87

Lebanon recognizes the principle of freedom of association and effective recognition of the right to collective bargaining, as stated in our previous reports (GB.277/3/2; GB.280/3/2). The principle is recognized in:

- the Lebanese Constitution of 1926, guaranteeing trade union freedom and the right to establish legal associations, and its amendments;
- the Lebanese Labour Code of 1946, which covers trade unions in Title IV (Articles 83-106);

- Decree No. 7993 dated 3 April 1952 on the organization of trade unions, in implementation of Title IV of the Labour Code; and
- the international instruments ratified or acceded to by Lebanon, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Assessment of the situation in the private and public sectors

Private sector

Under Article 83 of the Lebanese Labour Code, employers and workers in many industries are entitled to establish a trade union with legal personality and the right of legal representation.

All employers and employees are covered by the Labour Code, unless they are specifically excluded. The categories entitled to establish a trade union are listed in Article 8, which also applies to establishments and their departments and branches, whether commercial or industrial, Lebanese or foreign-owned, public or private, secular or religious, including national and foreign-owned educational establishments, charitable organizations and foreign companies with an office, subsidiary or agency in Lebanon.

Article 7 lists the following categories as being excluded from the provisions of the act and therefore not entitled to establish trade unions:

- domestic staff in the service of private persons;
- agricultural corporations that do not conduct commercial or industrial activities. These will be governed by special legislation;
- establishments that employ only family members under the management of the father, mother or guardian;
- employees and temporary workers in public administrative departments and municipal bodies, who have a “special employee status” adopted under Decree No. 5883 dated 3 November 1994.

In practice, there are agricultural corporations covered by the Labour Code’s provisions on trade unions.

The right to organize exists also at the international level. Employers’ and workers’ organizations and their federations are entitled to join international bodies and federations in their field, even if there is no specific law on the subject.

Public sector

Public servants are not permitted to join professional organizations or trade unions. Nor, under Executive Order No. 112 dated 12 June 1959 (Art. 15, Para. 2 and 3), are they permitted to strike or call strikes.

In connection with the right to organize, the following should however be noted:

1. In the State educational sector, there are teachers' associations at all levels of education, including primary, secondary and university. These organizations negotiate with the relevant administrations to safeguard teachers' rights and defend their interests.
2. In the services under State supervision and undertakings responsible for running public services on behalf of the State or in their own name, there are legal trade unions that exercise a full range of trade union activities and negotiate with a view to concluding collective agreements under the provisions of the Collective Agreements, Conciliation and Arbitration Act, No. 17386, dated 2 September 1964.
3. Graduates and students of the National Management and Development Institute have an association that is recognized by law and liaises on their behalf with the official authorities in order to improve their occupational situation.

The Labour Code provides that no employers' association or workers' organization may be established without the prior agreement of the Ministry of Labour. The request for authorization is submitted to the Ministry of Labour, which consults with the Ministry of the Interior before reaching a decision. The trade union is considered legal only following publication of the decree authorizing it in the Official Journal (Articles 86 and 87).

The establishment of trade union federations is also subject to authorization by the Ministry of Labour, under the same conditions as those for the establishment of a trade union.

In practice, the need for authorization by the Ministry of Labour has not represented an obstacle to the establishment of trade unions or federations. There are currently 465 employers' and workers' organizations (list not reproduced).

The Labour Code specifies that all trade unions must establish a set of internal regulations approved by at least two thirds of members at a general assembly. It can enter into force only following approval by the Minister for Labour (Article 89). The ministerial approval depends only on whether the provisions of the internal regulations comply with the laws and national regulations in force and do not undermine public order.

If an application for trade union membership is rejected by the union's council, the applicant can appeal to the Ministry of Labour, which will take the appropriate decision. The party held to be in the wrong by the decision of the Ministry can appeal against it in the courts. The same system applies where a member is expelled by the council of a trade union.

The trade union council sets the date of council elections and informs the Ministry of Labour, which does not interfere in the process. If the council fails to set a date for the election of members of the council or any other election required under Article 100 of the Labour Code or under the internal regulations for the replacement of members whose legal mandate has expired, the Minister for Labour sets the date of the relevant elections in order to avoid any vacuum that could have adverse impacts on the interests of the trade union and its members. The relevant section of the Ministry then takes the necessary measures, following notification to the Council in writing, addressed to its president or his representative, and a one-month period of grace following the date of notification in order to allow the council to fulfil its legal obligations.

The following requirements are contained in Article 3 of Decree No. 7993 on the organization of trade unions:

- (a) The elections shall be supervised by an electoral commission comprising members nominated by the trade union council and a delegate nominated by the Trade Unions Section of the Ministry of Labour in order to ensure the smooth operation of the electoral process. If the trade union council has not nominated members to the commission, the ministerial delegate shall supervise the elections with observers representing the candidates in order to make sure that the election is held on the date fixed by the council, thereby ensuring compliance with the law and the continuity of the trade union's operations.
- (b) If the election results are contested, the Ministry of Labour shall examine the objection together with all interested parties and attempt to settle the dispute in the trade union's interest. The party held to be in the wrong by the settlement may appeal against it to the appropriate judicial body.
- (c) Where a complaint is made by a member of the trade union council, the labour inspectors of the Ministry of Labour may consult the trade union registers.
- (d) The trade union council shall provide a copy of the final statement of the union's accounts to the Trade Unions Section of the Ministry of Labour within three months following the end of the financial year. The labour inspectorate may examine the accounts.
- (e) The Government reserves the right to dissolve any trade union council that has not taken into account the obligations incumbent upon it or committed acts beyond its competence.
- (f) A new council shall be elected within three months of the previous one being dissolved. If the acts in question are ascribed to a member of the council, the Government may demand his replacement and prosecute him if appropriate.
- (g) Following the dissolution of a council, the Director of the Trade Unions Section of the Ministry of Labour shall, until a new council is elected, be responsible for any purely administrative work normally carried out by the president of the trade union council. He shall also be responsible for the electoral duties normally carried out by the council (Decree No. 7993, Article 12).

The principle of freedom of association is implemented through the following mechanisms:

- at the administrative level, the Ministry of Labour through its Labour Inspection, Protection and Safety Section, which is authorized in law; and
- at the legal level, the jurisdiction competent to rule on potential conflicts.

Assessment of the factual situation

Below we list the number of trade unions, employers' associations, employers' federations and workers' federations by geographical region (governorate) as at 30 July 2001.

<i>1. Governorate of Beirut and Mount Lebanon</i>		
	Workers' trade unions	192
	Employers' associations	108
	Employers' federations	7
	Workers' federations	34
<i>2. Governorate of North Lebanon</i>		
	Workers' trade unions	46
	Employers' associations	17
	Workers' federations	2
<i>3. Governorate of South Lebanon</i>		
	Workers' trade unions	54
	Employers' associations	7
	Workers' federations	3
<i>4. Governorate of North Lebanon</i>		
	Workers' trade unions	4
	Employers' associations	2
	Workers' federations	1
<i>5. Governorate of Al Bekah</i>		
	Workers' trade unions	38
	Employers' associations	7
	Workers' federations	2

The General Confederation of Workers has 37 worker federation members. A further five worker federations are not members of the Confederation.

Worker federations are particularly active in the industries that include: aviation; land and marine transport; commerce; construction and woodworking; oil; printing and media; food; hotels; restaurants and leisure; health and education; liberal professions; public and private institutions; chemicals; free trade unions; paper industries; steel, iron, mechanical engineering and plastics; sports; public services; modern technologies; agriculture and associated activities; nursing; electricals and electronics; the arts; and jewellery.

It can be seen from the list that the organization of trade unions is free and covers various industries and economic activities. There may be several trade unions within a

given industry. Equally, a federation may have member unions from a number of industries.

Employers' and workers' organizations play an effective role in economic and social life through their participation in a number of committees and tripartite councils, including:

- the Conciliation Board;
- the Committee on the Cost-of-Living Index;
- the Administrative Council of the National Social Security Fund;
- the Administrative Council of the National Employment Agency; and
- the Administrative Council of the National Centre for Vocational Training.

These organizations are also members of the Economic and Social Council.

Additionally, representatives of employers' and workers' organizations participate in tripartite seminars on various labour issues, arranged by the Ministry of Labour in cooperation with the International Labour Organization and the Arab Labour Organization. These two organizations also convene special seminars for employers' and workers' organizations.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

A tripartite commission has been established by the Ministry of Labour in order to propose amendments to the Lebanese Labour Code. It is currently examining the Code's provisions, especially those on trade unions, with a view to promoting the principle of freedom of association.

The Lebanese Government intends that the amendments made to the Labour Code, particularly in the field of freedom of association, should be in line with international and Arab labour standards, especially as regards the principle of freedom of association in our national economic and social context.

Our economic and social situation is a product of our country's history; certain events have had adverse effects at a number of levels. Accordingly, we intend to take measures after due consideration in order to facilitate the promotion of freedom of association.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the following organizations:

- Association of Lebanese Manufacturers
- Federation of Lebanese Chambers of Commerce, Industry and Agriculture
- General Confederation of Workers

We have received no comments from these organizations as to the follow-up given to the Declaration or required in connection with freedom of association.

Annexes (not reproduced)

- Labour Code. Title IV: Trade Unions. Chapter I: General Provisions (Articles 83-85). Chapter II: The Composition of Trade Unions (Articles 86-89). Chapter III: Admission to Trade Unions (Articles 90-98). Chapter IV: The Administration of Trade Unions (Articles 99-104). Chapter V: Final Provisions (Articles 105-106).
- Labour Code. Title V: The Penal System. Articles 107 and 108 have been rescinded under the Act dated 17 September 1962.
- Act dated 17 September 1962, abrogating Articles 107 and 108 of Title V of the Labour Code on the penal system.
- Decree No. 7993 dated 3 April 1952 on the Organization of Trade Unions (Articles 1-15; Article 3 amended).

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The law confers broad powers on the Ministry of Labour, from which authorization 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 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. Nevertheless, teachers in schools and universities have established unofficial unions which are not authorized to enter into collective bargaining. 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. A minimum of 60 per cent of the workers must agree before a union can engage in collective bargaining and collective agreements must be ratified by two-thirds of the union members at a general assembly. The right to strike is limited and the law does not adequately protect workers against anti-union discrimination. Freedom to demonstrate is limited by the obligation to establish the number of participants in advance as well as the requirement that 5 per cent of the union's members be assigned to maintain order and that the organizers must sign a document whereby they assume full responsibility for all damages occurring during the demonstration. Over and above the legislative restrictions, the greatest interference in the proper exercise of trade union rights comes from the Government. It has repeatedly instigated or aggravated conflicts among trade unions.

Government observations on ICFTU's comments

We would like to communicate to the ILO the reply of the Ministry of Labour to the observations of the ICFTU.

First: By virtue of Act No. 183 of 24 May 2000, Lebanon has concluded the Arab Labour Convention (No. 1) concerning labour standards. This Convention is similar to the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (see Articles 76-84 of the Convention).

Second: By virtue of Decision No. 210/1 of 21 December 2000 of the Minister of Labour, a tripartite committee has been constituted to consider the existing Lebanese Labour Act and propose amendments. The Committee has completed its work and drawn up an updated draft Labour Act in the light of international and Arab Conventions concluded as well as the fundamental principles and rights at work contained in the ILO Declaration. This draft law will be referred to members of Parliament for consideration and discussion.

The draft Labour Act includes principles that promote freedom of association, the most salient of which are the following:

- the right of employees in the public administration, except military and security forces and judges, to set up trade unions and associations of their choice;
- adequate protection for trade union members against all acts of discrimination in employment because of their trade union affiliation. In other words, the decision to recruit a worker or an employee should not be conditioned by his affiliation to a trade union or by his relinquishment of membership in a trade union;
- employers' associations and workers' and employees' trade unions are to enjoy adequate protection against any acts of interference in each other's affairs with regard to their membership or function;
- the right of a trade union member to resort to the competent legal authority should his demand be refused or should he be dismissed from the trade union;
- controlling the election process is the responsibility of the trade union. The Labour Ministry has the role of observer to ensure that such elections function in accordance with the standing orders of the trade union and the other laws that should be respected;
- the draft amendment ruled out the competence of the political authority to dissolve a trade union, leaving this to the competent legal authority if the trade union in question is found to be violating general orders and the purpose for which it was constituted.

Third: As regards the categories to be excluded from the application of the provisions of the Labour Code (domestic workers, workers in agricultural establishments which have no industrial or commercial status, government and municipal employees (either with established temporary positions or on contract)), the new draft Law contains provisions concerning the regulation of the status of such categories of workers through special provisions. It excludes government and municipal workers (which does not include their right to trade union organization).

Fourth: Under the new draft Labour Act the required percentage for engaging in collective bargaining or approving a collective agreement has been reduced from 60 to 51 per cent. The percentage of two-thirds of participating union members at a general assembly, which is required for approving a collective agreement, was calculated as a part of the legal quorum required for such sittings, and which should not be less than 51 per cent of the membership.

Fifth: The draft Labour Act has modified the provision which imposes compulsory arbitration on workers in utilities under the responsibility of the State or those in establishments charged with the administration of public utilities, in the event of failure of mediation to settle a collective dispute. The draft law allows those workers to go on strike as others. However, it gives the arbitration committee (a tripartite labour tribunal), when informed by one of the two parties that mediation has failed either partially or completely, the right to decide urgently and within a period of three days, to stop the strike, if such a strike would expose the security and health of the population or a part of the population to danger, or if it would lead to an acute economic crisis.

Sixth: Saying that the Lebanese Government imposes limits on the right to strike and trade union members participating in such strikes is unacceptable, because the legitimacy of strike action or demonstration is embodied in the Lebanese Constitution and in established laws. Every government has the right to organize the course of demonstrations in order to keep them within the limits of the law, and to prevent any deviation from the announced objective, that might have negative effects on civil peace.

As regards the organization of such activities, referred to by the ICFTU, this is a decision of the Ministry of the Interior and concerns all Lebanese, not only trade unionists, as it is claimed.

Malaysia

Government

Means of assessing the situation

Assessment of the institutional context

The situation has not changed since our last report (GB.280/3/2). Any changes to the existing situation will be duly reported to the Office.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Government policies, restrictive legislation and inefficient industrial courts prevent workers from freely organizing and bargaining collectively.

There are still numerous obstacles to trade union formation. These include legislative restrictions on workers' associations within companies, dismissals of trade union recruiters and the slow and tedious procedures needed to obtain trade union recognition.

Legislative restrictions

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. In response to this reproach, the Malaysian Government explains that certain restrictions on basic trade union rights are needed in order to ensure that the interests of the country and its people are not sacrificed for the benefit of "a few" individuals. The Government also says that certain aspects of trade union activities must be regulated in order to ensure that trade unions act in a healthy, democratic and responsible manner and that the rights and interests of their members are protected [...].

General unions are prohibited and mergers between unions in different professional sectors are practically impossible.

- 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, withdraw registration. Trade unions for which registration has been denied or withdrawn are considered to be illegal associations. The DGTU can specify the category a union would be permitted to organize. [Reference is made to action reportedly taken by the DGTU vis-à-vis factories in which a particular union was trying to organize workers.]
- The Director General of Trade Unions 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 organization. Any appeals of his decisions must be presented to the Minister of Human Resources, which is the same body that put him in office. These appeals can easily take between three to five years to be heard. The Ministry of Human Resources has the power to order the suspension of a trade union for a maximum period of six months if he feels that the union has been used for purposes that are prejudicial to or incompatible with public safety or order. During this period, the trade union must cease all activity. However, such a suspension order has never been issued.
- The law prohibits industrial unions from organizing 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 only represents their category of employees. According to the Government, this provision is intended to avoid conflicts of interest. Employers often take advantage of this legal provision. [Reference is made to employer behaviour alleged to weaken trade unions.]
- 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 themes to this list.
- The law establishes restrictions regarding who qualifies as a candidate to become a trade union official.

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. They are always able to come up with this or that excuse to justify their refusals (economic difficulties, disciplinary measures, etc.). So far, the Government has failed to apply any sanctions against these “outlaw” employers. There have even been cases where companies have changed their name or ceased to exist during the court case.

There are often delays in processing claims filed with the industrial courts. Indeed, even if a worker has been fired for carrying out trade union activities and is later reinstated following a court decision, the three or four years that have elapsed between the moment the worker lost his/her job and the subsequent court decision to reinstate him/her can be very long for the victim [...]. This long period without income is an important measure of intimidation for workers wishing to join a trade union.

There is a backlog of over 5,000 cases pending, including 85 dismissal complaints filed back in 1998, 25 cases involving trade union recognition problems filed over a year ago, and 15 cases filed six months ago. This is despite the fact that Malaysian legislation requires claims to be processed within three weeks. The Government has explained that it lacks the employees needed to handle the increasing workload caused by the economic crisis, when many employers laid off workers and shut down their businesses.

The public sector

Trade unions in the public sector are permitted to organize trade unions per ministry, department, profession or activity as well as to join federations. Employees in statutory bodies (ports, Employees’ Provident Fund, etc.) are only authorized to join internal trade unions which, in turn, may join the Civil Service Federation or 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.

Foreign workers barred from trade union membership

Public affirmations by the Government and restrictive notices written on work permits state that foreign workers are not allowed to join trade unions. The Minister of Human Resources, for instance, 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. One of the conditions mentioned on the work permits issued to foreign workers by the authorities is that they are not allowed to join “associations”.

The Government has stated that it does not encourage foreign workers to become involved in trade union activities because their work contracts are of limited duration. This does not make sense because, in many companies, up to 40 per cent of the labour force is made up of foreign workers. [Reference is made to discrimination.] The Government claims that these workers enjoy protection from the labour courts. However, such protection is inefficient, as proven by delays in processing labour claims and refusal on the part of employers to comply with industrial court rulings.

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 lockout. 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 lockouts 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 authorization procedures are tedious.

Other laws used to stifle trade union rights

Legislation such as the 1961 Internal Security Act, which allows detention without trial, the Official Secrets Act, the Printing Press and Publications Act, and the Sedition Act can be invoked to restrict the exercise of trade union rights. The Malaysian Penal Code requires police permission for public gatherings of more than five people.

No national trade union allowed in the electronics industry

The electronics industry employs over 150,000 people in Malaysia, 80 per cent of whom are women. Since the first factory opened in 1971, these workers have largely contributed to the country's economic development. However, their efforts have not been rewarded with recognition of their rights. Indeed, workers employed in the electronics industry still do not have the right to form a national trade union.

Violations of workers' rights are particularly widespread in the export processing zones (EPZs), where labour legislation is supposed to apply just as much as in the rest of the country.

Government observations on ICFTU's comments

Comments from the Trade Unions Affairs Department

Legislative restrictions

[Even though] Malaysia does not practice general trade unionism this should not be construed as an obstacle with regard to freedom of association. Instead, trade unions are established based on establishment, trade, occupation or industry as is suitable to our socio-economic conditions. The Government of Malaysia is of the view that the formation of general unions will create inter-union rivalry, as trade unions compete among each other to recruit members from the same establishment, trade, occupation or industries. The

existence of inter-union rivalry is not conducive to the promotion and maintenance of harmonious industrial relations.

It is the Government of Malaysia's contention that when workers are organized under the present concept, it is easier to bind them together under this concept in a solid organization, through a lasting community of interests. This also facilitates the process of collective bargaining, as each union will be able to focus its attention on a particular place of employment or industry, with which its leaders are familiar. On the other hand, the practice of allowing workers to form "associations of their own choice" would, we believe, lead to the multiplicity of trade unions that might lead to problems relating to inter-union rivalry, thereby causing industrial relations instability within enterprises or industries.

The power to refuse to register or cancel the certificate of registration of a trade union is only exercisable on grounds specifically provided for in the Trade Unions Act 1959. Any person or union who is dissatisfied with the decision or act of the Director-General of Trade Unions (DGTU) in this connection is at liberty to lodge an appeal with the Minister of Human Resources. Both the DGTU and the Minister's decisions are subject to judicial review through *certiorari* proceedings in the civil courts.

The legal provision requiring a trade union to obtain the approval of the DGTU to affiliate with an international organization is not to ensure that a trade union will only affiliate with healthy and responsible international organizations. So far the Government has not rejected any application by a trade union to affiliate with an international body. The Minister's powers to suspend a trade union are not absolute and are also subject to judicial review. The provision regarding the power to suspend a trade union has never been invoked.

The Act explicitly prohibits the use of trade union funds for any payment to a political party or for "political subjects". This is to ensure that union funds are used solely and exclusively for trade union objects as specified in the law. Although the Minister is empowered to include any object as a "political subject", he has never exercised this power.

In any organization, the managerial, executive, confidential and security staff perform different job functions in accordance with their respective capacities, with different duties and responsibilities. In the strict sense, the Trade Unions Act 1959 does not prohibit them from forming or joining a trade union. However, in order to avoid conflicts of interest and even conflicts of position of power and responsibilities, as well as to be in conformity with the provisions of section 9 of the Industrial Relations Act 1967 administered by the Department of Industrial Relations, these employees logically should form or join a trade union which represents their interests or the particular category of employees, only.

The restrictions imposed by the Trade Unions Act 1959 on who qualifies to become a trade union official are meant to ensure that members of the executive of a trade union are responsible people, who can not only protect the interests of members of their trade union, but also those of the country and the people at large, and will not use the office for their own personal interest.

The public sector

Statutory bodies are legal entities set up through the Act of Parliament with different functions and objectives. As such, it is not practical for employees of a statutory body to form a national union. Employees who are members of the Royal Malaysian Police, any

prison service or of the armed forces, are prohibited from forming or joining trade unions. The rationale for this restriction is partly due to [the need to preserve] national security, which is vital for our nation building perspective.

