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ORGANIZING FOR SOCIAL JUSTICE

*Global Report
under the Follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work*

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Introduction

1. This is the first Report of the second cycle of Global Reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Four years after the first Global Report on freedom of association and the effective recognition of the right to collective bargaining,¹ this principle and right remain the focus of attention. This fundamental right has been enshrined in the Constitution of the ILO since 1919. It has a dual role, as a fundamental human right at work and as an important element of economic, social and political processes.

2. The fundamental principle of freedom of association and the right to collective bargaining is a reflection of human dignity. It guarantees the ability of workers and employers to join and act together to defend not only their economic interests but also civil liberties such as the right to life, security, integrity and personal and collective freedom. It guarantees protection against discrimination, interference and harassment. As an integral part of democracy, it is also key to realizing the other fundamental rights set out in the ILO Declaration.

3. Research and analysis have demonstrated that respect for freedom of association and the right to collective bargaining also plays an important part in sound economic development. It has a positive effect on economic development by ensuring that the benefits of growth are shared, and promoting productivity, adjustment measures and industrial peace. In a globalized economy, freedom of association and the right to collective bargaining in particular provide a connecting mechanism between social goals and the demands of the marketplace. Consequently, the real debate cannot and should not be on *whether* to respect these principles and rights, but on how best to respect and make use of them.

4. *Organizing for social justice* continues the assessment of current trends begun in *Your voice at work*. It will come as no surprise that the picture is mixed. Despite a general positive trend, linked to the spread of democracy, high rates of ratification of the fundamental international labour standards, and increased transparency in global markets, serious problems remain. Violations of freedom of association rights of both employers and workers

¹ ILO: *Your voice at work*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 88th Session, Geneva, 2000.

persist in different forms, including murder, violence, detention and refusal to allow organizations the legal right to exist and function. People continue to lose their lives and their freedom for attempting to organize and defend collectively their fundamental rights. Problems range from the tragic and complex case of Colombia to obstacles to extending legislation and protection beyond the sphere of established industrial relations. The ILO provides assistance in resolving problems regarding respect of freedom of association when these arise, for example by supporting governments' efforts to reform their legislation and procedures, or by intervening to obtain the release of imprisoned trade unionists.

5. A distinction has to be drawn between democratic actions and "formal" democracy; between ratification of standards and their implementation. In some cases, situations have become more precarious; in others, no progress can be recorded. Some problems of application are due to political choices; others are primarily attributable to structural and organizational obstacles. In many cases there is no clear-cut boundary between the two reasons for non-compliance. However, in addressing the issues it is important to determine whether the root cause is the absence of political will or a lack of capacity to implement an accepted policy.

6. Positive developments have continued to take place in a number of countries. Yet it is important to point out that without further enabling measures, political will in itself does not guarantee results. For instance, in Saudi Arabia and other Gulf Cooperation Council countries acceptance of the right to start developing structures for workers' representation will have to be followed up by positive measures to translate the process into practical action. In the Republic of Korea, legislative reform is hesitant, demonstrating the need for further confidence-building between the Government and the social partners and the general public. Indonesia is still dealing with the consequences of the explosion of the single-union system, and a great deal of work needs to be put into promoting labour-management cooperation and effective social dialogue.

7. Despite continued democratization, parts of Central and Eastern Europe still need to overcome the legacy of the centrally controlled single-union system. Such tendencies never die easily, and they can be exploited for political purposes. Trade unions still suffer from the heritage of being used as transmission belts for political decisions and the image this gave over decades to the whole notion of workers' – as well as employers' – representation.

8. Political and democratic impulses and economic and structural concerns often work hand in hand, with virtuous effects on organization and negotiation. For example, in Ghana and the United Republic of Tanzania, greater involvement by employers' and workers' organizations in poverty reduction strategies helps bring these partners together for better cooperation on key issues of national interest. In Brazil, the new Government established a national tripartite forum to discuss labour law reform with a view to giving better effect to freedom of association.

9. As was shown by *Your voice at work*, structural change and globalization have posed serious challenges to traditional methods and structures of representation of workers and employers and collective bargaining. These structures are being reviewed and adjusted, although organizational change – never easy in institutions representing people and their economic interests – is arguably not as rapid as that of economic actors and activity. Trade unions have sought to boost their strength, for instance through mergers and increased national and international cooperation. Coverage of collective agreements has continued to spread to new categories of salaried employees.

Some employers' organizations have merged with industry federations or coordinated their activities more closely. On the employers' side this may well mean a closer integration between the functions of managing labour relations and strategic decisions by enterprises on investment, production and location.

10. The question of the level at which collective bargaining occurs (local, industry-wide, national) continues to elude simple answers. Enterprise-level bargaining may well be desirable for rapid adjustment, although it may shift responsibility and burdens to the weakest without providing for adjustment measures at the industry-wide or national scale. The answer depends closely on the strength and capacity of employers' and workers' organizations at each level. Centralized bargaining may provide for longer-term economic adjustment measures at the national level, and in the process support governments' economic and employment policies. Success stories can be found at each level of bargaining.

11. There is a need to establish for each country (or economic sector, as the case may be) the optimal mix between what is negotiated centrally and what is more appropriate for local bargaining. It is misleading to see different levels and methods of bargaining as mutually exclusive. Decentralized bargaining systems may, in fact, have an overall coordinated effect, as in the case of the Shunto wage negotiations in Japan, held each spring between unions and employers, essentially at the enterprise level. Enterprise-based negotiations, when they take place at around the same time and with transparency, can have the same impact as a highly coordinated national-level process, such as that of Finland.

12. What does not seem in general to be a feasible option at this time is extending collective bargaining for wages and conditions of work to the international level. An important exception is a global collective agreement reached in 2003 between maritime employers and the International Transport Workers' Federation (ITF), covering wages and working conditions on flag-of-convenience ships. For the foreseeable future in other industries, the focus of bargaining remains at the national level. As to the right to organize, however, both international affiliation and international cooperation of workers' organizations are on the increase. The structures that have been created, either through European Union legislation (European Works Councils) or through agreements between multinational enterprises and trade unions (global company councils) are primarily for information and consultation. The role of international information and consultation arrangements for, among other things, reaching national and local agreements should certainly not be underestimated.

13. Recent years have seen the rapid growth of framework agreements concluded between multinational enterprises and global trade union federations. The venue for such negotiations can be consultative structures, such as international or European Works Councils. Framework agreements aim to ensure the respect of basic principles, such as freedom of association and collective bargaining, throughout the enterprise. Most of the agreements signed to date cover subsidiaries and some extend to joint ventures, suppliers and subcontractors. Given that framework agreements often include follow-up procedures and mechanisms to deal with problems that cannot be solved at the local level, they can also help to improve dialogue between management and workers throughout the company