Foreign workers barred from trade union membership

The Government does not forbid, but merely does not encourage foreign workers, to join trade unions because their employment in Malaysia is only on short-term contracts, generally for not more than two years. Their interests and welfare are sufficiently covered by the labour laws of Malaysia. Being given such a golden opportunity to work in a foreign country, arising out of Government to Government [arrangements], foreign workers should understand that they will not enjoy the full privilege of the local citizens of the host country, be it in Malaysia or in any [other] part of the world. If they remain in their respective homeland, they may not even get the opportunity to work for a living, not to mention have the right to join a trade union of their choice. Furthermore, Malaysia is experiencing an influx of foreign workers, both legal and illegal, from our neighbouring countries, due to the economic problems in their countries. Under such circumstances, allowing foreign workers freely to join our trade unions will encourage them to migrate to Malaysia. This will create multiple social and political problems in our country. As far as the law is concerned, it only provides that any non-citizen who is elected or employed by a union needs to have the consent of the Minister of Human Resources.

Restrictions on the right to strike

The requirement that at least two-thirds of the members must be in favour of a strike before it can be launched, is to ensure that strike action, being a major action, is really supported by the vast majority of members, especially when the union's funds may be used to provide for pay or other benefits for its members during a strike. This is a common democratic practice.

The requirement that the ballot paper must contain a resolution which states "the nature of the acts to be carried out or to be avoided during a strike", is to ensure that members are given ample information pertaining to the proposed strike and to avoid a strike turning into a demonstration or into violence, which will tarnish the image of this country, which will in turn drive away investors. If this is allowed to happen, this country will face economic turbulence that will jeopardize its economic development and programme.

The strike procedures are set out in order to accord time to government agencies, particularly the Industrial Relations Department, to conciliate the matters in dispute, and also in order to facilitate both the trade union and the employer to seek an amicable settlement of the issues leading to the proposed strike.

No national trade union allowed in the electronics industry

Workers in the electronics industry are not denied the freedom to organize themselves. Just like workers in other industries, they are free to form trade unions. The right of workers to form or to join a "union of their own choosing" includes the right to form or join in-house unions which in most developed countries are called enterprise unions. These in-house unions are free and independent. They enjoy the same rights and protections accorded to national unions, including the right to collective bargaining and to strike, and the right to affiliate with any trade union coordinating body like the Malaysian Trade Union Congress or an international trade secretariat like the ICFTU. Evidence and

empirical research abound in other countries indicating that enterprise unions have proven to be very successful and effective in promoting the welfare and protecting the interests of workers. There is no reason why it should not be so in Malaysia.

Comments from the Industrial Relations Department

Violations of trade union rights

[The ICFTU observation maintained that:] There are still numerous obstacles to trade union formation. These include legislative restrictions on workers' associations within companies, dismissals of trade union recruiters and the slow and tedious procedures needed to obtain trade union recognition.

[In response, the Government states that:] The ICFTU's contention is unfounded. Labour legislation accords workers the right to form or join a trade union. Section 4(1) of the Industrial Relations Act, 1967 (IR Act), in particular, provides the following protection: "4(1) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form, and assist in the formation of and join a trade union, and to participate in its lawful activities."

As regards dismissals, section 5(1)(d) of the IR Act states:

5 (1) No employer or a trade union of employers, and no person acting on behalf of an employer or such trade union shall:

- (d) dismiss or threaten to dismiss a workman, injure or threaten to injure him in employment or alter or threaten to alter his position to his prejudice by reason that the workman;
 - (i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or
 - (ii) participates in the promotion, formation or activities of a trade union.

Section 8 of the IR Act allows for complaints relating to anti-union practices by employers, including dismissals, to be lodged with the Director-General of Industrial Relations (DGIR). When the steps taken or enquiries made by the DGIR which are necessary or expedient to resolve the complaint are unsuccessful, the Minister is notified and he may, if he thinks fit, refer the complaint to the Industrial Court for hearing.

In addition, under section 20 of the IR Act, a workman, irrespective of whether he is a member of a trade union or otherwise, who considers himself dismissed without just cause or excuse by his employer, may make representations to the DGIR to be reinstated in his former employment. The DGIR is to take steps necessary or expedient to resolve the matter expeditiously, failing which the Minister is notified and he may, if he thinks fit, similarly refer the representations to the Industrial Court for an award.

The law thus provides adequate protection for employees who are dismissed, including those dismissed for organizing unions.

The procedure relating to union recognition has been clearly laid down in the law. It also allows for the granting of voluntary recognition by the employer. If the union claiming recognition is found competent and/or represents the majority of the workmen concerned, the Minister is also empowered to order recognition to be granted by the employer.

Whilst recognition is a legal pre-requisite to collective bargaining, there is no provision in the law for recognition to be withdrawn. Hence, it is imperative that recognition claims be systematically processed and justly determined.

Legislative restrictions

[The ICFTU's observation stated that:] The law prohibits industrial unions from organizing 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 their category of employees only.

According to the Government, this provision is intended to avoid conflicts of interest. Employers often take advantage of this legal provision. [Reference is made to employer behaviour alleged to weaken trade unions.]

[In response, the Government notes:] Whilst employees in managerial and executive positions, employees entrusted with confidential matters, or employees performing security-related tasks are not to be organized by industrial unions, each category of workmen is free to form or join a union of their own category.

This delineation is necessary since such workmen are incapable of being effectively represented by industrial unions, but more importantly, it is to avoid conflicts of interest that could undermine good industrial relations in the organization. Disputes relating to the scope of representation of such workmen by industrial unions, should they arise, are capable of being dealt with under section 9(1A) of the IR Act, which states:

“(1A) Any dispute arising at any time, whether before or after recognition has been accorded, as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity may be referred to the Director-General by a trade union of workmen or by an employer or by a trade union of employers.”

In the final analysis, when the matter is not resolved by the DGIR, the Minister is empowered under section 9(5) of the IR Act to decide as to who are the workmen employed in the disputed category. A decision of the Minister under this section is final and is not to be questioned in any court.

Inefficient labour courts

[The ICFTU observation stated:] Some employers have opposed government directives granting trade union recognition and have refused to comply with Industrial Court orders to reinstate illegally dismissed workers. They are always able to come up with this or that excuse to justify their refusals (economic difficulties, disciplinary measures, etc.). So far, the Government has failed to apply any sanctions against these “outlaw” employers. There have even been cases where companies have changed their name or ceased to exist during the court case.

[In response, the Government notes:] In any democracy the right to challenge an administrative decision is an integral part of the judicial system.

An administrative decision is subject to judicial review when challenged by way of writs applied in the courts of law. However, judicial review is very much concerned with the decision-making process of an administrative authority rather than with the decision

itself. In this instance, the decision which ostensibly takes the form of a government directive to accord recognition is unfortunately perceived as being challenged.

However, it must not be forgotten that the exercise of this right to challenge is vested in both employer and workmen (union) alike.

Awards of the Industrial Court are legally binding on the parties. Any complaints of non-compliance of such awards may be lodged with the Industrial Court, by any person bound by the award, for enforcement. The Industrial Court is empowered to deal with such complaints by making the appropriate order. In addition, failure to comply with an order so made by the Industrial Court is an offence, rendering the offender subject to a penalty.

In cases where the aggrieved workmen notify the DGIR of non-compliance with the second award (order) for the prosecution process to be initiated, the original awards generally pertain to monetary compensation.

[The ICFTU observation further suggested that:] There is a backlog of over 5,000 cases pending, including: 85 complaints of dismissal filed back in 1998; 25 cases involving trade union recognition problems filed over a year ago; and 15 cases filed six months ago. This is despite the fact that Malaysian legislation requires claims to be processed within three weeks. The Government has explained that it lacks the employees needed to handle the increasing workload caused by the economic crisis, when many employers laid off workers and shut down their businesses.

[In response, the Government notes:] The bulk of the cases referred to as backlog were made up complaints of dismissal (for both individual and collective dismissals) that occurred in unprecedented numbers in the years 1998 and 1999 following the economic crisis. Despite staffing constraints faced by the conciliation department, the majority of the cases were resolved, and the majority were amicably settled through conciliation efforts.

Claims for union recognition have registered significant increases since 1997, as the following table indicates:

Year	1997	1998	1999	2000
No. of claims	71	108	146	184

It is to be emphasized here that it is factually incorrect to say that Malaysian legislation requires claims to be processed within three weeks. No such provision exists as regards complaints of dismissal where workmen file representations claiming reinstatement. As to trade union recognition claims, an employer is initially required to respond within three weeks to such claims as provided in section 9(3) of the IR Act below:

9(3) An employer or a trade union of employers upon whom a claim for recognition has been served, shall, within twenty-one days after the service of the claim:

- (a) accord recognition; or
- (b) if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds for not according recognition; or
- (c) apply to the Director-General to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union of workmen concerned and give a written notice of such application to such trade union of workmen.

Restrictions on the right to strike

[In its observation, the ICFTU maintained that:] 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 lockout. 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 lockouts 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.
- Pre-strike authorization procedures are tedious.

[In response, the Government notes that:] There are adequate provisions in the IR Act to deal with disputes relating to trade union recognition (not registration) or illegal sackings. Recognition disputes are ultimately determined by the Minister should they fail to be voluntarily resolved. Disputes over wrongful dismissals, if not amicably resolved through conciliation, may have recourse to the Industrial Court where adjudication results in appropriate decisions.

When recourse is to be had under the law, there is no apparent need for such issues to be made subject matters of strikes (or lockouts).

It is to be noted that strikes and lockouts are only prohibited when the dispute leading to the strike or lockout has been referred to the Industrial Court and the parties so informed, but not any time earlier.

Essential services have already been identified specifically in the Schedule to the IR Act. Some services appear to be broadly defined, as it is quite impractical to provide for precise definitions. They are considered essential as the public and national interests are at stake should disruptions occur in any of the services concerned, because of strikes or lockouts.

The imposition of certain notice requirements (applicable to both employers and unions), before a strike or a lockout can be carried out in any of the essential services, is necessary to enable contingency actions to be taken. It does not in any way deny the right to strike or lockout.

Comments from the Industrial Court of Malaysia

The Industrial Court is an arbitration tribunal. If employers refuse to comply with the Industrial Court awards, there are legal avenues under the Industrial Relations Act 1967 and other existing laws to enforce these awards.

The objective of the Industrial Court is to hand down the award speedily and economically, as provided for, under section 30(3) of the Industrial Relations Act 1967,

which says, “the Court shall make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of a reference to it under section 20(3)”. Once the cases are referred to the Industrial Court by the Honourable Minister, the cases will be distributed to the Chairmen (judges) of the Industrial Court immediately for a hearing and decisions. The period taken for the hearing of a case will depend on the complexity of each case.

As at October 2001, only 1,932 cases were pending settlement at the Industrial Court.

Mauritania

Observations submitted to the Office by the Free Confederation of Workers of Mauritania (CLTM)

Means of assessing the situation

Assessment of the institutional context

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference on 18 June 1998 at its 86th Session, which, as an instrument for the protection of basic human rights, represents a major priority for the ILO and trade union organizations, is unfortunately far from being respected in Mauritania.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both ratified by Mauritania,² remain a dead letter in the country. The following problems are very evident:

- (1) a lack of provision for the exercise and application of the right to organize, the right to collective bargaining and freedom of association, although these rights are guaranteed by the legislation in force (there are no negotiations between the social partners and no right to assemble or organize);
- (2) the absence of social dialogue; and
- (3) obstacles to the exercise of freedom of association at all levels (activities by central organizations, basic trade unions and delegates, etc.).

Although the principle of freedom of association and the recognition of the right to negotiate are recognized in the Mauritanian Constitution of 20 July 1991 and in the provisions of Act No. 93-038 dated 27 July 1993 establishing trade union pluralism, they are still far from being effectively applied and respected by the Government of Mauritania.

[Reference is made to alleged cases of violations of the application of a ratified Convention (No. 87).]

² As of 1 September 2001, Mauritania’s ratification of Convention No. 98 had not been registered by the Director-General of the ILO.

Certain occupational groups in the informal sector are deprived of the right of association and/or of recognition, including: small-scale fishermen; city and inter-city transport workers; agricultural workers; city porters; and butchers.

Certain categories of employers or workers are encountering major difficulties in organizing themselves because of multiple obstacles and restrictions. This affects the trade unions of transport workers, fishermen, city porters, agricultural workers and others.

[Reference is made to presumed cases of violations of the application of a ratified Convention (No. 87).]

Certain trade unions, although they are set up in accordance with the regulations, are deprived of their right to bargain collectively, in particular the Union of Mauritanian Transport Employers and the Union of Fishermen (Workers).

For over 40 years, with the single exception of the General Collective Labour Agreement dated 13 February 1974, no collective sectoral agreements have been concluded or revised, despite many requests by the unions. Even the additional clauses signed in the 1970s are now frozen, particularly that relating to dockers who are not permitted [to engage in] any trade union activity.

The means for the implementation of the principle of freedom of association and the effective recognition of the right to collective bargaining are very limited or totally blocked. The low level of subsidy granted to trade unions and the discriminatory manner in which they are allocated makes their operation problematic.

Assessment of the factual situation

Trade unions are not free to operate in a normal way because they are regularly subjected to obstruction and disparagement by public administrations in order to influence their decisions. Hence:

- workers belonging to trade unions are subjected to daily pressure and intimidation in order to influence their choice of union and representatives;
- arbitrary assignment, demotion and dismissal are commonplace;
- workers' rights are not respected and the resulting conflicts are suppressed. The labour administration is absent and fails to play a positive role in the management of labour conflicts;
- court decrees in favour of workers' rights are rarely implemented;
- administrative remedies are not followed up; and
- general assemblies of workers are not permitted in public and private establishments and trade union posters are not permitted to be displayed there.

[Reference is made to matters relating to the application of a ratified Convention (No. 87) and of specific comments of a complaint-like nature.]

- trade unionists and workers, particularly those belonging to the CLTM, are almost always refused leave of absence to participate in training seminars or other trade union business.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

There have been no positive developments in terms of the promotion of freedom of association or the effective recognition of the right to collective bargaining, despite the provisions of the national Constitution. Indeed, there has been a clear decline in the exercise of trade union rights.

The tripartite dialogue structures, including the National Labour Council, the Economic and Social Council, the Advisory Council and others, have not been operational for over 30 years.

There has not been a single meeting of any of these bodies. The social dialogue for which unions are calling [for] so insistently, has never emerged.

National participation in the PRODIAP programme (an ILO/Belgian project for the promotion of social dialogue in French-speaking Africa) was stopped by the Government some years ago.

Government observations on CLTM's comments

The CLTM points to the obstruction of the free exercise of trade union rights and mentions, in connection with this, certain activities or legal provisions. In response, it is appropriate to provide the following clarifications.

The provision requiring that candidates for the post of workers' representative to know French, is a remnant of the colonial regime. This provision has always been interpreted in practice to mean that the candidate should be literate, in keeping with the demands of his task. In any case, it is not retained in the draft Labour Code that is currently in the process of being adopted.

The claim that the right to strike is "conditional, even prohibited" is unfounded. Both in law and in practice, the right to strike is recognized and freely available to workers.

All labour tribunals have worker assessors, as required for their operation. There is no discrimination in terms of representation, for all central trade union organizations are represented at tribunals.

During the Labour Day celebrations, appropriate media coverage is given to the activities of all central trade union organizations.

Contrary to the CLTM's claim, all categories of workers and employers in the informal sector have trade unions and they can conduct their activities freely. Moreover, Mauritanian legislation does not require any prior authorization for a trade union to exist legally. On the contrary, there is a system of simple declaration, and there are no cases in this connection before the Office of the Public Prosecutor.

The accusation that no sectoral collective agreements have been concluded for 40 years is untrue. Social dialogue is a tangible reality. Consequently, sectoral agreements have in recent years been concluded in industries including banking, mining, and dock and port work.

With respect to the Kiffa seminar held by the CLTM, the regional and municipal authorities spared no effort to facilitate its organization, as reflected in the statement of the Secretary-General of the CLTM. However, those efforts were abused by the organizers, who, following the opening, attempted to turn this workshop on trade union training into a political forum.

As regards leave of absence in order to participate in seminars and other trade union activities, it should be emphasized that the administration has never received any complaints about [any] obstruction. Moreover, in November 2001 the CLTM held two seminars (with the assistance of the Democratic Organization of African Workers' Trade Unions), in which workers from all *wilayas* (regions) of the country took part.

As to the promotion of the ILO Declaration on Fundamental Principles and Rights at Work, the Government has requested ILO cooperation in its implementation. The process began in 2000, with the involvement of the CLTM and the other central trade union organizations. It resulted in the holding of a workshop for the approval of the national study for the promotion of fundamental principles and rights at work, in which the CLTM also participated.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Mauritanian legislation grants the Government the power to decide whether or not to recognize a trade union. The Government can also dissolve any trade union involved in what the Government considers to be an "illegal" or "politically motivated" strike. Mauritania's trade union centres have strongly criticized these provisions, pointing to ILO standards which state that only the courts should be given the power to dissolve trade unions. Trade unions also complain about the fact that many companies in the private sector refuse to recognize the associations formed within them to defend the interests of workers. Foreign workers do not have the right to become trade union officials. An expected change in 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 afforded by the Labour Code, although such protection is conferred upon union delegates within companies.

Obstacles to strikes

Various obstacles stand in the way of the right to strike, namely compulsory arbitration. General strikes are difficult to organize [... comments of a complaint-like

nature are made with respect to difficult administrative requirements for organizing strikes in the public and private sectors]. Moreover, civil servants must give a one-month pre-strike notice. In the private sector, strikes must be preceded by the submission of a non-conciliation or negotiation-breakdown report. According to Mauritania's trade unions, legislation also allows the Government to use a trade union's calling of a strike as a justification for dissolving it.

Government observations on ICFTU's comments

The observations of the ICFTU relate to the following points:

- (1) the violation of trade union rights;
- (2) the obstacles to the right to strike.

These observations lead the Government to make the following comments.

"Violation" of trade union rights

The Mauritanian Constitution establishes and guarantees public and personal freedoms as defined in the Universal Declaration on Human Rights and in other international instruments on human rights and in particular, freedom of expression, freedom of association and freedom of assembly.

Being a signatory to all ILO fundamental Conventions, Mauritania has prescribed the respect of all public and personal freedoms in its laws and regulations.

With regard, in particular, to the right to associate and trade union rights, Act No. 63023 of 23 January 1963 concerning the Labour Code and Act No. 93-038 of 20 July 1993 amending and adding certain provisions, do not confer any right to political or administrative authorities to be involved in the process of the setting up and the recognition of trade union organizations.

This process is not subject to any authorization because the persons who take the initiative to create a trade union are only obliged to submit the draft statutes and internal regulations to the public prosecutor who must decide whether or not they are in conformity with the legislation in force.

With regard to the dissolution of trade unions, the administrative authorities do not intervene at any time, since this is decided by a court. The allegation that "the Government can also dissolve all trade unions implicated in [...] an illegal strike or [...] motivated 'by political considerations'" is based on assumption since no trade union has ever been dissolved for any reason whatsoever.

With respect to associations set up in enterprises in the private sector, every association or trade union, which is properly constituted, can freely carry out its activities and does not, at all, need the approval of the enterprise in question.

No case of the obstruction of the free exercise of trade union rights has ever been submitted to the competent authorities.

The right of foreigners to hold positions of leadership in trade union organizations has been largely taken into account in the draft Labour Code, drawn up in close collaboration

with the International Labour Office and already adopted by the National Council of Labour, which is made up of representatives of employers as well as representatives of workers.

The specific protection accorded to staff representatives is justified by the fact that they incur the risk of losing their jobs in carrying out their activities, which consist of defending, almost daily, the causes of the workers that elected them.

Obstacles to strike action

The Labour Code provides that all disputes which could not be settled within the framework of collective agreements, may be submitted by the labour inspector to a conciliation procedure.

In the case of failure, the recourse to strike action is authorized. However, the labour inspector can, as a last resort, assign an expert or a group of experts chosen according to the criteria defined in the law relating to mediation.

If mediation fails, the recourse to strike action is authorized.

Strikes are therefore not prohibited and no legislative or regulatory provision authorizes the authorities to dissolve a trade union for having had recourse to such action.

However, with regard to the law, this is only one means among others, which workers can use to fulfil their demands. Reconciliation and mediation are others. The pre-strike notice required by the law is in no way contrary to international standards.

The recourse to arbitration can be decided by the Minister of Labour, after all the aforementioned steps have been exhausted, in the case where the repercussions of a conflict on the economic and social life of the nation justify it.

The draft Labour Code which is in the process of being adopted, explains all these provisions even further and brings them into line with international labour standards.

With regard to the public sector, *the intrinsic role of which is to guarantee services to the public*, it does not escape the possibility of the outbreak of strikes, but such action suggests that negotiations have failed and notification has been given, which is in no way contrary to international law. *Strikes are not prohibited in cases where negotiations fail, provided that notice has been given; this is in no way contrary to international standards.*

Mauritius

Government

Means of assessing the situation

Assessment of the institutional context

There has been no change since our last report for the 2001 annual report with regard to freedom of association and the effective recognition of the right to collective bargaining in Mauritius.

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

The revision of the Labour Act and the Industrial Relations Act is not yet completed.

The Government's Budget 2001/2002 has made provisions for Rs. 3 million for the Trade Union Trade Fund, to, inter alia, finance training and education programmes organized by trade union federations.

The University of Mauritius is running, at the request of the Government, a two-year part-time Certificate course in industrial relations for Government officials, trade unions and employers' representatives. The Government is responsible for funding the course for its officers. The Trade Union Trust Fund and the Mauritius Employers' Federation are responsible for the payment of fees for their respective representatives.

The Trade Union Trust Fund has commissioned a study to be carried out by the University of Mauritius on the "Low Rate of Unionisation in Mauritius causes, strategy for Reinvigoration." The project is benefiting from ILO funding.

Additionally, the Trade Union Trust Fund will, in September 2001, organize a National Trade Union Conference, with a view to mapping out what the trade unions believe is the way forward for the labour movement in Mauritius. The Conference will receive the technical and financial support of the Bureau for Workers' Activities (ACTRAV) of the ILO.

Our objectives with a view to the observance, promotion or realization of the principles and rights are still under consideration.

A legal officer of the Freedom of Association Branch of the International Labour Office, who paid a visit to Mauritius from 1 to 5 July 2001, had working sessions with stakeholders concerned with the promotion of the principle of freedom of association.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

Copies of this report are being sent to the following employers' and workers' organizations:

Employers' organization

- Mauritius Employers' Federation

Workers' organizations

- *Fédération des syndicats des corps constitués*
- Federation of Civil Service Unions
- Federation of United Workers
- Federation of Progressive Unions

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- General Workers' Federation
 - Mauritius Confederation of Workers
 - Mauritius Labour Congress
 - Mauritius Labour Federation
 - State Employees' Federation
 - Free Democratic Union Federation
 - Mauritius Trade Union Congress
 - Mauritius Trade Union Confederation

Observations received from employers' and workers' organizations

No observations on the principle of freedom of association and the effective recognition of the right to collective bargaining have been received from these organizations for the period under review.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Occasional incidents have marred industrial relations especially in the country's export processing zones (EPZs) where it is difficult to carry out trade union activities.

There is great hostility to trade unions in the EPZs even if the labour law authorizes freedom of association within the EPZs. Nevertheless, the rate of unionization is particularly low. The Mauritius Labour Congress (MLC) claims that this is due to the fact that some employers have intensified their efforts to intimidate workers and have made it difficult for trade unionists to gain access to the workplace. Protection of trade unions against these acts of anti-union discrimination is low and ineffective.

The right to strike is hampered by restrictions. Lengthy pre-strike procedures and the right to call for arbitration make it difficult to organize strikes.

Government observations on ICFTU's comments

The right of employees to organize themselves for the defence of their occupational interests is provided for, by the Industrial Relations Act (IRA), which regulates the activities of trade unions, promotes harmonious industrial relations and lays down the institutional framework for the settlement of industrial disputes on terms and conditions of employment. The IRA applies equally to the EPZ.

The Ministry of Labour and Industrial Relations intervenes promptly when there are complaints related to acts of anti-union discrimination. It provides a specialized service for workers, employers and their representatives through the Labour Relations Division. In 2000, the Branch received six industrial disputes from trade unions operating in the EPZ, concerning alleged acts of anti-union discrimination through the refusal of employers to arrange meetings with the recognized trade union, the granting of access to the workplace, and time off. One industrial dispute was settled following conciliation and was withdrawn by the trade union. Four industrial disputes relating to the granting of permission to a trade union to hold meetings with its members at the workplace were withdrawn following the intervention of officers of the Division. The remaining industrial dispute, which concerned the granting of facilities for time off, has been referred to the Industrial Relations Commission for further conciliation following unsuccessful conciliation efforts at the Division level.

The procedure concerning the settlement of disputes is prescribed in the Industrial Relations Act, 1973. The 21-day cooling-off period before any strike can be envisaged, is meant to allow the authorities to help the parties concerned in the dispute to explore all the avenues for a settlement. Such a procedure has helped in settling numerous disputes and in many cases, caused the parties to the dispute to resume good faith discussions on disputed items. The Industrial Relations Act is being revised. In fact the ILO has submitted a draft replacement law which is presently being examined. The draft legislation addresses the right to strike in line with international labour standards.

Twenty work stoppages were reported in the EPZ in 2000. The causes related to conditions of employment. No stoppage was related to the violation of trade union rights.

The rate of unionization is generally low in the country, especially in the private sector, where it around 12 per cent. In the EPZ it is below 10 per cent. The causes of such a situation are multiple and cannot be imputed solely to the attitude of the employer. In fact the trade unions themselves, grouped in the Trade Union Trust Fund, have commissioned the University of Mauritius to carry out a study on “The Low Rate of Unionization in Mauritius — Causes and Strategy for Reinvigoration.” The project is benefiting from ILO funding. The study will hopefully provide recommendations to boost workers’ participation in trade union activities. The Ministry of Labour and Industrial Relations fully supports the project.

Mexico

Government

Means of assessing the situation

Assessment of the institutional context

In order to avoid duplication and in the interest of simplicity, we would repeat what was stated in the previous report (GB.280/3/2), since there have been no changes since then.

Assessment of the factual situation

The Government of Mexico reports that, in 2000, there were 8,282 strike calls, involving 60,015 workers, resulting in 26 strikes. In 2001 (up to August), there were 2,250 strike calls, involving 6,964 workers and resulting in 18 strikes (Annex 1, not reproduced).

In 2000, 5,171 collective agreements were deposited. In 2001, a total of 3,002 had been deposited by June (Annex 2, not reproduced).

Seven industry-wide collective agreements (*contratos-ley*) were revised in 2000 as a result of disputes, affecting 1,690 enterprises with a total of 148,631 workers. In 2001, four industry-wide collective agreements were revised as a result of disputes, affecting 1,447 enterprises with a total of 53,653 workers (Annex 3, not reproduced).

The Government of Mexico reports that there are a total of 5,590 organizations registered at the federal level, of which 1,171 groups have active legal representation. Only three of them are employers' organizations.

In the period August 2000 to July 2001, the Ministry of Labour and Social Security registered 40 organizations, of which 12 were confederations or federations and 28 were trade unions. Nineteen of them were independent organizations and 21 were affiliated to national organizations. Of the existing 1,171 organizations, 1,022 are trade unions and 149 are confederations or federations.

Of the 1,022 trade unions, the largest number is concentrated in the textile industry (Annex 4, not reproduced), and the federal administrative unit with the largest number is the Federal District (Annex 5, not reproduced). Of the existing 1,171 organizations, 1,132 have male secretaries-general and 39 have female secretaries-general.

The following data and trends are of interest:

- of the trade unions registered at the federal level, only 17 per cent have an active executive committee (Annex 6, not reproduced);
- of the existing organizations, 0.25 per cent represent employers and 99.75 per cent represent workers (Annex 7, not reproduced);
- of the trade unions (not counting confederations and federations) registered in the period in question, 52 per cent are affiliated with national organizations and 48 per cent are independent (Annex 8, not reproduced);
- of the existing organizations, 87 per cent are trade unions and 13 per cent are confederations or federations (Annex 9, not reproduced);
- of those organizations, 97 per cent are headed by men and three per cent by women (Annex 10, not reproduced);
- from January 1995 to July 2001, 246 organizations were registered, 198 of them trade unions (i.e. 80 per cent of the total) and 48 of them (i.e. 20 per cent) confederations or federations (Annex 11, not reproduced); and

- of the trade unions registered between January 1995 and July 2001, 111 (56 per cent) were affiliated with national organizations and 87 (44 per cent) were independent organizations (Annex 12, not reproduced).

The aforementioned data show that there is a clear trend towards an increase in independent trade unions.

Representative employers' and workers' organizations to which copies of the report have been sent

In accordance with the requirements of article 23(2) of the ILO Constitution, copies of this report have been sent to the Mexican Confederation of Chambers of Industry (CONCAMIN), the Mexican Employers' Confederation (COPARMEX) and the Confederation of Mexican Workers (CTM).

Observations received from employers' and workers' organizations

Mexican Confederation of Chambers of Industry

The Mexican Confederation of Chambers of Industry notes that freedom of association in Mexico is guaranteed by article 123, parts A and B, of the Political Constitution of the United Mexican States. The Federal Labour Act also contains provisions on freedom of association for workers and employers. Effect is given to this through the existence of all types of trade unions provided for by the Act, throughout the country, and at both the federal and the local levels. Consequently, workers of the relevant enterprises have been involved fully in the signing of collective agreements, which apply to all industries in the country and enterprises operating in many different fields.

Confederation of Mexican Workers

The Confederation of Mexican Workers notes that, since it was founded, it has fought for the right to freedom of association and collective bargaining. This stance has been maintained and defended as a fundamental principle of the organization. It considers that current relations between workers and employers include a legal framework supporting the workers' right to freedom of association and collective bargaining. It also notes that within the legal framework and the relations with the Federal Government, there is an increasingly wider scope for the free negotiation of agreements.

Annexes (not reproduced)

Annexes 1-12: Extracts from Labour Statistics (12 pp. in total).

Observations submitted to the Office by the Confederation of Mexican Workers (CTM) through the Government

Means of assessing the situation

Assessment of the institutional context

The following provisions in the Constitution and the Federal Labour Act provide the legal framework for freedom of association and collective bargaining.

According to article 123(A), clauses XVI, XVII, XVIII, XIX and XX of the 1917 Constitution, workers have the right to join together in defence of their interests by forming, inter alia, trade unions, professional associations.

[Reference is made to matters relating to the application of a ratified Convention.]

As regards regulations, the Federal Labour Act in Title VII, Chapters I, II, III, IV, V, VI, VIII and IX provides the framework for collective labour relations and collective bargaining.

With respect to State employees, article 123(B), clause X of the Political Constitution states that workers employed by the (central) federal authorities or by the Federal District authorities, have the right to associate in defence of their common interests. [Reference is made to matters relating to the application of a ratified Convention.]

The CTM regards these provisions as constituting the legal framework for freedom of association and collective bargaining.

The jurisprudence established by the Supreme Court is important to note. According to this, persons employed by *decentralized* federal public bodies do not come under the (central) federal authorities and are therefore not covered by article 123(B) of the Political Constitution (cf. *Seminario judicial de la Federación, Novena Epoca*, vol. III, Feb. 1966, page 52).

This represents a significant advance with regard to freedom of association, since under the previous law, workers covered by article 123(B) only had rights to form a federation to which the public service unions could affiliate, and this removed any vestige of freedom of association.

In this context, the CTM since its creation has fought for freedom of association and free collective bargaining. This has been constantly defended as a basic principle of the Organization.

Although these principles are shaped by the “Carta Magna” and in regulations such as the Federal Labour Act, the CTM is always fighting to ensure that the federal authorities apply them, especially given the changes in industrial relations that are taking place as a result of globalization.

Given the recent change in Government, the CTM has presented proposals to the President elect which place emphasis on the “undisputed need to observe article 123 of the Constitution” with regard to the subject of this report.

Assessment of the factual situation

[Reference is made to matters relating to the application of a ratified Convention.]

In [1999], 3,019 collective agreements were deposited with the Federal Conciliation and Arbitration Board, compared to a total of 6,206 for the first half of 2000.

As regards legally binding agreements, in 1999, agreements were negotiated with 1,538 companies covering 58,366 workers, compared to 1,495 companies covering 96,022 workers in the first half of 2000.

In the light of this, the CTM finds that within the framework of law and relations with the Federal Government, there is a broad openness to free bargaining, such that in July, contractual and wage negotiations were conducted on the basis of the real economic and financial capacities of enterprises and their productivity (revised wages for July 2000 appended [not reproduced]).

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

No prior authorization is required to form a trade union. To obtain legal status however, the unions must be registered by the Commission and Arbitration Boards (CAB). These are tripartite committees composed of representatives of the Government, employers and workers. Although about 50 per cent of trade unions are not affiliated to a national centre, independent trade unions can have difficulty in getting registered. The CAB can delay or even withhold recognition of a trade union, especially if they are hostile to Government policy, to influential employers or to unions controlled by the employers. This has notably been the case in the *maquiladoras*. An unregistered union cannot call a strike or participate in collective agreements, and is excluded from all tripartite committees.

Restrictions on the right to strike

[Reference is made to the application of a ratified Convention.]

Maquiladoras: recurrent violations. There are frequent abuses in the country's 4000 or so *maquiladoras*. [Reference is made to characteristics of the *maquiladoras*.] The Government makes very little effort to apply legislation in the zones, as it welcomes this massive influx of capital. [Reference is made to various conditions of employment.]

Establishing an independent trade union, in other words a union that is not controlled by the employers, can resemble an obstacle course. "Protection contracts" are frequently used, with the blessing of the authorities, to prevent independent trade unions from organizing. These contracts consist of an agreement whereby the company pays a monthly sum to the trade union. In exchange, the trade union guarantees social peace. Blacklists of trade unionists' names regularly circulate in the factories.

Government observations on ICFTU's comments

The Government of Mexico recalls that the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work is of a strictly promotional nature and is not a substitute for the established supervisory mechanisms. The development of the Follow-up should not lead to a controversial mechanism. The observations of the ICFTU refer to principles of freedom of association and discrimination to be found in conventions that have already been ratified by Mexico. The following are some thoughts as regards their application:

- The federal labour law decrees that workers have the right to establish trade unions without previous authorization. These trade unions only need to be registered with the Secretariat for Labour and Social Security, for federal authority, and with the councils for conciliation and arbitration, for local authority. To register, trade unions need only provide an authorized copy of the act of the Constituent Assembly, a list of the number, names and domiciles of its members and the name and domicile of the employer, enterprise or establishment of which workers it represents, and an authorized copy of its statutes and the act of the assembly in which it elects its executive committee.
- From January 1995 to July 2001, some 246 trade unions were registered, of which 111 belonged to the main trade union centrals, and 87 to independent organizations. Registrations between August 2000 and July 2001 were 52 per cent and 48 per cent, respectively.
- The objectives of the General Directorate of Federal Labour Inspection for the January-October 2001 period were achieved and even consistently exceeded both at the national level and in the states where the *maquiladora* (export processing zones) industry is prevalent. In the January-October 2001 period, the national average for completed federal inspections was 102 per cent, and, for example, the percentages for those states where there are greater numbers of *maquiladoras* were, for the same period: Baja California 77.86 per cent, Baja California Sur 121 per cent, Chihuahua 103 per cent, Coahuila 84 per cent, Sonora 104 per cent, Tamaulipas 100 per cent, Nuevo Leon 93 per cent, Yucatan 95 per cent, Jalisco 92 per cent and Durango 99 per cent. For October 2001, the number of completed federal inspections exceeded the original objective by 33 per cent.
- The figures for federal inspections relating to the number of women working, by state, on the national level, showed women working both during pregnancy and immediately following pregnancy. These figures, specifically covering those states in the Republic of Mexico where there are greater numbers of *maquiladoras*, such as Sonora, Chihuahua, Coahuila, Baja California, Tamaulipas, Nuevo Leon, Jalisco, Yucatan or Durango, support this, as does the identification of these cases in the course of labour inspections for their protection. In those enterprises visited by the Federal Labour Inspection in 2000, 346,113 women workers were identified, of whom 4,944 were pregnant and 1,674 were breast-feeding. In the January-May 2001 period, 103,478 women workers were identified in the enterprises visited, of whom 1,572 were pregnant and 424 were breast-feeding.
- In accordance with the National Employment Survey on salaries, technology and training in the manufacturing sector for 1999, of all workers in exporting *maquiladoras* that received training in 1998, 51 per cent were men and 49 per cent were women.

Morocco

Government

Means of assessing the situation

Assessment of the institutional context

The legal instruments concerning the principle of freedom of association and the effective recognition of the right to collective bargaining, mentioned in previous reports to the International Labour Office, remain valid.

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Morocco. Morocco has a number of legal instruments, mentioned in previous reports.

The laws and regulations recognize the principle of freedom of association and the effective recognition of the right to collective bargaining. Article 9 of the Constitution of the Kingdom of Morocco guarantees all citizens:

- freedom of opinion, freedom of expression in all its forms and freedom of assembly; and
- freedom of association and the freedom to join a trade union and political organization of their own choosing.

Similarly, the Constitution states that no limits shall be imposed on the exercise of the aforementioned freedoms, other than by law.

In addition, it should be recalled that Morocco has already ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which was registered at the ILO on 20 May 1957.

Recent measures have been adopted to ensure the conformity of national law with the provisions of Convention No. 98.

On 9 *kaâda* 1420 Dahir (Royal Decree) No. 1-00-01 was adopted promulgating Act No. 11-98 of 15 February 2000, a copy of which was sent to the International Labour Office.

For workers and employers in the private sector, to whom the provisions of the Dahir of 16 July 1957 apply, there are no limitations on the right to form trade union organizations and become members of these organizations.

In addition, the exercise of freedom of association by civil servants is recognized in section 14 of the Dahir of 24 February 1958 relating to the general regulations relating to the civil service. This right is exercised under conditions stipulated in the Decree of 5 February 1958.

The only exceptions under national law currently in force concern the following categories of persons:

- civil servants and officers whose duties involve the right to use a weapon (section 4 of the Decree of 5 February 1958);
- persons subject to the special regulations relating to administrators of the Ministry of the Interior (section 15 of the Dahir of 1 March 1963);
- the magistracy (section 14 of the Dahir of 11 November 1974).

Prior authorization is not needed to form an employers' or workers' organization.

However, all persons wishing to establish an occupational trade union must lodge with the offices of the competent authority, or send the following information to the said authority, by recorded delivery and with an acknowledgement of receipt:

- the by-laws of the planned trade union;
- the list of all persons holding any office whatsoever in its administration or its management. This list shall indicate the surnames, first names, affiliation, date and place of birth, nationality, occupation and domicile of the persons concerned. Such persons must be of Moroccan nationality and must enjoy civil and political rights.

The aforementioned documents are exempt from stamp duty. They must be lodged with or sent in quadruplicate to the offices of the local authority, which shall give one of the copies to the Public Prosecutor's office. These copies, furthermore, shall be given or sent with an acknowledgement of receipt.

The Government does not intervene in the functioning of an employers' or workers' organization. Section 2bis of Act No. 11-98 amending and supplementing the Dahir of 18 *hija* 1376 (16 July 1957) relating to occupational trade unions contains the following provisions:

- prohibition on occupational organizations of employers and workers from interfering, directly or indirectly, in one another's affairs and engaging in any action of this sort, in particular by handing over money without legal justification;
- prohibition on hindering the independence of these organizations with regard to their establishment, management or administration;
- prohibition on any physical or moral person from impeding the exercise of freedom of association.

The effective recognition of the right to collective bargaining ensues from the application of the provisions of sections 1 and 2 of the Dahir of 17 April 1957 relating to collective labour agreements, which state explicitly that collective labour agreements on conditions of employment and work may be concluded between the representatives of one or more occupational workers' unions, on the one hand, and one or more employers or their professional associations, on the other.

No category of employers' and of workers' organizations is excluded from the mechanisms and procedures set up in order to ensure the effective application of the right to collective bargaining.

National legislation does not require prior authorization for the conclusion of collective agreements; however, such agreements shall be lodged, free of charge, by the most diligent party with the clerk of the competent court and with the Ministry responsible for labour matters.

Such agreements may only be applied from the end of the third day following the day on which they were lodged with the Ministry responsible for labour matters.

The application of the principle of freedom of association and the effective recognition of the right to collective bargaining takes a number of specific forms:

- Professional employers' and workers' groupings have the right to organize themselves as professional trade unions for the purpose of defending the economic, industrial, commercial and agricultural interests of their members (Dahir of 16 July 1957).
- Trade unions have the right to conclude contracts or agreements with all other unions, companies or undertakings.
- Trade unions are established at local and regional levels in all branches of economic activity and they participate in the work of the advisory authorities.
- Professional trade unions play an active role in consultations conducted by public authorities in the context of formulating and implementing economic and social policy.
- As with trade union activity, labour inspection plays an important role in the application of the principle of bargaining. Labour inspection is involved de facto in settling collective labour disputes. It provides technical support and assistance for collective bargaining.

Assessment of the factual situation

Morocco has a considerable variety of trade unions. The three principal ones, which are sufficiently representative and established in the public, semi-public and private sectors, are the Moroccan Labour Union (UMT), the Democratic Labour Confederation (CDT) and the General Union of Workers of Morocco (UGTM).

There are currently some 20 trade unions, all of which have a number of structures and contain various levels of authority.

There are two employers' organization, which participate alongside the Government in negotiation, dispute settlement and the formulation of economic and social policy. These are, the General Confederation of Moroccan Enterprises (CGEM) and the Federation of Chambers of Commerce and Industry (FCCISM).

The following are statistical records for the year 2000:

- Number of inspection visits made by labour inspectors: 38, 481
- Number of proceedings initiated against employers committing infringements: 684

- Number of collective disputes avoided: 873 (where strike action was avoided after the intervention of the labour inspection services).
- Number of memoranda of understanding concluded with the assistance of the labour inspection services: 171.

In the context of collective bargaining, the labour inspectorate helps the social partners to sign memoranda of understanding to put an end to situations of conflict.

In practice, there is a visible increase in the number of memoranda of understanding compared with collective agreements. This is because of the negotiation and conclusion of memoranda of understanding with staff representatives in enterprises where there are no trade unions.

Moreover, the labour inspectorate gives information and technical advice to employers and workers on means of applying the principle of negotiation.

Collective labour disputes are examined in the presence of the social partners, first at the level of the labour inspectorate and/or the labour representative, and then they can be renegotiated at the level of the province or prefecture in the context of local investigation and conciliation committees.

However, if disputes cannot be settled at the local level, they are examined in the context of the National Inquiry and Conciliation Committee created by the Declaration of 1 August 1996, and signed by the Government and the social partners.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to promote freedom of association and the effective recognition of the right to collective bargaining are as follows:

- the recent adoption of Dahir No. 1-00-01 of 9 *kaâda* 1420 (15 February 2000) promulgating Act No 11-98 amending and supplementing Dahir No. 1-57-119 of 18 *hijae* 1376 (16 July 1957) on occupational trade unions;
- other provisions are planned in the draft labour code under discussion in Parliament, which aim to harmonize national legislation with the right to organize and collective bargaining.

The means used to promote freedom of association and the effective recognition of the right to collective bargaining are as follows:

- At the local level, the labour inspectorate plays an important role in collective bargaining. It advises the social partners, encourages social dialogue, reconciles the positions of both parties and encourages collective bargaining. The labour inspectorate thereby participates in improving labour relations within the enterprise.
- At the national level, the National Inquiry and Conciliation Committee is very active. It is responsible for promoting social dialogue and fostering links for cooperation between the social partners, and settling labour disputes;

- All provincial and prefectural labour representatives are invited to adopt appropriate measures to encourage employers and workers to refer to International Labour Conventions, through tripartite meetings on social dialogue.

In the context of its general policy and labour relations strategy, the Ministry of Employment has set itself, inter alia, the following objectives:

- step up the monitoring of the application of labour legislation;
- promote health at the workplace;
- develop law as codified under International Labour Conventions;
- draw up, adopt and implement labour legislation better suited to the reality of the new context and in line with the spirit of international labour standards;
- improve the management of labour relations for the promotion of collective bargaining and the settlement of collective labour disputes;
- step up controls on conditions of work for vulnerable social groups (e.g. women, children).

The Ministry's external departments are reminded of the objectives by means of circulars so that they can ensure that these objectives are implemented with a view to improving the social climate in enterprises and promoting a culture of social dialogue, while respecting workers' fundamental rights.

The development of technical cooperation contributes effectively to the promotion of collective bargaining.

Cooperation with France

A scheme backed by GIP-INTER to support tripartite training on the negotiation of collective agreements has been under way since 1999.

Reciprocal visits have taken place between Moroccan and French representatives in the area of promoting collective agreements.

In this context, a tripartite seminar on the promotion of collective bargaining in the textile sector will be organized in the near future.

Cooperation with Belgium

Tripartite workshops have been organized with the support of Belgium in the areas of social dialogue, labour inspection, equality of opportunity and safety and health at work. Cooperation is continuing along these lines.

Cooperation with the United States

The finalization of the agreement with the United States Department of Labor concerning the strengthening of labour relations in Morocco is imminent.

Cooperation with the ILO

In the context of cooperation with the International Labour Office in the area of social dialogue, four regional workshops will be held with the support of the ILO/Belgium project to promote social dialogue in French-speaking Africa (PRODIAP) during the second half of 2001.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report will be given to the following most representative employers' and workers' organizations:

Employers' organizations

- the General Confederation of Moroccan Enterprises (CGEM)
- the Federation of Chambers of Commerce, Industry and Services of Morocco (FCCISM)

Workers' organizations

- the Moroccan Labour Union (UMT)
- the Democratic Labour Confederation (CDT)
- the General Union of Workers of Morocco (UGTM)

No observations have been received regarding past or planned follow-up to the Declaration.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Although workers are free to form and join trade unions, the Government continues to interfere in the daily work of trade unions. Moreover, the *dahir* (law) of 1957 on trade unions does not extend equal rights to workers in the agricultural sector. Magistrates are also completely barred from carrying out trade union activities.

Failure to comply with collective agreements

[Reference is made to the setting of salaries.] Moreover, numerous labour disputes have arisen as a result of employers failing to comply with collective agreements. In several companies and even within the public sector, labour law is often ignored.

Strikers taken to court, anti-union discrimination

The right to strike is established and there have been numerous specific cases. However article 288 of the Penal Code on the “freedom to strike” does not really give workers the freedom to choose whether or not they wish to participate in a strike. It actually gives prerogatives to employers in this sense. This article is often used by employers to take strikers to court, where they face fines or prison sentences. [Reference is made to alleged violations arising under a ratified Convention.]

Very often, the police act brutally when strikes take place and strikers are regularly taken to court.

Government observations on ICFTU’s comments

The Government wishes to make the following observations on the ICFTU’s comments.

(1) As regards the first point concerning the violation of trade union rights, the Moroccan Government does not intervene either in the organization or functioning of any professional grouping of workers and employers.

The principle of freedom of association is recognized in the Moroccan Constitution, which guarantees all citizens “freedom of opinion, freedom of expression in all its forms and freedom of assembly”.

In order to put into practice the principles enunciated in the Constitution, the Dahir of 16 July 1957 [copy attached, not reproduced] provides, in article 2, for the right of persons in the same, similar, or related occupations, to establish freely the organizations of their choice.

The right to organize is also recognized by virtue of the international instruments ratified by Morocco, in particular:

- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the International Covenant on Economic, Social and Cultural Rights;
- the Right of Association (Agriculture) Convention, 1921 (No.11).

In parallel, and within the framework of efforts being made by our country to protect trade unions, measures have been taken with respect to dispute settlement and the promotion of social dialogue.

It involves, in particular, the following:

- conclusion of the accord of 19 Moharem 1421 (21 April 2000) between Government and the social partners;
- the setting up and convening of several conciliation committees for the amicable settlement of disputes;

- consultations involving trade unions, employers' organizations and the public authorities, within the framework of formulating and implementing economic and social policy; and
- involvement of employers' and workers' associations in discussions on the draft Labour Code and its harmonization with the principles of international conventions for the protection of workers' rights.

Moreover, in order to guarantee adequate protection of employers' and workers' organizations against all acts of interference in each other's affairs, and in keeping with recommendations made by the ILO, a law to amend and complement the Dahir of 16 July 1957 concerning occupational unions was adopted in February 2000 [copy attached, not reproduced].

This law, in article 2bis, contains the following provisions:

- prohibition of occupational employers' and workers' organizations from interfering either directly or indirectly in each other's affairs or engaging in any such acts, especially by giving sums of money with no legal justification for doing so;
- prohibition compromising the independence of these entities, as regards their establishment, management or administration;
- prohibition of all natural or moral persons from obstructing the exercise of trade union rights.

Consequently, the Moroccan Government acts within the framework of the national legislation and it does not pose any hindrance to the free exercise of trade union rights. On the contrary, it encourages social dialogue and the protection of the fundamental rights of workers.

(2) The Dahir of 16 July 1957 concerning occupational unions does not exclude the agricultural sector. The first article of the Dahir states that "occupational unions are exclusively for examining and defending their members' economic, industrial, commercial and agricultural interests"

[Reference is made to a complaint concerning a specific enterprise (named).]

As regards the principle of equal rights, this is recognized in the provisions of the aforementioned instrument and applies to workers in industry and services as well as those in the agricultural sector.

In addition, in practice, the three most representative unions (Moroccan Labour Union (UMT); the Democratic Labour Confederation (CDT) and the General Union of Workers of Morocco (UGTM)), represent unionized agricultural workers.

As far as the magistracy is concerned, the national legislation in force prohibits its members from forming a union.

However, in the framework of efforts to promote the ratification of Convention No. 87, Morocco has taken steps in the departments of the ministries concerned, to re-examine the difficulties which prevent the ratification of the Convention.

(3) As regards the third comment concerning collective agreements, the legislation defines such an agreement as a written accord between employers and workers; and no authorization is required for concluding collective agreements.

The application of the principle of collective bargaining is guaranteed by:

- the follow-up to industrial relations and the settlement of collective labour disputes, in the framework of regular meetings, national and regional inquiries and conciliation;
- the spread of the principles of trade union freedom, the culture of social dialogue and consultations through seminars on social dialogue such as the recent regional seminars under the ILO/PRODIAF programme;
- the support and technical assistance of the Labour Administration for the conclusion of collective agreements [Reference is made to the recent conclusion of a collective agreement with a specific enterprise (named).]

In the event that one of the clauses of the collective agreement is not respected, the affected party has the right to have recourse to legal action.

(4) The respect for labour rights in the private sector is ensured by the daily visits of labour inspectors.

During their visits, and in case of non-observance of the labour law, the labour inspectors draw up a statement concerning the infringement by the recalcitrant employers.

The statements are then submitted to the competent tribunal.

(5) The right to strike is guaranteed under article 14 of the Moroccan Constitution, which applies to both the public and private sectors.

All the same, the acts against which sanctions are imposed in keeping with article 288 of the Penal Code, are acts of violence, assault, fraudulent activities and obstruction to the freedom to work; they are not to do with the exercise of the right to strike.

(6) When there is a strike the police only intervenes in serious cases, such as breaches of public order.

Strikers are subject to legal action only in cases of violence and in the wake of complaints by the employer.

Therefore, from the foregoing, it appears that the ICFTU's allegations about the violation of trade union rights, and the failure to respect collective agreements and the right to strike, are without foundation.

Myanmar

Government

Means of assessing the situation

Assessment of the institutional context

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has already been submitted to the competent authorities within the set timeframe in accordance with article [19] of the ILO Constitution.

Meanwhile, the Government of the Union of Myanmar is in the process of reviewing the labour laws in the light of social and economic changes, also taking into account the provisions in the State Constitution that is being drafted and the comments and observations made by the Committee of Experts [on the Application of Conventions and Recommendations] and the Conference Committee on the Application of Standards.

The Government would also like to inform the [ILO] that this report has been transmitted to employers' organizations such as the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and the relevant workers' welfare associations.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

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 detention and sometimes torture. Independent unions must work underground and their leaders, when captured, are given severe prison sentences.

The law prevents independent trade union activities

A "Trade Union Act", which has existed 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 was 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 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 article 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”.

[Reference is made to the alleged imprisonment of certain trade unionists.]

Nepal

Note from the Office

The Office received no report from the Government for the annual review of 2002. Reports were received for the annual reviews of 2000 and 2001.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Although the Nepalese Constitution guarantees the right to form and join trade unions, a series of legislative restrictions hamper trade union activity. As a case in point, the law authorizes the Government to stop a strike or suspend a trade union’s activities if they disturb the peace or affect the economic interests of the nation. The Labour Act also stipulates that a strike is only legal if 60 per cent of the union’s members vote in favour of the action in a secret ballot. Strikes are also prohibited for a very long list of essential services.

In 1992 Parliament enacted the Trade Union Act which defines the procedure to be followed when creating a trade union. This Act also prohibits anti-union discrimination. Despite this step forward, the Government has not yet implemented all the provisions of this law. After a decade of democracy, the authorities still do not recognize trade unions as valid representatives of workers despite the fact that they express the aspirations of a majority of workers.

While the Labour Act provides for collective bargaining, the organizational structures needed to perform this function do not exist. Collective bargaining is still very rarely practised. [Reference is made to experiences on the part of workers and intentions on the part of employers.]

New Zealand

Government

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in New Zealand through the Employment Relations Act 2000.

The Employment Relations Act came into effect on 2 October 2000, as indicated in New Zealand's 2001 report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (GB.280/3/2).

The overall objectives of the Employment Relations Act are:

- (a) to build productive employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship:
 - (i) by recognizing that employment relationships must be built on good faith behaviour; and
 - (ii) by acknowledging and addressing the inherent inequality of bargaining power in employment relationships; and
 - (iii) by promoting collective bargaining; and
 - (iv) by protecting the integrity of individual choice; and
 - (v) by promoting mediation as the primary problem-solving mechanism; and
 - (vi) by reducing the need for judicial intervention; and
- (b) to promote observance of the principles underlying Conventions Nos. 87 and 98.

Main elements of the Employment Relations Act relating to freedom of association and collective bargaining

Parties to an employment relationship are to deal with each other in good faith

Part I of the Act requires that all parties to an employment relationship (unions, employers and employees) are to deal with each other in good faith. This provision applies to all aspects of such relationships, including: collective bargaining; any matter arising under the collective agreement; consultation; any proposals by the employer that may have an impact on the employees; redundancy; union access to the workplace; and any contacts between employer and union relating to secret ballots for the purposes of collective bargaining.

Protection of freedom of association

Part III of the Act provides for voluntary membership of unions, with prohibition on preference in employment by reason of membership or non-membership of a union or of a particular union. This includes any preference in obtaining or retaining employment, in relation to terms and conditions of employment, fringe benefits, and opportunities for training, promotion or transfer. Part III also prohibits undue influence on the decision to belong or not to belong to a union, or on the decision of any individual who is authorised to act on behalf of employees, to act or not to act on their behalf.

Employees are also protected under the personal grievance provisions of the Act (Part IX) against discrimination by reason of an employee's involvement in the activities of a union. Discrimination by reason of an employee's involvement in the activities of a union is defined in section 107. Involvement in the activities of a union means that within 12 months before the action about which there was a complaint, the employee:

- was an officer, official or otherwise representative of a union;
- acted as a negotiator or representative of employees in collective bargaining;
- was involved in the formation of a union;
- made, caused or supported a claim for some benefit by an employee;
- had submitted another personal grievance to that employer;
- had been allocated, applied to take, or had taken any employment relations leave under the Act; or
- was a delegate of other employees on matters relating to their employment.

Case law, under previous legislation, has established that although not listed as an activity of an employees' organization, strike activity could be grounds for discrimination upon which is a basis for personal grievance.

Where an employee establishes that discrimination has occurred, there is a rebuttable presumption that the employer, or representative of the employer, discriminated against the employee on the grounds of the employee's participation in union activities.

Grounds for personal grievance actions also include duress in employment in relation to an employee's membership or non-membership of a union or employees' organization.³ Situations where an employee is subject to duress in employment in relation to membership or non-membership of a union include those where the employee's employer or a representative of that employer directly or indirectly:

- makes membership or non-membership of a union or employees' organization a condition to be fulfilled to retain that employee's employment; or

³ Employees' organization, for the purposes of the provisions relating to duress, means any group, society, association or other collection of employees other than a union, that exists, in whole or in part, to further the employment interests of the employees that belong to it.

- exerts undue influence on that employee, or offers, or threatens to withhold or does withhold, any incentive or advantage to or from that employee, with intent to induce that employee:
 - to become or not to become, or to cease to be or remain, a member of a union or a particular union or employees' organization; or
 - in the case of an employee who is authorised to act on behalf of employees, not to, or cease to, act on their behalf; or
 - on account of the fact that the employee is, or is not, a member of a union or employees' organization, to resign from or leave any employment; or
 - to participate or not to participate in the formation of a union or employees' organization.

Employers' organizations are not explicitly referred to in the Employment Relations Act. Employers are, however, free to associate in any way they wish, and to establish organizations and make their own rules for membership in the same way as other civil organizations.

Recognition of the role of unions in promoting their members' collective employment interests

A union is defined by the Employment Relations Act as a union registered under Part IV of the Act, which provides for the registration of unions that are accountable to their members. Unions have the exclusive right to represent their members' employment interests through collective bargaining.

Provision of reasonable access to workplaces for representatives of unions for purposes related to employment and union business

A representative of a union is entitled to enter a workplace for purposes related to the employment of its members, including bargaining, health and safety, enforcement of the collective agreement, or, with the authority of an employee, to deal with matters related to an individual employee's agreement or terms and conditions of employment. Access is also permitted for union business, including recruitment and the distribution of information. Restrictions on access include requirements to limit access to reasonable hours and to comply with reasonable procedures such as health and safety requirements. Access may be denied, on religious grounds, by businesses with no more than 20 employees, if there are no union members in the workplace and the employer has a certificate of exemption issued under section 24 of the Act.

To provide paid employment relations education leave to certain employees to increase their knowledge about employment relations

Part VII of the Act provides for an entitlement to paid employment relations education leave for employees who are members of the union which has negotiated, or is negotiating, a collective employment agreement with the employer, and who are covered by that agreement. The union has the right to allocate the leave for courses of employment relations education approved by the Minister of Labour.

*Recognition that the requirement of good faith behaviour
does not preclude certain strikes and lockouts being lawful*

Strikes or lockouts are lawful in support of collective bargaining at least 40 days after the initiation of bargaining, or on grounds of safety and health. Notice must be given of strikes in essential services.

*Recognition that in resolving employment relationship
problems, including collective negotiations, access to
information and mediation services is of primary importance*

The Act provides for dispute resolution aimed at supporting successful employment relationships. It provides for mediation services, including the provision of information, to be the first approach to solving employment problems. The Department of Labour employs 53 mediators located in offices around New Zealand. They operate informally and offer processes of any kind that will help the parties to a dispute to resolve it themselves.

*Establishment of procedures and institutions that
support successful employment relationships and
the good faith obligations that underpin them*

The Employment Relations Authority is an investigative body which is required to resolve employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. The Authority is required to promote good faith behaviour.

Recognition that judicial intervention will be required in some cases and that judicial intervention at the lowest level needs to be that of a specialist decision-making body that is not inhibited by strict procedural requirements

Parties may approach the Employment Court for a *de novo* hearing if they are not satisfied with the determination of the Authority. The Court must be satisfied that the parties have attempted to resolve the matter in good faith. The Employment Relations Authority may agree to remove a case to the Court under certain conditions.

With regard to the manner in which the principle is recognised; to what extent and within what limits; and the means of implementing the principle, the Government refers to the preceding information and its 2001 report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (GB.280/3/2).

Assessment of the factual situation

The Employment Relations Act requires that a copy of all collective agreements be provided to the Department of Labour for monitoring purposes. The Department of Labour's analysis of these agreements showed in April 2001 that unions continue to represent most (79 per cent) of the employees covered. Under the Employment Relations Act, all collective agreements must now be negotiated by unions. Hence, it can be anticipated that representation will increase to 100 per cent as existing collective agreements are replaced.

Since the Employment Relations Act came into force, 139 unions have been registered. Those registered at 1 March 2001 (121) were required, under section 16 of the

Act, to provide membership numbers on that date. This is an increase in the number of unions over the 81 unions that were incorporated societies before the beginning of 2000.

The Department of Labour's database shows that union membership totalled 319,660 employees at 1 March 2001. This represents 22.1 per cent of wage and salary earners and 17.7 per cent of the total employed labour force.⁴ These figures suggest a small increase (5.7 per cent) in the number of union members since the introduction of the Employment Relations Act.

There has been an increase in the number of enterprise-based unions in recent months. However, the number of members they represent is very small. Forty-eight registered unions became incorporated societies after 1 September 2000. Of these, 34 (28 per cent of registered unions at that time) were required to provide membership numbers at 1 March 2001. Their combined membership amounted to less than 1 per cent of union members.

The Department of Labour's collection of data on unions and union membership began only in March 2001. However, the preceding figures are consistent with data produced by the Industrial Relations Centre at Victoria University of Wellington, which have shown a continuous decline in union membership since 1985, to 302,405 members in December 1999. The Industrial Relations Centre's latest survey, at 31 December 2000, shows an increase in union members to 319,000, and an increase in the number of unions to 134, up from 82 in 1999. It also found that the majority of the new unions were enterprise based, but that these unions represented only 2,800 members.

Part of the increase in the number of unions may be attributed to the fact that the Employment Relations Act requires that only registered unions represent employees in collective bargaining.

With regard to any other information that might allow a better assessment of the situation in the country (structural, economic, demographic or training and education factors, etc.), the Government refers to its 2001 report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (GB.280/3/2).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Employment relations education leave

As noted earlier, the Employment Relations Act provides for paid leave for eligible employees (union members) to undertake approved courses in employment relations education. This is intended to increase skills and knowledge of employment matters to improve relationships in the workplace and enable employers, employees and unions to deal with each other in good faith.

To support the provision of employment relations education leave, a contestable fund of \$5 million spread over three years has been set up to assist with the costs of developing and running employment relations education courses. The fund is available to unions,

⁴ Household Labour Force Survey, March 2001 quarter, Statistics New Zealand.

employers and other providers, to develop and run courses approved by the Advisory Committee on Employment Relations Education, which may include courses for people not eligible for paid leave (e.g. employers, young people entering the labour force).

Information

The Department of Labour has upgraded its system for disseminating information about the Employment Relations Act and minimum employment standards, to ensure that employers and employees are aware of their rights, including those relating to collective bargaining. This makes use of a variety of channels, including printed material, a toll-free Information Centre and a web site (www.ers.dol.govt.nz).

The Department of Labour has also revised its database to cover all collective agreements and collect information relevant to the Employment Relations Act, including information on unions and union membership. Analysis of this information showing trends in collective bargaining arrangements and outcomes is presented in its magazine *ERA Info*, and distributed free to interested groups including unions and employers.

With regard to the objectives of the Government with a view to the observance, promotion or realization of these principles and rights, the Government refers to its 2001 annual report (GB.280/3/2).

With regard to the conditions deemed necessary to meet these objectives, including technical cooperation resources that might help to achieve them (for example, the recognition of the principle in the country's legal system; the development of relevant indicators or statistics; the promotion of the principle in practice), the Government refers to the preceding information and its 2001 report (GB.280/3/2).

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to:

- Business New Zealand;
- New Zealand Council of Trade Unions.

Observations received from employers' and workers' organizations

The Government forwarded the comments of Business New Zealand and the New Zealand Council of Trade Unions (NZCTU).

Observations submitted by Business New Zealand

Business New Zealand is in general agreement with the Government's draft report from a factual point of view, but would add the following points.

While in strict terms it is true that no employees are excluded from any systems or procedures intended to ensure the effective recognition of the right to collective bargaining – there being no prohibition on the right to join a registered union – it is also true that employees who do not wish to join a union have no effective right to bargain collectively.

Only unions are entitled to negotiate collective agreements, and to be so entitled, the union itself must be officially registered. As a consequence, a group of employees wanting to negotiate a collective agreement other than as union members has no right to do so and can therefore be covered only by a collection of individual agreements.

However, there is a logical flaw in viewing freedom of association as requiring membership of a union, registered or otherwise. Freedom of association should mean what it says, or at least, what it appears to say – that is, that if particular employees wish to bargain collectively without joining a registered union and availing themselves of its services, they should be free to do so. There should be no obligation to join a union for bargaining purposes. To require membership of a union before a collective agreement can be negotiated is inherently self-contradictory. Freedom to associate should mean just that – freedom to associate in the way that best suits particular employees. By the same token it should also mean that employers are free to negotiate collectively with employees who are not union members. Any other interpretation is out of step with the changing nature of industrial relations, with the move to flatter management structures, with the growth of a better-educated workforce, and with the changing nature of work itself.

With regard to the measures taken to promote freedom of association and the effective recognition of the right to collective bargaining:

As the Government's response indicates, paid employment relations educational leave is available only to employees who are union members, with the relevant part of the Employment Relations Act (Part 7) addressing only the rights of unions in respect to their ability to grant leave to their members for this purpose. In fact, if not in law, provision has been made for employers to provide employment relations education to their employees. However, in strict terms, the Act in relation to granting employment relations education leave, is concerned only with improving relationships between employers and union members, not those between employers and their employees who do not belong to a union. Here, as elsewhere, the Act promotes registered unions, which may or may not be properly representative of their members, over employee freedom of choice. The case is the same for the right to hold stop-work meetings, which is also a prerogative of union membership.

Observations by the New Zealand Council of Trade Unions (NZCTU)

We have reviewed the Declaration Report on Freedom of Association and Collective Bargaining. The NZCTU has no comments to make on this draft government report.

Annexes (not reproduced)

- Department of Labour, Employment Relations Service ERA Info: *The Report on Employment Relations in New Zealand*, July 2001, Volume 4; April 2001, Volume 3; February 2001, Volume 2.
- Fact sheets:
 - Minimum rights in legislation
 - Annual holidays
 - Public holiday dates

- Public holidays
- Minimum pay
- Special leave
- Shop trading hours
- Redundancy
- Dismissals
- First steps – Problem-solving
- Problem Solving: Taking things further
- Mediation
- Going to the Employment Relations Authority
- Resolving parental leave problems
- Applying for parental leave
- Parental leave – General entitlements
- Union membership
- Payment of wages and deductions
- Sample individual employment agreement
- Employment status
- Your employment agreement
- Sample problem resolution procedures
- Negotiable terms and conditions of employment

Pamphlets:

- What employment relations law means to you as an employer, January 2001
- Employment rights and obligations in the Employment Relations Act 2000 environment, April 2001
- Parental Leave and Employment Protection Act 1987, April 2001
- Employment agreements, October 2000
- Minimum pay and deductions, June 2001
- Dealing with a workplace problem, October 2000

- Your rights to holidays and other leave, April 2001
- Employment relationship problems, June 2001
- Your minimum employment rights, March 2001

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights: New legislation

The Labour Government elected in November 1999 has kept its election promises by repealing the very anti-union 1991 Employment Contracts Act. As a reminder, this Act had dismantled the existing system of collective and minimum wage awards, replacing it with individual employment contracts. It also placed restrictions on the right to strike. Consequences: the number of workers covered by collective agreements dropped by half, real salaries decreased and trade union membership plummeted. Despite these measures, neither the New Zealand economy nor worker productivity improved.

The new Employment Relations Act, which came into effect on 1 October 2000, gives new impetus to trade unions by restoring access to work sites and the right to bargain collectively. There are still some restrictions for the army and special arbitration procedures for the police force, which cannot go on strike. The new Employment Relations Act is intended to re-establish bargaining in good faith, placing emphasis on mediation and problem-solving rather than arbitration or the obligation to obtain results. [Reference is made to alleged attempts by some enterprises to “circumvent the spirit of the law”.] Further reforms in favour of workers are planned.

Despite this improvement, the list of essential services is still too long and setting up picket lines is still a challenge.

Government observations on ICFTU’s comments

In relation to the last paragraph of the ICFTU’s comments, it should be noted that pickets are lawful in New Zealand under the provisions of the Employment Relations Act.

The list of essential services in New Zealand was reviewed as a part of the democratic process during the passage of the Employment Relations Act. The list of essential services retained was considered to reflect an appropriate balance between the interests of employees being able to take industrial action, and the interests of employers and the economy in having notice of industrial action, so that contingency plans can be put in place where industrial action occurs.

Oman

Government

Means of assessing the situation

Assessment of the institutional context

The Sultanate of Oman reaffirms that the principles and aims upon which the Declaration on Fundamental Principles and Rights at Work is based, are respected by the Sultanate, in accordance with the Constitution of the International Labour Organization and the Declaration of Philadelphia, without prejudice to ensuing values established in the society and rooted in the Islamic Sharia (Law of Islam).

The Sultanate of Oman, in view of its respect for, and interest in, the Declaration on Fundamental Principles and Rights at Work, refers to international labour standards to develop its regulations and laws, making every endeavour to have its national laws conform to these standards.

With regard to the means of assessing the situation in the country as it relates to freedom of association and the effective recognition of the right to collective bargaining, the principle is recognized within the limits established in the rules and laws in force in the Sultanate of Oman.

It is recognized in the Statute on the establishment of associations, and the Omani Labour Law relating to the composition of committees for workers and owners of enterprises employing 50 workers or more.

This practice exists in large enterprises without the interference of the Ministry; but this practice does not exist in small enterprises and companies, due to the situation of the local labour market and the composition of the labour force, of which the majority are migrant workers who are employed under temporary contracts and, consequently, do not retain their jobs for long periods.

The establishment of employers' or workers' organizations is subject to regulations established by the Government, not to prior authorization.

There is mutual cooperation between the Government and the parties concerned, for the promotion of common public interest.

The system in force ensures the recognition of this principle. There are legal and administrative means for implementing the principle.

Assessment of the factual situation

The economic and social conditions in the Sultanate of Oman have led to a limited number of nationals in the labour force in the formal private sector. In view of the increase of temporary migrant workers of different nationalities, the Sultanate of Oman makes every effort to take all necessary measures to find a mechanism that ensures the development of the roles of the social partners (employers' and workers' organizations). This is being done progressively in response to developments in the Omani labour market as well as to changes at the international level.

In addition, the Sultanate of Oman is always willing to enable workers' and employers' representatives to participate actively in Arab and international conferences according to the principle of tripartism. This is without prejudice to their total independence and close cooperation with relevant bodies and organizations, in order for them to broaden their experiences. The Sultanate endeavours to reinforce this principle either through employers' organizations or by giving workers' representatives in enterprises with a significant labour force, the opportunity to play this role.

The Sultanate provides workers and employers with the means to participate in numerous bodies and institutions specialized in training, vocational development, labour rights as well as social benefits and social insurance. The representatives of the parties concerned participate in the decision-making process as well as in improving labour market conditions for the benefit of the social partners and the general public.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government strives to support workers' participation and to increase their role, activities and contribution to the realization of workers' interests, inter alia, by including them in the process of developing mechanisms for promoting career development.

The Government encourages the establishment of joint committees of employers and workers in enterprises with significant workforces. This is done in order to resolve problems, to establish mechanisms for improving work and for developing their role in many workers' activities. It is also designed to develop information programmes for the labour force at the country level.

The Sultanate seeks assistance from the Arab Labour Organization as well as from the International Labour Organization in carrying out studies that it deems necessary and that contribute to supporting the organization and development of the labour force in the country.

The Government's aims are to observe the fundamental principles and rights of workers and to translate them into practice, by putting emphasis on them in the Constitution, legislation and labour laws. This is done in order to enhance productivity, to take care of workers' interests and to improve their social conditions.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the following representative employers' and workers' organizations:

- Chamber of Commerce and Industry of Oman;
- Workers' representative.

Observations received from employers' and workers' organizations

The Government has not received any observations.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Trade union rights do not exist in Oman, and there is still no sign of the promised new Labour Code.

Neither trade unions nor collective bargaining are authorised under the law. Salaries and wages, working hours and other working conditions are generally defined by the law or by individual contracts in accordance with government directives. Temporary workers are not covered by the law.

Enterprises with more than 50 employees must also 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.

Strikes are forbidden

A 1973 Decree states “it is absolutely forbidden to provoke a strike for any reason whatsoever.” Workers can be dismissed for striking or for inciting others to strike. Work stoppages are rare, even non-existent.

Despite its promises since 1994, the Government has still not reviewed its Labour Code. [Reference is made to international labour standards.]

Government observations on ICFTU’s comments

The Government of the Sultanate of Oman thanks the ICFTU for the interest it showed in workers’ and employees’ concerns in all sectors, especially those of ensuring their rights in the Sultanate. We would like to reaffirm that the Sultanate of Oman, following its adherence to the International Labour Organization, committed itself to respect the instruments of this Organization and undertook to develop regulations, laws and legislation in conformity with international instruments, taking into account national conditions. Consequently, the Sultanate ratified some of the fundamental ILO Conventions and it is in the process of examining other Conventions with a view to ratifying them, subject to the economic and social development needs of the Sultanate.

We would like to clarify the following points with regard to the ICFTU’s comments.

Violation of trade union rights

The Sultanate of Oman reaffirms that the principles and objectives upon which the Declaration on Fundamental Principles and Rights at Work, in particular, and the standards of the ILO in general, are based, are respected by the Sultanate. The Sultanate is committed to their content and aim, in accordance with the Constitution of the International Labour Organization and the Declaration of Philadelphia, without prejudice

to ensuing values established in the society and rooted in the Islamic Sharia (Law of Islam).

The Sultanate of Oman, in view of its respect for, and interest in the Declaration on Fundamental Principles and Rights at Work, refers to international labour standards to develop its regulations and laws, making every endeavour to have its national laws conform to these standards.

The economic and social conditions in the Sultanate of Oman have led to a limited number of nationals in the labour force in the formal private sector. In view of the increase in temporary migrant workers of different nationalities, the Sultanate of Oman makes every effort to take all necessary measures to find a mechanism that ensures the development of the roles of the social partners (employers' and workers' organizations). This is being done progressively in response to developments in the Omani labour market as well as to changes at the international level.

Consequently, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in the Sultanate within the limits established by the Statute of the country as well as by the labour legislation.

The basic Statute provides for the establishment of associations, and the Omani Labour Law allows for the creation of committees for workers and employers in enterprises employing 50 workers or more.

The Government had said that it was about to promulgate the new Labour Code in 1994. However, the draft of the new Labour Code only came into force recently. This is due to the changes in the ministerial structure of the Ministry of Social Affairs and Labour, the latest of which has been the issuing of Sultan Decree No. 108/2001 on the creation of the Ministry of Social Development and the Ministry of Manpower on 6 November 2001. There is also the fact that laws in the Sultanate are only promulgated when all competent councils and institutions have fully examined them. Consequently, the promulgation of this Law is pending until the complete collection of all observations from the Ministry of Legal Affairs, the Legislative Council, the State Council and the social partners. These observations must be obtained before the new Code can be submitted for adoption by the Council of Ministers. We hope that the Law will be promulgated as soon as possible, especially since the Sultanate, in the light of international developments, is striving to develop its systems of work to achieve efficiency, the stability of workers and higher productivity, in order to meet the requirements for development and the obligations resulting from its membership in the World Trade Organization in 2001.

The non-promulgation of the new Law does not mean, in any way, that the Sultanate does not apply practices and measures aimed at ensuring workers' rights and collective bargaining. In fact, the Sultanate discussed this matter with ILO officials during the 88th Session of the International Labour Conference, in the framework of efforts being made by member States of the Gulf Cooperation Council (GCC) to find an appropriate formula with regard to the creation of trade unions. The Organization promised to send an expert to the GCC member States to examine the situation of the workforce and to elaborate on recommendations with regard to the establishment of trade unions.

We would like to reaffirm that the Sultanate has begun to establish a variety of civil associations in accordance with Ministerial Order No. 150/2000. By virtue of Ministerial Order No. 88/2001, authorization has been given for the establishment of 27 women's associations and a professional for practitioners called the Omani Medical Association. In

addition there has been the establishment of an association for engineers, by virtue of Ministerial Order No. 186/2001 as well as a professional association for geologists, by virtue of Ministerial Order No. 79/2001, and an Omani association for oil services by virtue of Ministerial Order No. 322/2001.

The new Law, which is in the final stage of being examined, contains an article providing explicitly for the establishment of workers' committees in the Sultanate, which will provide the base for workers' participation and collective bargaining to be extended in the future.

The Sultanate draws on the experience of Arab and international organizations in carrying out studies deemed necessary to support, organize, develop and promote the workforce in the country.

The Government endeavours to do the following: promote workers' participation; increase their role, activities and contribution to work-related matters, including their involvement in the development of mechanisms for career development and upgrading; to encourage the establishment of joint committees of employers and workers in labour-intensive enterprises in order to settle problems; to develop mechanisms to improve working conditions and make workers' activities more efficient; and to develop information programmes for all workers in the country.

With regard to wage determination, the Omani Labour Law does not fix wages and salaries but only provides for the minimum wage, by virtue of Ministerial Order No. 222/98 which was promulgated to guarantee the minimum standard of living for workers in the Sultanate, as required by all international instruments, including those of the International Labour Organization. With regard to wages at different levels, they are determined by the private sector when concluding employment contracts accepted by both parties, in a manner that ensures economic development. The agreed wage should not be less than the minimum wage. Furthermore, the terms of the contract should be in conformity with the Omani Labour Law and the Directives of the Government in this regard, which stem from the laws in force in the Sultanate.

By this means, the Government aims to respect the fundamental principles and rights of workers. It translates them into practice by including them in the Statute and labour legislation with the aim of achieving efficient worker productivity, the protection of their interests and an improvement in their social condition.

Prohibition of strikes in the Sultanate

Guaranteeing principles and rights at work in the Sultanate of Oman, is one of the fundamental means for achieving social development and economic growth, which are considered as a special sign of achievement of these rights. The boom witnessed by the Sultanate under the guidance of His Majesty the Sultan Kabus, is undoubtedly an honourable symbol of the achievements realized by the Sultanate in favour of Omani citizens as well as foreigners living in the Sultanate, in terms of stability, security and progress. They enjoy freedoms based on equal opportunities and equal participation to achieve human development in all its dimensions.

The membership of the Sultanate in the Arab Labour Organization in 1983 and in the International Labour Organization in 1994, is undoubtedly proof of the importance of the Sultanate's efforts to realize fundamental principles and rights for citizens, to set up equitable policies in the field of human development, and to promote human rights. The

Sultanate is convinced that these principles at work are an expression of the principles embodied in the Statute of the country.

The Sultanate of Oman, by joining the International Labour Organization, freely endorsed the principles and rights set out in the ILO Constitution and in the Declaration of Philadelphia. The Sultanate has undertaken to work towards the attainment of the overall objectives of the Organization, to the best of its capacity and fully in line with its specific circumstances. In this context, the Statute as well as the Omani Labour Law provide for the protection of workers' rights, considering that the competent authorities settle differences between the worker and the employer out of court, by conciliating the views put forward and ensuring that the interests of both parties are considered. If the parties fail to reach an agreement the issue is then submitted to the administrative and commercial courts to be resolved within the framework of the legislation that serves the interests of everyone in the Sultanate.

In accordance with the regulations and mechanisms of the International Labour Organization and the Arab Labour Organization, of which the Sultanate is a member, and in conformity with the principles and rights set out in the Constitution of the ILO and the Declaration of Philadelphia, the Government has undertaken to work towards the attainment of the overall objectives of the Organization to the best of its capacity and fully in line with its specific circumstances. In confirmation of the fact that all workers in the Sultanate are well treated, the ICFTU itself affirmed that layoffs are either non-existent or very rare in the Sultanate. This confirms that workers in the Sultanate enjoy benefits that do not justify strikes which result in hindering the process of economic and social development in the country, as the Government strives to resolve problems before they become worse and lead to strikes.

Qatar

Government

Means of assessing the situation

Assessment of the institutional context

We would like to refer to our report submitted for the first annual review 2000 (GB.277/3/2), and in particular, the following.

Employers have their own organization represented by the Chamber of Commerce and Industry of Qatar. This Chamber has been founded by virtue of a special "article of association" which regulates affiliation to the Chamber, its administrative structure (General Assembly, Board of Directors and Executive Bureau), its competencies and activities.

As far as workers are concerned, the Labour Code allows for the setting up of consultative committees composed of employers' and workers' representatives with a view to promoting cooperation between them. Such committees can consider and submit proposals on matters concerning the upgrading of working conditions and of the workers' position in the enterprise.

The Labour Code regulates the procedures for dispute settlement between the employer and some or all his workers (collective dispute).

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

The Ministry of Civil Service Affairs and Housing would like to indicate the following.

The Ministry submitted the Declaration on Fundamental Principles and Rights at Work and its Follow-up to the august Cabinet of Ministers which considered it and decided to constitute a Committee of the following ministers: Civil Service Affairs and Housing, Interior, Finance, Economy and Commerce, to study the Declaration and to define the position of the State of Qatar vis-à-vis the principles, rights and obligations contained in the Declaration.

The Ministry has sought the help of an expert of the ILO (the Regional Office for Arab States) who held meetings with the employees concerned to explain to them the principles and rights, which the Declaration might entail.

The Ministry asked for the help of other experts in the administrative and legislative fields, as well as those concerned with the principles and rights laid down in the Declaration, in order to get information on the ways in which they can be respected, promoted and realized.

The Ministry intends to seek the help of the ILO for the organization of a symposium or meeting for officials and workers in the different public and private sectors, in order to discuss the Declaration and the implications of its principles, rights and obligations for all the parties concerned.

The Ministry expresses its thanks and appreciation to the ILO for the valuable contribution and response. It looks forward to continuing and promoting this cooperation in the different fields that concern the fundamental principles and rights in the Declaration. Among the measures taken are the following.

There is a general committee for workers representing those economic sectors in which the majority of workers are employed, namely the petroleum, gas, iron and steel sectors. The general committee is made up of representatives of the workers' committees in enterprises in the aforementioned sectors. It enjoys full liberty in choosing its representative for Arab and international labour conferences and meetings.

The assistance of the ILO was sought. The ILO delegated an expert to revise the new draft Labour Code. He has revised the new draft and submitted proposals, one of which concerns the development of workers' organizations.

**Representative employers' and workers'
organizations to which copies of the
report have been sent**

Copies of this report have been sent to:

- The Chamber of Commerce and Industry of Qatar;

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- The General Committee of Workers.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

Trade unions do not exist 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 prohibited and wages are generally set by the employers.

The Government recognizes the right to strike but places severe limitations on it. As a case in point, civil servants and domestic workers are denied this right. In the private sector, although most workers have the right to strike, they may only do so after a conciliation board has ruled on the dispute, which effectively neutralizes the purpose of the strike in the first place. In contrast, under the same conditions, employers are authorised to lock out or sack workers.

Strikes organized by expatriate workers are quite rare but have been known to occur.

Government observations on ICFTU's comments

Our response highlights the measures which have been undertaken in 2001, to develop the labour law according to the Declaration on Fundamental Principles and Rights at Work. In particular:

1. the draft of a new Labour Code was prepared;
2. a Committee to study the Declaration was created;
3. the ILO and the Gulf Cooperation Council (GCC) reached an agreement on technical cooperation with these member States;
4. all of these measures would contribute to the development of international labour standards and their application.

Saint Vincent and the Grenadines⁵

Government

Means of assessing the situation

Assessment of the institutional context

There are 27 collective agreements in force in Saint Vincent and the Grenadines, covering the following sectors:

Sector covered	No. of agreements
Government (teachers in primary and secondary schools)	1
Electricity, gas and water	6
Transport, storage and communications	6
Industrial and manufacturing	7
Agriculture, forestry, hunting and fishing	1
Community services	2
Wholesale/retail	1
Financial institutions	3

Freedom of association is recognized in the Constitution of Saint Vincent and the Grenadines (S.11 (1-2)) and the draft Labour Relations Bill, 2001.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of the report were sent to:

- St. Vincent Employers' Federation
- National Labour Congress

Annexes (not reproduced)

- Excerpts of the Saint Vincent and the Grenadines Constitution, 1979
- Saint Vincent and the Grenadines: Bill for an Act to establish the Labour Relations Bill, 2001

⁵ Between 1 September 2001, the deadline for submitting reports under the follow-up to the Declaration, and 31 December 2001, Saint Vincent and the Grenadines ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Therefore, Saint Vincent and the Grenadines will not be requested to report for this category of principle under the Declaration follow-up, as from the next annual review.

**Observations submitted to the Office by the
International Confederation of Free Trade Unions
(ICFTU)**

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

There is no law that forces employers to recognise trade unions as a party to negotiations. Worse still, employers have asked the Government to make it their constitutional right not to recognise trade unions. This has led to recognition disputes arising between employers and officially registered trade unions.

Government observations on the ICFTU's comments

The Government of Saint Vincent and the Grenadines wishes to state that in relation to the communiqué regarding freedom of association and the effective recognition of the right to collective bargaining, legislation has already been drafted and is about to be passed, to address the recognition of trade unions.

Discussions with all social partners, such as trade unions and the employers' association revealed a total rejection of these allegations and further communication will be sent to the Office on this matter.

Saudi Arabia**Government****Means of assessing the situation*****Assessment of the institutional context***

Regarding the principle of freedom of association and the effective recognition of the right to collective bargaining, the Kingdom of Saudi Arabia emphasizes once again the importance of this principle. In addition to scheduled meetings to be held either at ILO headquarters or in the region during the coming months, several meetings were held this year [2001] between officials of the Kingdom including Dr. Ali Al-Namlah, Minister of Labour and Social Affairs, and officials of the International Labour Office, in order to continue the current meaningful and constructive dialogue focusing on relations between the ILO and the Kingdom, in particular concerning fundamental principles and rights at work.

There are also continuous meetings being held between officials of the ILO and the Gulf Cooperation Council. During such meetings, it was agreed with the ILO to intensify efforts in the region, and provide the necessary technical assistance to members States of the Gulf Cooperation Council, following technical meetings between the parties concerned, and in coordination with the Executive Bureau of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council, and the International Labour Office.

Regarding developments since the last report, as the Kingdom has already stated, there is a mechanism for organizing workers in the Kingdom, which is yet to be approved. The Kingdom of Saudi Arabia would like to draw to the attention of the Expert-Advisers the fact that the Council of Ministers has issued Decree No. 12 dated 2 April 2001 approving rules for the establishment of labour committees at the enterprise level, which will be applied once the necessary formalities have been completed. These rules are considered to be a step towards a mechanism for organizing workers in a way that is compatible with national needs and conditions, which are very well known to the ILO, in terms of the percentage of foreign to national workers in the Saudi labour market.

The rules approved by the Council of Ministers open the possibility for establishing one labour committee in each enterprise, consisting of Saudi workers employed in the enterprise. The committee will engage in activities at the enterprise level with the aim of: improving working conditions and terms of employment; enhancing productivity and improving quality; increasing workers' productivity in order to strike a balance between workers' interests and those of the enterprise; achieving stability in industrial relations; providing for occupational safety and health measures in addition to improving the standard of health; developing vocational and managerial training; and increasing workers' cultural and social standards.

The rules take into account the independent action of the labour committee vis-à-vis the management of the enterprise in decision-making as well as freedom to run for election on such committees. The rules also provide for the establishment of a consultative labour council consisting of the Government, employers and workers. The consultative labour council will be responsible for the examination of proposals and may express views on the following:

- increasing workers' productivity, protecting their interests, improving their conditions, providing for occupational safety and health measures;
- recommendations of labour committees at enterprise level;
- drafting rules concerning labour and workers and amendments thereof.

The Government of Saudi Arabia would hope that such rules would consolidate fundamental principles and rights at work, particularly in the area of freedom of association and collective bargaining. These rules shall be the focus of interest of officials of the Ministry of Labour and Social Affairs, in particular, and of the Government of Saudi Arabia, in general. These rules will be subject to continuous review, once applied and put into practice.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report were forwarded to:

- Mr. Dahlan, Abdullah, Council of Chambers of Commerce and Industry, Employers' representative
- Mr. Al-Hajri, Mohammed, Saudi ARAMCO, Workers' representative

Observations received from employers' and workers' organizations

We have not received any comments from either representative.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The Sharia, the Islamic Law used as the Constitution, is the only legal text protecting workers. There is practically no other mechanism to promote the aims set out in the Sharia, however. More specifically, trade unions do not exist and whoever tries to form one can be fired, imprisoned or (in the case of migrant workers) deported.

Strikes are banned by royal decree. It is nearly impossible to organize even a march since freedom of assembly is very strictly limited. [Reference is made to alleged difficulties in organizing public demonstrations and public meetings in general.]

Collective bargaining is also non-existent. The Government justifies the absence of worker protection by arguing that the labour force is of a "specific nature" (i.e. mainly foreign). In the event of a dispute, the only legal recourse is to contact the labour inspector. As for salaries, they are determined by the employers and vary according to the nature of the work and the nationality of the workers. There is no minimum wage.

Government observations on ICFTU's comments

The Kingdom of Saudi Arabia has already expressed its own point of view on the observations of the ICFTU, which we find to be repetitive and inaccurate. We have already replied to these observations on several occasions.

The Kingdom of Saudi Arabia has informed the International Labour Office, including [the InFocus Programme on Promoting the Declaration], that the Council of Ministers has approved the establishment of labour committees at the enterprise level. At present, we are in the process of completing by-laws for the labour committees, which shall start functioning in the near future.

Singapore

Government

Means of assessing the situation

Assessment of the institutional context

There have been no changes to our legislation with regard to this principle.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government recognizes the important roles played by the trade unions and employers' organizations, and regards them as key social partners in the formulation and implementation of employment, industrial relations and human resources policies, within the tripartite framework. This is reflected in the formation of various tripartite committees which have representatives from the trade unions, employers and the Government, to study various labour-related issues (for example, the recent formation of the National Task Force on Employment to help retrenched workers seek re-employment and skills training). The Committee is headed by the Deputy Secretary-General of the National Trades Union Congress (NTUC).

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to:

- Singapore National Employers' Federation (SNEF)
- Singapore National Trades Union Congress (NTUC)

Observations received from employers' and workers' organizations

Comments from both employers' and workers' organizations have been taken into account in this report.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The Constitution grants all citizens the right to form trade unions. The Parliament may nevertheless impose certain restrictions for matters relating to security, public order or morality. Forming a trade union is subject to approval from the Registrar of Trade Unions who has, for reasons specified in the legislation, powers to refuse or cancel registration of trade unions, particularly where one already exists for workers in a particular occupation or industry. These powers may be used to obstruct the establishment of trade unions and impose a single trade union structure. Unions have pointed out that these provisions help prevent the formation of "yellow" or company-sponsored unions which would undermine trade union unity, particularly in view of the small size of many workplaces in Singapore. The Registrar of Trade Unions is also given far-reaching powers under the law to investigate union finances.

The Trades Unions Act of 1940 (adopted while Singapore was still a British colony) places a general prohibition on government employees forming or joining trade unions. However, the President of Singapore has the power to make exemptions from this provision of the law, and this has already been done.

Most labour disputes are settled through conciliation with the Ministry of Manpower. If such proceedings fail, the parties to the dispute may submit their case to the Industrial Arbitration Court, whose members include representatives of workers and management. In some cases, the law provides for recourse to binding arbitration, which can put an end to collective bargaining at the request of either one of the parties. This has not happened since 1981, however.

Legislation requires that 50 per cent plus one vote of all of the trade union's members be in favour in order to call a strike. This is excessive in the light of the fact that international standards consider it reasonable to require trade unions to obtain a 50 per cent favourable vote among the trade union members participating in the vote. Legislation also prohibits strikes in essential services (water, gas, electricity). In February, a debate took place in Parliament on the issue of whether or not to apply a no-strike clause to a new national security agency called the "Defence Science and Technology Agency". [Reference is made to legislative history.]

The law restricts the right of trade unions to elect their officers, as well as whom they employ. Citizens with a criminal record are not permitted to work for a trade union. The same is true for foreigners. In both cases, however, exemptions can be granted by the Minister. Moreover, the law limits the objectives on which unions may spend their funds and prohibits payments to political parties or the use of funds for political purposes. Such issues should only be addressed internally.

Government observations on ICFTU's comments

The Government of Singapore would like to clarify the observations made by the ICFTU. The Government notes that some of the observations were previously raised by the ICFTU in its 2000 *Annual Survey of Violations of Trade Union Rights* to which the Government has already responded. The Government would like to take the opportunity to explain the rationale and its position on the issues raised by the ICFTU; specifically, the issues concerning union registration, strikes, appointment of union officers and restrictions pertaining to the expenditure of union funds.

Union registration

In Singapore, union registration is not for the purpose of control, but to confer on a registered trade union certain rights, immunities and privileges such as immunity from civil suit in certain cases and liability in tort. A trade union cannot be refused registration or have its registration cancelled arbitrarily by the Registrar of Trade Unions. Such powers can only be exercised on valid and justifiable grounds, taking into account the views and interests of its members. Contrary to the observation made, the power of the Registrar to refuse registration of a trade union, if there is already an existing one for a particular occupation or industry, is intended to minimize a proliferation of trade unions which would jeopardize the interests of both workers and employers, particularly within smaller establishments. As has been correctly pointed out by the ICFTU, unions in Singapore have supported this approach as it has helped to prevent the formation of "yellow" or

“company-sponsored” unions, and helped strengthen the solidarity of the labour movement. This power of the Registrar has not been exercised in decades.

Strikes

The legislative requirement for a simple majority of a 50 per cent plus one vote of all of the trade union members to be in favour in order to call a strike, is considered by the ICFTU to be “excessive”. The Government would like to explain the rationale for the requirement for a simple majority in a secret ballot. As the decision to carry out strike action will seriously affect the interests of workers and employers, the Government is of the view that the decision must be supported by the majority of union members. A simple majority in a secret ballot in support of a strike is also in line with democratic principles, as it ensures that the view of the majority prevails.

Appointment of union officials

With regard to the statement that “*the law restricts the right of trade unions to elect their officers, as well as whom they employ*”, the Government would like to clarify that the law does not restrict the rights of trade unions to appoint their officials, except for persons convicted of serious criminal offences specifically relating to fraud and criminal breach of trust. However, exemptions could be granted depending on the severity of the offences, and this has been done in many instances. Again, the objective is to safeguard the overall interests of union members.

Expenditure of union funds

On the statement that the law “*limits the objectives on which unions may spend their funds*”, the Government would like to explain that the restriction is mainly confined to the use of union funds as contributions to a political party or for a political purpose. The Government’s view is that union funds are contributed by members and hence should only be used to enhance the welfare and interests of members. Other restrictions, such as investment in safe instruments, are to encourage prudent management of union funds. Prudence in the management of union funds has enabled trade unions in Singapore to improve their financial position significantly and to provide a wide range of social, welfare and recreational benefits for union members and their families.

Conclusion

In conclusion, the objectives of the Trade Union Act are to ensure that elections are conducted fairly and that union funds are managed prudently in order that the interests of union members are better protected and enhanced. In Singapore, any amendment to the Trade Union and Industrial Relations laws will only be effected after due consultation with the trade unions and employers’ organizations. The healthy growth of trade unions in Singapore is reflected in the significant growth in union membership from 212,204 in 1990 to 314,478 in 2000 – an increase of 48 per cent.

Sudan

Government

Means of assessing the situation

Assessment of the institutional context

The Government wishes to report that since the last annual review, the Trade Union Act of 1992 has been replaced by the Trade Union Act of 2001, which takes care of the observations made by the supervisory bodies of the ILO.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

[Comment of a complaint-like nature is made with respect to anti-union discrimination.] A new Labour Code limits trade union rights.

Background

After 1989, 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 have been outlawed and collective bargaining is nearly non-existent. Whenever a dispute arises, the Minister of Labour can refer the matter to compulsory arbitration. Salaries are set by a government-appointed and controlled body.

Persistent violations

A new Labour Code went into effect in December. The new Code continues to deny trade union freedoms. Government control over trade unions has been reinforced. The penalties imposed for infringement include fines and/or six-month prison terms. The Code stipulates that one of the trade union objectives is “to cooperate with the government bodies and social forces in order to reinforce national unity, protect the nation's independence and security, move the nation towards its ideals, and develop international relations”.

Arrests, detentions, ill treatment during periods of imprisonment are still common. [Reference of a complaint-like nature is made to arrests, detention and the treatment of detainees.]

Although three export processing zones (EPZs) were created in recent years, only one of them is actually active. Labour legislation does not apply in the EPZs.

Oil extraction zones: A no man's land

The Government has categorically outlawed access to the oil extraction zones to anyone unrelated to the oil companies operating within them. This restriction even applies to the leaders of the government-controlled trade union centre. [Reference of a complaint-like nature is made to alleged action taken by the Government to enforce this restriction.]

Thailand

Government

Means of assessing the situation

Assessment of the institutional context

Thailand recognizes and is committed to the fundamental principle of freedom of association and the right to collective bargaining. Thailand has adhered to the Universal Declaration of Human Rights and various related international instruments such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

The principle is also reaffirmed in the Constitution of the Kingdom of Thailand of 1997, the Labour Relations Act of 1975, the State Enterprise Labour Relations Act of 2000, the Establishment of Labour Court and Labour Court Procedure Act of 1979, many ministerial regulations and codes of practice, together with the Eighth National Economic and Social Development Plan.

Assessment of the factual situation

The number of labour organizations in the whole Kingdom is available and might be used as a means of assessing the situation.

The number of workers' and employers' organizations under the Labour Relations Act B.E. 2518 and the State Enterprise Labour Relations Act B.E 2543 are as follows:

State enterprise labour unions:	44
Private labour unions:	1,084
Labour federations:	19
Labour confederations:	9
Employers' associations:	226
Employers' federations:	3
Employers' confederations:	10

**Efforts made or envisaged to ensure respect,
promotion and realization of these principles
and rights**

The most concrete measure has been taken by the Ministry of Labour and Social Welfare through the Department of Labour Protection and Welfare under the five-year plan project running from 2002 to 2006. It is called the "Project on Labour Standards Development to Promote Free Trade". Its aims are to:

- (1) provide knowledge and enhance understanding for export producing to all concerned, in order to make them aware of their responsibility with regard to labour standards;
- (2) develop a network on cooperation, promotion and developing responsibility with respect to labour standards;
- (3) provide information and technology on labour standards for entrepreneurs and all concerned;
- (4) enable producers to improve labour standards systems in their enterprises so as to serve as a tool to compete in a free market.

In order to implement the project, the Ministry of Labour and Social Welfare has set up an agency under the Department of Labour Protection and Welfare to manage and monitor labour standards. Many training courses on labour standards will be held for business and professional associations, producers and sub-contractors, internal and external auditors as well as consultants.

The expected outcomes are:

- (1) to raise the quality of life of workers in line with international standards;
- (2) to increase the competitiveness of export producers;
- (3) to promote the national image with respect to international labour standards.

The Ministry of Labour and Social Welfare, through the Department of Labour Protection and Welfare, has taken the following measures to promote the principle:

- (1) promoting bipartite labour relations to prevent and settle labour disputes in both the private sector and State enterprises by encouraging employers and employees to play greater roles, and the enforcement of the State Enterprise Labour Relations Act of 2000 (8 April 2000);
- (2) promoting unity among employers' and workers' organizations as regards principles and promoting awareness among employers and employees of morals and safety at work to bring about efficient labour-management relations;
- (3) the Government has devoted human, material and financial resources to the realization of the principle. In addition, the Labour Relations Act of 1975 is being amended to make it more compatible with the principle. At present, the draft amendment of the Labour Relations Act is being examined by the Council of State. Later on, the draft amendment will be re-submitted to Cabinet for approval before

being submitted to Parliament for consideration. The Bill contains several provisions which are compatible with ILO standards, including the following:

- (a) an employee; irrespective of sex, race, nationality or political opinion, can be a member of a labour union;
- (b) workers shall be protected when forming a union and when they belong to a union;
- (c) a labour organization in a State enterprise can be a member of a labour organization in the private sector.

Training in labour relations is provided by the Ministry of Labour and Social Welfare as well as private organizations, to employers and workers, and employees in State enterprises. Moreover, the Government has provided resource persons and curricula to private organizations which provide the training.

The Government of Thailand has received assistance from, and continuously acted in cooperation with, ILO specialists based in the ILO Regional Office for Asia and the Pacific, in Bangkok, in educating and providing knowledge on international labour standards, particularly in reviewing existing labour relations laws to bring them into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Government of Thailand, through the Ministry of Labour and Social Welfare, has strongly encouraged and invited all segments of civil society – employers' and workers' organizations, academics and NGOs – to participate actively in strengthening the right to organize and collective bargaining at both the national and international levels.

As an ILO member State, which strongly supported the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up during the International Labour Conference in June 1998, it is clearly shown that the Government of Thailand has committed itself to respect, promote and realize in good faith, the fundamental principles and rights.

Even though the Government of Thailand has not yet ratified Conventions Nos. 87 and 98, it has continuously made every possible effort to implement the principle of freedom of association. Workers can freely exercise the right to organize and bargain collectively in a manner compatible with international standards. The will for legal reform is reflected in the endorsement of the State Enterprise Labour Relations Act of 2000 and the revision of the Labour Relations Law, which is now being examined by the Council of State.

Significantly, the present Prime Minister H.E. Thaksin Shinawatra announced the Government's policy to Parliament on 26 February 2001, with a view to promoting the establishment of a labour relations system that will provide the opportunity for all concerned to participate in settling labour disputes as well as in developing and protecting employees in a very efficient and just manner.

In order to meet the aforementioned objectives, to strengthen understanding and promotion of the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining, we need technical assistance from the ILO

for training and seminars on Conventions Nos. 87 and 98 for Government officials, workers and employers. Furthermore, we need technical assistance to improve the relevant statistics and information.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the following most representative employers' and workers' organizations:

- Employers' Confederation of Thailand;
- Employers' Confederation of Thai Trade and Industry;
- Labour Congress of Thailand;
- The National Congress of Thai Labour.

Observations received from employers' and workers' organizations

No comment was received from any of these organizations up to the time of submitting this report.

Observations submitted to the Office by the National Congress of Thai Labour (NCTL) through the Government

[These comments were received too late to be included in the annual review of 2001; they are therefore being taken into account for the annual review of 2002.]

[The Government of Thailand forwarded to the ILO (Geneva) in February 2001, the comments it received from the National Congress of Thai Labour (NCTL) for the Government's 2000 report on Freedom of Association and the Right to Collective bargaining (GB.280/3/2) as well as its observations on these comments.]

The entry into force of the State Enterprises Labour Relations Act of 2000 is to restore to employees in State enterprises, the right to form a labour union and bargain collectively. Nevertheless, under this Act, there are some shortcomings:

- (a) The right to form a labour union is limited to one labour union in each State enterprise.
- (b) State enterprise employees and employees in the private sector are not allowed to join together in the form of a federation or a confederation.

Government observations on NCTL's comments

[These comments were received too late to be included in the annual review of 2001; they are, therefore, being taken into account for the annual review of 2002.]

- (a) The State Enterprises Labour Relations Act of 2000 prescribes that only one labour union can be formed in each State enterprise in order to enhance the unity of labour unions in State enterprises, which can strengthen their power to bargain collectively.
- (b) The draft amendment to the Labour Relations Act allows a State enterprise labour federation to join with a labour congress in the private sector.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

After nine years of struggle, the employees of state enterprises have finally regained the right to join a union. In the private sector though, sanctions for violations of the labour code are inefficient. Anti-union practices abound.

Insufficient protection

While the 1975 Labour Relations Act (LRA) protects the activities of existing trade unions, it does not provide any protection to workers forming new trade unions for acts of anti-union discrimination committed in the period prior to official registration of the union with the Ministry of Labour and Social Welfare. However, it is often during this period that union activists fall victim to such acts. Even after official registration has taken place, those workers participating in union activities who are not union committee members are still exposed to this risk.

A victory for trade unions

The trade union movement scored a major victory on 16 February with the unanimous approval of the amended State Enterprise Labour Relations Act. This law, which came into effect on 8 April, grants employees of state enterprises the right to join trade unions and bargain collectively. The enactment of this law is the culmination of a nine-year struggle by Thai trade unions: The State Enterprise Labour Relations Act (SELRA), enacted by [...] the National Peacekeeping Council (NPKC) on 15 April 1991, had abolished state employee trade unions. These unions were replaced by “State Enterprise Employees’ Associations”, which were barred from collective bargaining. Although it is a major step forward, the new law does not apply to civil servants, who still do not have the right to form a trade union. The law also maintains prohibitions on the right to strike in the state enterprise sector.

A strange detail that still needs to be ironed out: the State Enterprise Labour Relations Act that came into effect on 8 April allows state employees to join the same national congress as employees in the private sector. However, the 1975 LRA prohibits them from doing so because the LRA was also amended by the [...] NPKC government. The Government has made it known that it intends to solve this problem through the revision of the LRA, and has included language to this effect in its draft law.

Limitations on the right to strike

The Government maintains the power to limit strikes in the private sector when such strikes affect national security or lead to negative repercussions on the population in general. The law also prohibits strikes in “essential services”. However, the Thai Government’s list of essential services [Reference is made to ILO criteria] includes such sectors as telecommunications, electricity, water and public transport.

No more than two trade union advisers permitted

NPKC Decree 54, which was introduced by the same [...] regime in 1991, prohibits trade unions from calling upon more than two outside advisers (legal advisers from national centres, non-trade union specialists, etc.). These advisers are allowed to work with unions in all aspects, and to join the union’s collective bargaining team in negotiations with employers. Trade union advisers are required to obtain a licence from the Ministry of Labour (MOL) every two years. Anyone can be denied a licence at the MOL’s discretion, and acting in an advisory capacity without such a licence is punishable by law.

Few collective agreements

The LRA 1975 requires that all trade union executive board members must, by law, be a full time worker in the factory. This means that all leaves of absence for trade union work must be negotiated with employers, and the employer can easily harass a trade union leader. The LRA 1975 also provides that all workers in a factory can receive the benefits of a union contract even if they are not trade union members, and there is no requirement for them to pay dues or service fees for non-members receiving the benefits of trade union representation. This results in a “free-rider” situation that significantly hinders trade union efforts to raise dues to levels sufficient to sustain continuous union activity.

The low percentage of unionization combined with the autocratic attitude adopted by many employers explain why there are only a few collective agreements in Thailand. As a rule, salary increases tend to dovetail the legal minimum salary increases rather than occur as a result of collective bargaining.

Minimum salaries can also be applied in each province and are set by the National Wage Committee based in Bangkok which sets minimum wages according to zones.

Inefficient labour jurisdictions

Thai trade unions also denounce the partiality and slowness of tripartite Labour Courts in the handling of labour disputes, although the courts have been known to sometimes rule in favour of the workers. [Comment of a complaint-like nature is made with respect to alleged action by enterprises.]

[Reference of a complaint-like nature is made in respect of the provisions of the 1975 Labour Relations Act regarding the protection of trade union officials against dismissals and the application of these provisions during the recent financial crisis.]

Outsourcing as a means to bypass trade unions

Outsourcing is sometimes used as a means to bypass trade union activities. That was the case for several factories.

Government observations on ICFTU's comments

The Government of Thailand fully recognizes the negative effects that can result from anti-union practices. Under the Labour Relations Act of 1975, Chapter 9, sections 121-127 clearly protects workers against unfair practices. Anyone who violates the law is subject to penalties of imprisonment, or a fine, or both.

Referring to the ICFTU's observation that the Labour Relations Act of 1975 does not provide any protection to workers forming new trade unions, the Government would like to state that the Act clearly stipulates that the Labour Relations Committee, as a tripartite body, has the authority to decide on complaints concerning unfair practices. It can also order the employer to reinstate employees, to pay indemnity for employees, or to perform any act deemed to be appropriate, or refrain from committing certain acts. Additionally, the Ministry of Labour and Social Welfare (MOLSW) has added the protection of workers forming a new trade union to the draft amendment of the Labour Relations Bill at present under consideration by the Council of State.

With reference to the ICFTU's comment that the State Enterprise Labour Relations Act of 2000 does not apply to civil servants, the MOLSW would like to clarify that since the conditions of employment of civil servants and private sector workers differ, the laws applicable to each sector are therefore different. Although the Labour Relations Act of 1975 does not apply to the Central Administration, Provincial Administration and the Local Administration, including the Bangkok Metropolitan Administration, civil servants have rights to organize in an association, such as the Civil Servant Association, under the Civil and Commercial Code. Its role is: (a) to acquire and protect civil servants' interests relating to conditions of employment and work; (b) to promote better relationships between the association and the Government and among members themselves; and (c) to have the right to make suggestions relating to conditions of employment, benefits, welfare and the amendment of unfair regulations which do not facilitate the performance of government duties. In other words, civil servants can enjoy the right to organize to protect their benefits in the same way as workers in the private sector.

The types of state enterprises in Thailand that produce products for public consumption do not exclude anyone from consuming. The quality of these products needs to be under strict control to avoid harm to the health and life of consumers. The process of producing certain products that exhaust natural resources must be controlled. Some products need huge investments and take a long time to generate profits. Some products are for military supplies and are kept in reserve in case of emergency such as war or natural calamity. Instability and exploitation for private benefit in making such products which serve the economic system would jeopardize the national economy.

For these reasons, it is considered that interrupting the operations of state enterprises would produce a negative impact not only on the life, personal safety or health of the entire population, or at least part of it, but also on living standards, economic and social development, and the security of the country. Therefore, strikes by state enterprise employees must not be allowed and penalties must be imposed on offenders.

Regarding the ICFTU's statement concerning the right of employees in state enterprises to join a labour confederation in the private sector, the Government reaffirms that it has solved this problem by issuing the Labour Relations Act (No. 3) of 2001, which prescribes that Labour Federations under the State Enterprise Labour Relations Act of 2000 can be members of labour confederations under the Labour Relations Act of 1975. The Labour Relations Act (No. 3) of 2001 came into force on 17 November 2001.

Uganda

Government

Means of assessing the situation

Assessment of the institutional context

As indicated in the previous reports, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognised in Uganda. Uganda ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in 1963. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) has not yet been ratified. However, the principle of freedom of association and the effective recognition of the right to collective bargaining is embodied in the National Constitution and national legislation governing the trade unions and industrial relations system in the country; namely:

- the Constitution of the Republic of Uganda, 1995;
- the Trade Union Decree No. 20 of 1976 as amended by Trade Union (miscellaneous Amendment) Statute, 1993;
- the Trade Disputes (Arbitration and Settlement) Act 1964 as amended by Amendment Decree No. 18 of 1974.

Certain occupational categories are excluded, namely members of the armed forces, members of the police and prison services, including local administration police forces or prison services established by law, officers of the internal security organization and the external security organization as provided for, under the Trade Union Laws (miscellaneous Amendments), statute 1993, section 3(2), (a), (b).

Article 29(1)(e) of the National Constitution provides for freedom of association which includes freedom to form or join associations including trade unions, political and other civic organizations.

Article 40(3) further provides that every worker has the right:

- (a) to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;
- (b) to collective bargaining and representation: However, section 8(3) of the Trade Union Decree No. 20 of 1976 provides for a minimum of 1,000 members for the registration of a trade union.

Section 19(e) of the Employment Decree provides that an employer shall be bound to recognise a trade union to which at least 51 per cent of his employees have freely subscribed their membership and in respect of which the Registrar has issued a certificate under his hand, certifying the same to be a negotiating body with which the employer has to deal in all matters, affecting the relationship between the employer and those of his employees who fall within the scope of membership of the registered trade union.

At the moment, the power to order an employer to recognise a trade union lies with the Minister responsible for labour under section 19(3) of the Trade Union Decree. Therefore, the fulfilment of the 51 per cent is a pre-condition for union recognition.

The Government can intervene in the functioning of employers' or workers' organizations, under the following circumstances:

- if there is a violation of the provision of the Trade Union Decree, the Government comes in as a third party to conciliate, mediate and arbitrate;
- if the Trade union operations contravene the laws of the land; and,
- if the Government suspects mismanagement of funds, then the Minister for Labour appoints the Auditor to inspect the accounts of the organization.

Certain categories of employees are excluded as earlier reported, although the Trade Unions Law (miscellaneous Amendments) Statute of 1993 extended eligibility for membership and the right to collective bargaining to cover employees in the Public Service, teaching service and the Bank of Uganda. Certain categories of public employees are still excluded as provided under section (1)(a)-(f) of the Trade Union Laws (miscellaneous Amendments) Statute.

In Uganda's industrial relations system, the Industrial Court is the highest and final body in the process of settlement of labour disputes. The Industrial Court is intended to facilitate the process of collective bargaining through the settlement of industrial disputes. This Court has not been active for the last year-and-a-half, because there was no judge. A new judge and deputy have been appointed with effect from 1 May 2001. However, the Court's activities are still very limited because it lacks the facilities to execute its duties.

There are administrative and legal means for implementing the principle.

Assessment of the factual situation

There have been no new cases of disputes reported concerning the principle of freedom of association and the right to collective bargaining. However, there are nine cases pending on trade union recognition. The Government has adopted a policy of consultation, dialogue and education as a strategy for dealing with disputes relating to non-recognition of trade union rights. To this effect, the Department of Labour is trying its best to mediate and have disputes resolved amicably.

The difficulty in providing a factual assessment of the situation persists due to lack of data and statistical information on the application of the principle. However, recently, with financial assistance from the ILO, a survey was carried out by the Directorate of Labour. Although the survey was mainly intended to find out the total number of workplaces that require inspection, questions related to the application of the principle of freedom of association and the right to bargain collectively were included in the questionnaire. The data gathered have not yet been processed, but the findings will help to assess the factual situation – even if only to a small extent since no more than 21 districts were covered by the survey.

The number of registered trade unions has remained at 19. Structural adjustment programmes have a negative impact on unions as most of them experience a loss in their membership numbers. This weakens their strength, and thus, affects the right to bargain

collectively. There are still some employers, especially in the private sector, who are opposed to having their workers organized into trade unions, and who are therefore limiting the scope of collective bargaining.

Yet, the Trade Unions Decree No. 20 of 1976 grants legal recognition to trade union activities and under section 19(1)(e) of the Decree an employer is bound to recognize a trade union, which has achieved a 51 per cent membership of his total workforce. This, however, is difficult to implement because the information needed from employers in order to be able to assess union strength, in many cases, is not forthcoming.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Sensitization and awareness-raising activities have been undertaken through meetings, workshops, seminars, conferences, the media and the workers' representatives in Parliament. With technical and financial support from the ILO, a number of tripartite workshops and seminars have been conducted on the principle, at both national and sub-regional levels. Recently a tripartite East African meeting took place in Kampala on Conventions Nos. 87 and 98, which are the subject of the principle on freedom of association and the effective recognition of the right to collective bargaining. The meeting took place under the auspices of ILO-Uganda "Strengthening Labour Relations Administration" (SLAREA).

The objectives of the Government of the Republic of Uganda with regard to the observance, promotion or realization of these principles and rights have remained, good governance, democracy, social justice and equitable social development.

One of the conditions necessary to reach these objectives is technical assistance. Under ILO-SLAREA a number of training seminars have already been conducted, namely on labour relations, recruitment and organizing trade unions.

Other activities under way are, among others:

- collective bargaining/grievance handling;
- conciliation/mediation;
- proactive labour inspection; and
- international labour standards/legislation for parliamentarians.

The need for training and capacity building for the social partners as well as for strengthening the tripartite structures, most notably the Labour Advisory Board, is partly met by SLAREA. Membership in the SLAREA Project Advisory Committee (PAC) is based on membership in the Labour Advisory Board (LAB) subcommittee on industrial relations. In this way, matters concerning the LAB can be discussed without having to call a separate meeting.

In terms of equipment, ILO-SLAREA-Uganda has provided computers, printers, and photocopying machines. The computers will make it possible to establish a database on the application of the principle.

Regarding legislative reform, the review of the relevant legal provisions governing this principle has been completed. The revised laws in the form of Draft Bills are ready for submission to Cabinet for consideration. This was accomplished through technical and financial help from the ILO/UNDP Support for Policy and Programme Development (SPPD).

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to:

- the Federation of Uganda Employers (FUE)
- the National Organization of Trade Unions (NOTU)

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The National Organisation of Trade Unions (NOTU) was set up by law and all trade unions in the private sector have to become affiliated. In order for a trade union to be set up it must have at least 1,000 members and cover at least 51 per cent of the workers concerned. The Government admitted that these provisions were not in conformity with the new 1995 Constitution and assured that it would endeavour to resolve this problem. However, no change has been made to date. Categories of workers belonging to services regarded as essential – the police, the Army, prison personnel and many positions of responsibility – are excluded from the right to join a trade union.

The right to strike is subject to complex procedures, with the result that almost all of the strikes held in the course of the last few years have been illegal.

[Comments of a complaint-like nature are made with regard to the actions of the Government and employers as well as the role and effectiveness of the labour tribunal.]

United Arab Emirates

Government

Means of assessing the situation

Assessment of the institutional context

The right to organize and engage in collective bargaining is recognized in the United Arab Emirates (UAE) under the Constitution, laws and regulations in force, and decrees giving effect to these laws. Freedom of association is applied pursuant to legal procedures

and administrative means supervised by the Ministry of Labour and Social Affairs and other related bodies.

The Constitution of the UAE includes several provisions guaranteeing workers' rights and freedom and recognition of their work. Regarding public rights and freedom, Article 30 provides that "freedom of opinion and of expression, verbally or written, or in the form of other means of expression, is guaranteed within the limits defined by law". Article 33 of the Constitution provides that "the freedom to organize and establish associations is guaranteed within the limits defined by law".

In giving effect to the Constitution, the following laws and decrees were enacted:

- Federal Law No. 6 of 1974, as amended by Federal Law No. 20 of 1981 concerning public benefit associations.
- Federal Law No. 5 of 1976 concerning the Federation of Chambers of Commerce and Industry, as amended by Federal Law No. 22 of 2000.
- Federal Law No. 8 of 1980 concerning labour relations; Part IX of this law includes procedures for collective bargaining.
- Ministerial Decree No.297 of 1994 concerning the establishment of the Coordination Council for Professional Associations operating in the country.
- Ministerial Decree No.48 of 1980 establishing Conciliation Committees to settle collective disputes.

The Council of Ministers Decree No. 48/1 of 1982 defines the legal and other procedures necessary for the proper functioning of the Conciliation Committees and the Higher Arbitration Committee, established to settle collective labour disputes.

Federal Law No. 6 of 1974, as amended by Federal Law No. 20 of 1981, grants persons in different sectors or groups the right to establish their own associations in order to defend their interests – i.e. professionals, artisans, cultural groups, charitable organizations, women's organizations, the arts and cultural groups. Within the scope of the law, associations of teachers, sociologists, lawyers, engineers, doctors, economists, journalists and financial consultants were established. These associations hold periodic elections to set up their governing boards in accordance with the law, and without interference from government authorities. By-laws approved by the competent authorities guarantee the right of these associations to establish their constitutions and by-laws and to elect their representatives, in accordance with rules established by Federal Law No. 6 of 1974 and amendments thereof.

Ministerial Decree No. 297 of 1994 regarding the Coordination Council for Professional Associations operating in the country defines the work of these associations and sets the following goals:

- (a) to coordinate the activities of professional associations operating in the country and to unify their efforts to guarantee the fulfilment of the purpose for which they were established and to work in order to protect the material and moral interests of their members;

- (b) to help professional associations improve their professional standards, and strengthen their role in society through training courses, symposia and scientific lectures;
- (c) to identify problems encountered by professional associations and propose measures to solve them;
- (d) to strengthen cooperation with Government and private entities which have activities that are connected to those of the professional associations;
- (e) to represent the professional associations at international, regional and local conferences and meetings that are related to their mandate.

The Decree also defines the mandate of the Coordination Council, the rules governing the establishment of its governing body and meetings, the meetings, and the mandate of its General Assembly, its resources and by-laws, the procedures for its dissolution, and other matters related to its activities. The Coordination Council has exercised its activities within this framework in a positive and effective manner.

A noticeable development occurred with respect to employers as regards the principle of freedom of association – i.e. the abrogation of Federal Law No. 5 of 1976 and the enactment of Federal Law No. 22 of 2000 concerning the Federation of Chambers of Commerce and Industry. The Federation is composed of all Chambers of Commerce and Industry at the country level. It enjoys legal personality.

The Law outlines the objectives, mandate, major bodies and administrative and financial matters of the Federation. Officials of the different organs of the Federation are democratically elected by members and without interference from government authorities or any other institution.

The major bodies of the Federation are the following:

- the General Assembly;
- the Board;
- the Executive Bureau; and
- the Secretariat.

The General Assembly consists of citizens of the State who are members of the Board of Chambers of Commerce and Industry. The General Assembly is convened at least once a year. It may be convened for extraordinary meetings. Articles 9 to 15 of the aforementioned Law govern all aspects of the General Assembly of the Federation.

The Board of the Federation consists of the presidents of the chambers and a member of each chamber selected by its board. The Board shall elect, by secret ballot, the President and Vice-President for a three-year term. Articles 16 to 22 of the abovementioned Law govern all details concerning the Board.

The Board shall establish an Executive Bureau that consists of the President of the Board, the Vice-President and three members selected among its members. The Secretary General shall be the *rapporteur*. The Executive Bureau is responsible for dealing with urgent matters.

The Secretariat of the Federation consists of the Secretary General, the Vice-Secretary General, and the necessary staff. The Board shall appoint the Secretary General and the Vice-Secretary General. The staff of the Secretariat shall be appointed by a decision of the President of the Board on the basis of a recommendation of the Secretary General. The Secretariat is responsible for the implementation of decisions taken by the Board and the handling of administrative and financial matters. The Law also regulates matters relating to the budget and financial resources of the Federation.

Pursuant to the abovementioned Law, the Federation represents all Chambers of Commerce and Industry in the country at local, international and regional conferences. It coordinates its activities with government authorities and also represents employers in ILO bodies.

Regarding collective bargaining, we would like to point out the following: Federal Law No. 8 of 1980 regulating labour relations defines in Article 154 a collective labour dispute as “any dispute between an employer and his employee the subject of which concerns the joint interests of all or certain subgroups of employees working in a specific establishment, occupation or trade or in a specific occupational sector”.

Labour disputes shall be settled by observing certain procedures provided for under Part IX of the aforementioned Law, through specific structures in which the labour administration is involved. If a dispute covered by the provisions of Article 154 occurs between an employer and his employees, both parties should first attempt to settle the dispute themselves by reaching an agreement. If they fail to do so, they should submit the dispute to the competent labour department for mediation, with the aim of reaching an amicable settlement. If the labour department fails, it shall refer the dispute to a conciliation committee for settlement. If the disputing parties accept the decision of the mediation committee, it shall inform both parties in writing; if no agreement is reached, both parties may submit the dispute, within a limited time-frame to the Supreme Conciliation Board. Its decision is binding and final for both parties. This is the general basis and the framework defined by Part IX of the Federal Law (Articles 150 to 160), which determine the steps to be followed to settle collective labour disputes among employees and employers, and through which the Law seeks to restore social peace in the country.

The Law defines the higher structures aiming at the settlement of collective labour disputes, as provided for under Article 160 which reads as follows: “A Board, to be called Supreme Arbitration Board shall be set up within the Ministry of Labour and Social Affairs to settle collective labour disputes. The Minister of Labour and Social Affairs shall act as Chairman. In the event of his absence the Under-Secretary or the Director General of the Ministry shall replace him. The Supreme Arbitration Board shall also include among its members, a judge of the Federal Supreme Court appointed by the Minister of Justice, and a third member having knowledge and experience in the field of labour relations, to be appointed by order of the Minister of Labour and Social Affairs”.

As to the structures lower than the Higher Arbitration Board, specifically the Conciliation Committees, the Law grants the Minister of Labour and Social Affairs under Article 157, the right to set up such Committees within each labour department. Consequently, Ministerial Decree No.1/48 of 1980 was issued, according to which the Minister of Labour and Social Affairs sets up Conciliation Committees in every labour department of the country. Each Committee shall consist of the competent director of the labour department as a chairman, the employer or his representative, and a workers' representative who shall be selected in consultation with the Chairman of the Committee.

By defining these structures, disputes are settled gradually, requiring the drawing up of regulatory procedures, which lead to the settlement of the collective dispute in accordance with the provisions of the Labour Law. In line with Article 162, the Council of Ministers issued Decree No. 11 of 1982 regarding the rules of procedure, and other rules necessary for the proper functioning of the Conciliation Committees and the Supreme Arbitration Board responsible for the settlement of collective labour disputes.

The parties to a dispute may resort to the courts if the Ministry does not proceed to do so on its own initiative, or following the request by one of the parties to settle the dispute, with the involvement of the Ministry. Parties to a dispute may also resort to the courts, if the mediation of the Ministry of Labour does not lead to the settlement of the dispute, and if the matter is not referred to the Supreme Arbitration Board.

Law No. 22 of 2000 concerning Chambers of Commerce and Industry does not foresee the exclusion of any category of employers from the right to organize at various levels. There is no legal text concerning the right of workers to organize either at the enterprise level or at the level of the industrial sector. However, Ministerial Decree No. 297 of 1994 regulates professional associations at the national level, according to the professional category.

No prior authorization for the establishment of employers' organizations is required. However, it is necessary to give official public notification of the registration of public benefit associations, including professional associations, before they begin their activities.

Article 9 of Federal Law No. 22 of 2000 concerning Chambers of Commerce and Industry provides that the Minister of Economy and Commerce may convene the General Assembly for an extraordinary meeting. This is the only form of government intervention in the affairs of the Federation; and to convene an extraordinary meeting is considered an exceptional invitation due to an unforeseen event of *force majeure*. Regarding professional associations, the rules allow a representative of the Ministry of Labour and Social affairs to attend meetings of the General Assembly as an observer. The presence of the Ministry representative ensures the proper application of the Law, as he may respond to any queries regarding the Law concerning public benefit associations.

No provision is made for exemptions from the regulations relating to collective bargaining.

No prior authorization from the Government is required in order to conclude collective agreements.

Assessment of the factual situation

The following statistics are available on public benefit associations and Chambers of Commerce and Industry, in the country.

There are 110 registered associations in keeping with the Law, including professional, religious, women, cultural, national folklore and theatre associations. Furthermore, there are the associations and clubs of the foreign community living in the country. The following table gives an overview of these associations.

Category of association	Number of registered associations
Women	9
Religious	3
Professional	16
Humanitarian services	12
Public and cultural services	17
Theatre	9
National folklore and heritage	29
Foreign community	15
Total	110

Federal Law No. 6 of 1974 concerning public benefit associations is being amended with the aim of making these associations contribute more effectively to socio-economic development.

Regarding Chambers of Commerce and Industry affiliated to the Federation, their number amounts to seven Chambers of Commerce, Industry and Agriculture. The following table shows the number of registered members in each Chamber:

Name of the Chamber	Number of registered members
Abou-Dhabi Chamber of Commerce And Industry	35 000
Dubai Chamber of Commerce and Industry	64 000
Sharjah Chamber of Commerce and Industry	57 382
Ajman Chamber of Commerce and Industry	28 500
Umm al Quwain Chamber of Commerce and Industry	3 600
Ras al Khaimah Chamber of Commerce and Industry	11 762
Al Fughira Chamber of Commerce, Industry and Agriculture	7 637
Total	207 941

Source: Secretariat of the Federation of Chambers of Commerce and Industry, United Arab Emirates.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government seeks to promote and expand the scope of freedom of association through consultations with employers and professional associations in the country. The Government also seeks to amend relevant laws and regulations to achieve these objectives.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report was forwarded to the Chamber of Commerce and Industry and the Coordination Council for Professional Associations.

Annexes (not reproduced)

- Ministerial Decree No. 297 of 1994
- Federal Law No. 22 of 2000
- Ministerial Decree No. 1/48 of 1980
- Ministerial Decree No. 11 of 1982

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The law does not recognize freedom of association, the right to collective bargaining and the right to strike. Wages are fixed in individual contracts that 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, domestic workers 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.

United States

Government

Means of assessing the situation

Assessment of the institutional context

Since the purpose of the annual review for 2002 under the follow-up to the Declaration is to report on changes that may have taken place with respect to relevant national law and practice since our last report, the Government wishes to state that there have been no changes.

Observations received from employers' and workers' organizations

The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and the US Council for International Business were advised of and given the opportunity to comment on the present status report.

Copies of this reply are being communicated to them as required under Article 23(2) of the ILO Constitution.

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The United States (US) has ratified only two of the eight ILO Conventions recognized as core labour standards. In many areas, particularly regarding freedom of association, further measures are needed in order to comply fully with the commitments the US accepted at Singapore in 1996, in ... the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.

The US has not ratified either of the ILO's two core Conventions on trade union rights – i.e. the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The right to organize and the right to strike are not adequately protected in US labour legislation. The law does not fully protect workers when the employer is determined to destroy or prevent union representation.

The ICFTU's affiliate in the US is the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), representing 13 million workers. The AFL-CIO is the only trade union centre in the US.

While in theory US law provides for workers to have freedom of association, the right to join trade unions and participate in collective bargaining is in practice denied to large segments of the American workforce in both the public and private sectors.

In the public sector, approximately 40 per cent of all workers – nearly 7 million people – are denied basic collective bargaining rights. At the national level, only postal workers have full collective bargaining rights. Over 2 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 an excessive definition of management rights which further limits the scope of collective bargaining. [There are references of a complaint-like nature to statements made by the ILO Committee on Freedom of Association.]

While the situation varies from state to state, the absence of proper legal protection of trade union rights in the public sector is reflected in bans on strikes, bans on collective agreements, provisions for their invalidation, limitations on the scope of collective bargaining, and discrimination against national trade union organizations. Thirteen states only allow collective bargaining for certain public employees and 14 states do not allow it at all. Nearly seven million of the total of 14.9 million state and local government employees in the US are denied the right to bargain collectively.

[Reference of a complaint-like nature is made to statements by the ILO Committee on Freedom of Association.]

In the private sector, the law does not adequately protect workers when the employer is determined to destroy or prevent union representation. In order to establish a trade union in an enterprise, the law requires proof of majority status. This is normally obtained through an election in which more than 50 per cent of workers in any bargaining unit must

vote in favour of forming a union in order for it to be recognized for the purpose of collective bargaining.

Employers receive legal protection for extensive interference in the decision of workers as to whether or not they wish to have union representation. This includes active campaigning by employers among employees against union representation as well as participating in campaigns to eliminate union representation (“decertification”). In addition, penalties for breaking the law are so limited and ineffective that there is a high level of corporate lawlessness with respect to labour law. At least one in ten union supporters campaigning to form a union is fired illegally, and one in every 30 workers who votes for a union in elections will be illegally fired as a result.

In nine out of ten union representation elections, employers use mandatory closed-door (“captive audience”) 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 campaign against the union, often including intimidation. Employees who support trade unions are identified and often isolated from other workers. Many 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 organizing campaigns, there may be threats of arrest against union representatives and their expulsion from the employer's property, denying workers the opportunity to consider freely the advantages of union representation. 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. [References of a complaint-like nature are made with respect to statements by the ILO Committee on Freedom of Association, and to specific alleged instances of anti-union practices by a certain enterprise (named).]

The procedures of the National Labor Relations Board (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. Many workers, including those fired illegally, do not use available legal procedures because they take too long and fail to provide adequate compensation or redress the wrong done to them. The NLRB is estimated to have a backlog of almost 25,000 cases involving unfair labour practices committed by employers opposing trade union activity. It takes an average of 550 days for the NLRB to resolve a case, and the actual resolution of a case often takes far longer than this average. For example, in 1998, 62 workers finally received a financial settlement from their former employer for having been illegally fired during a union organizing campaign that had taken place 19 years earlier. One study found that where employees are ordered reinstated, only 40 per cent actually return to work and only 20 per cent remain employed for more than two years. The workers that do quit give unfair treatment as their main reason for leaving.

Should the NLRB determine that an employer has committed sufficient unfair labour practices so that a fair election to decide union representation was impossible, it may order a new election. The prospect of a new election rarely deters an employer from engaging in the same, or worse, illegal tactics.

Although it is illegal for employers to threaten to close or move their operations in response to union organizing activity, a study released in 1996 found that employers threaten to close their plants in over half of all organizing campaigns. In industries such as manufacturing where this threat is most credible, this violation occurs in over 60 per cent of all campaigns. Where collective agreements are negotiated for the first time, 18 per cent of employers threaten to close their facilities and 12 per cent of the employers actually follow through with their threats.

While making threats is illegal, the law permits the employer to make predictions to workers concerning the consequences of their choosing a union. Judges have interpreted this right to make predictions very broadly, such that it includes statements by employers asserting that workers will lose all their privileges to overtime and pay rises, or that the company will shut down or move [to another country (named)]. [Reference of a complaint-like nature is made to comments about the negative consequences for workers choosing to be represented by a union.]

The National Labor Relations Act (NLRA) requires the NLRB to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices. There is no corresponding obligation when the unfair labour practices are committed by employers. Unlawful acts by employers who deny trade union rights to their employees often accomplish their intended goal before any proceedings are concluded. [Reference of a complaint-like nature is made to statements by the ILO Committee on Freedom of Association.]

Employers regularly challenge the results when a 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 either quit or are fired, and new workers are hired, often after the employer has screened out, sometimes by using psychological and other tests, those persons deemed to be potential union supporters.

[Reference of a complaint-like nature is made to alleged anti-union action by an enterprise (named).]

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. Forty per cent 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.

[Reference of a complaint-like nature is made to alleged disputes over union recognition and collective bargaining in certain enterprises (named).]

The law, and various administrative and judicial decisions, place a variety of restrictions on the ability of workers to engage in “concerted activity”. They include restrictions or bans on intermittent strikes, sympathy strikes, secondary boycotts and other forms of mutual aid as well as various kinds of “on-the-job” activity.

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. In the construction industry, it is a common and legal practice for employers to

create separate non-union companies and thereby avoid negotiated commitments. When industrial disputes occur, employers can create a second gate for the entry of non-union workers where picketing is banned.

[Reference of a complaint-like nature is made to anti-union action by an enterprise (name cited).]

Recent surveys of employers with impending negotiations have found that more than 80 per cent are committed to, or contemplating, replacing workers if they can't get a deal they like. Under the law, employers can hire permanent replacement workers during an economic strike. Although the dismissal of strikers is banned, the use of permanent replacements is, in practice, virtually indistinguishable from dismissal.

An increasing number of employers have deliberately provoked strikes to get rid of trade unions. Unacceptable demands are made of workers and are often accompanied by arrangements for the recruitment and training of strike-breakers. Permanent replacement workers can vote in a decertification election to eliminate union recognition. Should the company and the union reach an agreement during a strike, striking workers do not automatically return to work. The law only gives strikers the right to return to work as jobs become available.

[References of a complaint-like nature are made to specific labour disputes arising over union recognition in certain enterprises (named).]

Strike-breakers are used not only to destroy established collective bargaining relationships but also to prevent trade unions from achieving a first agreement. [Reference of a complaint-like nature is made to labour disputes involving different enterprises (names cited) and also to statements made by the ILO Committee on Freedom of Association.]

Although the overwhelming majority of collective bargaining agreements in the United States are reached without an interruption of work, many disputes are long and damage industrial relations for many years. [Reference of a complaint-like nature is made to a specific instance in which an enterprise (named) used replacement workers during industrial action.]

National labour legislation does not cover agricultural, domestic workers and certain kinds 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 that is independent of a particular employer.

[Reference of a complaint-like nature is made, with regard to attempts by migrant and seasonal farm workers to obtain recognition for their trade union.]

Agricultural workers are not protected under the NLRA against acts of anti-union discrimination. As such, agricultural employers can fire workers for organizing or supporting union activities. While the Supreme Court has ruled that agricultural workers do have the right to form a union, they must take individual legal action against an employer who fires them for union-related reasons. This is prohibitively expensive and the chances of success are very small.

Also, many agricultural workers in the US are economic migrants under the rules of the H-2A visa authorizing temporary work in the US with a sponsoring employer. The terms of the H-2A visa are such that they are unable to exercise their rights to freedom of

association or collective bargaining. If the employer cancels the work contract, their visa is revoked and they must immediately return to their home country. If they leave their sponsoring employer, even because of gross violations of their rights, to find work elsewhere, their visa is immediately revoked. Unlike all other workers under the NLRA who can take grievances to federal courts, their grievances can only be taken to local state courts, where many workers claim that local growers and employers have undue influence.

Nearly 40 million US workers have what the Bureau of Labor Statistics calls alternative work arrangements. Included in this category are the millions of workers who work either for temporary agencies or for agencies that take contract work, such as janitorial agencies. These workers are often unable to exercise their right to freedom of association because of the unclear employment relationship with one or several employers. Janitorial agencies are one example of this, as when workers finally win recognition of their union by the agency employing them, the agency's contract with building owners may simply be cancelled.

[Reference of a complaint-like nature is made to alleged anti-union practices by a specific enterprise (named).]

[Reference is made to the North American Free Trade Agreement (NAFTA), which includes a side agreement entitled the North American Agreement on Labor Cooperation.]

The right to organize and the right to strike are not adequately protected under US labour legislation. The law is unable to protect workers when the employer is determined to destroy or prevent union representation. Weak laws and enforcement also inhibit the practice of collective bargaining.

A series of far-reaching measures need to be taken in order to establish genuine respect for core labour standards in the US, particularly with regard to trade union rights.

In the area of freedom of association, the US should ratify ILO Conventions Nos. 87 and 98, and bring its law and practice into line with their very basic provisions providing individual workers with a right to form and join a trade union and for that union to have the ability to undertake collective representation of their interests. National labour legislation needs to be extended to cover all workers in the economy including agricultural workers, domestic workers, migrant workers and supervisory workers.

In the public sector, the 1978 Federal Labor Relations Act should be modernized with a view to providing trade union rights to all federal employees, enhancing collective bargaining, providing a more limited definition of management rights and creating a framework for the exercise of the right to strike, in line with internationally recognized norms. Federal action is needed to encourage legislative changes in the 14 states, which at present deny outright, any opportunity for public sector workers to form or join a trade union and to provide public sector workers in all states with adequate protection of their trade union rights.

In the private sector, workers need to have effective protection of their right to organize and bargain collectively, including protection from employer interference and intimidation. With respect to union recognition campaigns, there is a compelling need both to change the law itself and to improve its implementation. The procedures of the NLRB need to be speeded up and improved to provide effective enforcement and adequate remedies for violation of trade union rights.

The laws on collective bargaining require improvement to give trade unions a fair opportunity to conduct collective negotiations on their members' behalf. In particular, employers need to be denied the option of hiring permanent replacement workers during a strike. This practice has a detrimental effect on collective bargaining and often forms part of a larger employer strategy to eliminate union representation. Striking workers need to have the right to resume their former employment following the conclusion of a strike.

Furthermore, there is need to reform the provisions governing the right 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. The law must prevent employers from undermining due collective bargaining procedures by unilaterally imposing their terms, locking out their employees or transferring work to another location, or even to another legal entity.

Viet Nam

Government

Means of assessing the situation

Assessment of the institutional context

In respect to the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, which was adopted by the International Labour Conference at its 86th Session on 18 June 1998, the Government of Viet Nam, in order to respect and realize in good faith the principles in accordance with the Constitution, has undertaken measures to respect its reporting obligations in relation to [non-ratified] Conventions i.e. the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Freedom of Association and the Right to Organise Convention, 1948 (No. 87); and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and to [a ratified Convention] to which the principles concerning fundamental rights are subject.

For the period of 2000 to 2001, the validity of previous reports sent to the ILO on 10 October 1999 in relation to [non-ratified] Conventions Nos. 87 and 98 (Freedom of Association and Right to Organise) remains the same.

Reports prepared by the Ministry of Labour, Invalids and Social Affairs of Vietnam result from tripartite consultation with Viet Nam Chamber of Commerce and Industry (VCCI), Viet Nam Cooperatives Alliance (VCA) (organizations representing employers), Viet Nam General Confederation of Labour (VGCL) (representative organizations of employees) and line governmental bodies, Government Office (National Assembly's office, line ministries) and mass organizations.

[Reference to the Committee of Experts on the Application of Conventions and Recommendations.]

**Observations submitted to the Office by the
International Confederation of Free Trade Unions
(ICFTU)**

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

The Vietnam General Confederation of Labour (VGCL) is the only legal trade union centre in Vietnam. It maintains very close relations with the political party in power, both by virtue of the law and its articles of association. All trade unions are required to join the VGCL, although there are some “labour associations” in certain sectors that enjoy greater independence. The law stipulates that the authorities must give their approval before a trade union may be created.

Although the right to strike exists, it can only be exercised after a tedious pre-strike procedure, which includes such action as recourse to a labour arbitration council. However, not all of the provinces have such a council. The Government also prohibits strikes in essential services, the defence sector, or public service utilities. There are 54 sectors included in this restriction (post office, public transport, banking, ...). Despite these restrictions, 72 strikes were reported last year. Most of the strikes took place in foreign-owned companies as a result of violations of work contracts, collective agreements, or the Labour Code. These strikes generally lasted no more than a day or two. The Government tolerated these strikes even though, in most cases, the strikers did not go through all of the steps required to make them legal. In 1999, the official media said that trade unions had failed to defend workers’ rights in foreign-invested companies that disregarded labour legislation. In response, the VGCL blamed the authorities, stating that measures to deal with violations of the Labour Code were inadequate. [Reference is made to the role of the VGCL.]

Limited collective bargaining

The Labour Code guarantees the right to bargain collectively. Some collective agreements were signed but their scope and content remain limited. Acts of anti-union discrimination are prohibited by the Labour Code.

Zimbabwe**Government****Means of assessing the situation*****Assessment of the institutional context***

The Government of Zimbabwe has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which is one of the ILO core Conventions on Human Rights and Fundamental Principles and Rights at Work, under the ILO Declaration and its follow-up.

At the time of ratifying the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), it became clear that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) could not be ratified at the same time because the provisions on freedom of association in the national labour legislation were not in line with the international principles enunciated in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

For example, Zimbabwe had a two-tier system of labour laws – the private sector being governed by the Labour Relations Act and the public sector being governed by a different set of labour laws such as the Public Service Act and other various Public Service regulations and directives.

This dilemma was further complicated by the emergence of export processing zones (EPZs), where both the Labour Relations Act (Chapter 28:01) and the Public Service Act would not apply. That situation made it necessary to harmonise the Labour Laws of the country.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Currently, Zimbabwe has a Labour Relations Amendment Bill before Parliament, which seeks, among other things, to harmonize the Labour Laws, so that all employees (except those in the uniformed forces) will be governed by a single labour law system. This will also pave the way for Zimbabwe to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Labour Relations Amendment Bill is going to Parliament for the second reading in September 2001. It is hoped that the Bill would be passed into an Act of Law, before the end of 2001.

Article 2 of the Convention

The Labour Relations Amendment Bill (which is currently before Parliament), if passed into Law, will address the concerns of the ILO with regard to the protection of workers' and employers' organizations from acts of interference by the authorities. The Bill is more comprehensive and specific.

Article 4 of the Convention

The Government, in its proposed labour amendments, has addressed the issue of employing compulsory arbitration to settle disputes arising from collective bargaining. "Voluntary" arbitration will replace compulsory arbitration, to conform to international principles and practice.

Section 17(2) and section (22) of the Bill deal with unclassified workers. The Minister [the Minister of Labour], by promulgating statutory instruments which fix a maximum wage as well as the maximum wage and maximum amount payable as benefits, allowances or increments, protects unclassified workers from being exploited by unscrupulous employers. These provisions have been applied in exceptional circumstances and sectors in Zimbabwe, for instance in cases involving domestic workers.

The Government of Zimbabwe has revisited some grey areas [in the labour legislation] in the draft of the Labour Relations Amendment Bill, which is being debated in Parliament.

It is hoped that once this Bill is passed into Law, most of the ILO's concerns will be adequately addressed in a manner that is compatible with the Convention. The requirement for agreements between workers' committees and employers to have the approval of a trade union [in the same sector] and over 50 per cent of employees [in a given enterprise] is not applicable in agreements between trade unions and employers.

The reasoning behind the requirement, for over 50 per cent of employees [in a given enterprise] to approve agreements between workers' committees and employers, is that this need for a high rate of approval from employees will ensure that these agreements do not fall short of the provisions of collective agreements negotiated by a trade union in the same sector.

On the other hand, these agreements, between workers' committees and employers can have more favourable provisions than those negotiated by a trade union in the same sector. Problems only arise in cases where agreements between workers' committees and employers are less favourable than those negotiated by a trade union in the same sector.

Therefore, the requirement for agreements, between workers' committees and employers, to be approved by over 50 per cent of employees [in a given enterprise] and by a trade union [in the same sector] was put in place to protect the interests of workers, as trade unions are more representative of workers than workers' committees.

Article 6 of the Convention

According to the Public Service Act and the Civil Service Joint Negotiating Council under Statutory Instrument 141 of 1997, public servants, i.e. teachers, nurses and other civil servants who are not directly engaged in the administration of the State, are allowed to take part in consultations and to negotiate collective agreements with the Public Service Commission. These collective agreements are forwarded to the Minister of Labour for approval.

The Public Service Act does not recognize the following categories of civil service workers as proper civil service personnel: civil service workers employed in "essential services" and civil service workers engaged in the direct administration of the State, for example, uniformed forces and persons working in the President's office. Therefore, the provisions in the Act do not extend to these categories of civil service workers.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report (update) have been distributed to the Employers' Confederation of Zimbabwe (EMCOZ) and the Zimbabwe Congress of Trade Union (ZCTU) for their observations and comments regarding developments for the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Observations received from employers' and workers' organizations

Their comments and observations will be sent to the ILO perhaps as "Shadow updates."

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The following comments cover violations of trade union rights in 2000. Legislative measures adopted in 2001 are not included in the comments.

Violations of trade union rights

[Reference is made to alleged violations arising under a ratified Convention.]

It is practically impossible to organize a legal strike. The right to strike is not recognized in the Constitution. Public service workers are forbidden to strike at any time, and any occupation at all may be classified by the Government as “essential”. If the service is not essential, a majority of the workers must give their consent to the strike, and then the Government must agree that it is impossible otherwise to find a solution to the conflict. The interdiction to strike is absolute as far as those workers in the public sector who have not managed to organize and engage in collective bargaining, are concerned. These rights are also denied to management personnel.

Despite all this, efforts are still being made to extract concessions from the Government – albeit without success so far. Parliamentary discussions on a possible harmonization of labour laws have not always been fruitful, nor have those on the contents of a social contract between the Government, employers and trade unions.

Although the Constitution guarantees the independence of the management of union affairs, a provision in the Labour Relations Law grants the Government the right to oversee the management of union finances.

Deteriorating labour rights in the export processing zones

The 1995 law establishing export processing zones in Zimbabwe exempts employers in such zones from the obligation to abide by the labour laws. Although the ZCTU has succeeded in negotiating directly with several of these investors in order to permit the organization of their employees, working conditions and conditions with regard to freedom of association in these zones, are in general, highly unfavourable.

Government observations on ICFTU’s comments

Ratification of Conventions Nos. 87 and 98

Zimbabwe has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and is still to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Ratification of Convention No. 87 is awaiting the passage of the Labour Amendment Act. The Bill is before Parliament.

Labour legislation and strikes

With regard to the legislative provisions covering strike situations, the Bill has new provisions. However, this is not to say that under current arrangements strikes were outlawed. What the current Labour Relations Act (Chapter 28:01) provides for, are certain preconditions which are administrative in nature, and which must be fulfilled before

workers can go on strike. The right to strike is indeed recognised in the main legislation, that is the Labour Relations Act (Chapter 28:01). The Public Service Act (Chapter 16:04), which covers civil servants, does not address the issue of strikes. However, in practice, civil servants like any other workers do engage in strikes.

It is interesting to point out that before the Bill was presented to the House, workers' organizations (the Zimbabwe Congress of Trade Unions (ZCTU) and staff associations of the public sector) as well as employers' organizations, presented their views on the draft Bill before the Parliamentary Portfolio Committee on Public Service, Labour and Social Welfare. It is the draft with comments from this Committee, which was subsequently tabled in the full House. Currently, the Bill is before the Parliamentary Legal Committee.

This process of appearing before the Committee as social partners is over and above their participation in the drafting of the Bill at the stage of the Ministry in pursuit of the principles of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) which the Government of Zimbabwe has ratified. With regard to workers' organizations, there is still room to lobby individual Members of Parliament if they are still not happy with other clauses in the Bill, since the second reading provides an opportunity for further discussion in the Chamber.

Union finances

The current position with regard to union finances is not about the management of these finances by Government. The Government, in the interest of the public, only investigates union finances after complaints from affected members about the use of finances for purposes other than those which have been stipulated and submitted to the Ministry upon the registration of the union. As the custodian of Labour Administration, such investigations are undertaken on request, to safeguard the interests of union members, which would have been tempered with, in the event of the use of finances to achieve other objectives not ordinarily associated with the mission of the workers' organization in question.

Collective bargaining in the public sector

With regard to collective bargaining, it is not correct to say that there is no collective bargaining in the public sector. Wages and conditions of service are negotiable matters and there is the Public Service Joint Negotiating Council consisting of staff associations and representatives of the Government as an employer. This Council was set up in terms of Statutory Instrument 141 of 1997 Public Service (Public Service Joint Negotiating Council) Regulations, 1997.

One of the main objectives is to review and negotiate salaries, allowances and conditions of service in the public service. Since 1997 this Council has been negotiating conditions of service and Cost of Living Adjustments (COLA). In November 2001, the parties to the Council agreed on the COLA and allowances to be awarded to the entire public service in 2002. The agreement will be implemented by the Government without amendments.

Labour laws and export processing zones (EPZs)

With regard to the application of labour laws in the EPZs, there is a set of employment rules which is akin to the Labour Relations Act (Chapter 28:01) being applied in this sector. These rules were formulated with the participation of both labour and

business. The rules are contained in Statutory Instrument 372 of 1998 Export Processing Zone Employment Rules. It is therefore erroneous for the ZCTU to allege that it is discussing working conditions with individual investors in the EPZs.

Conclusion

Finally, with the passage of the Labour Amendment Act, all workers, except the uniformed forces, will be covered by a single piece of labour legislation.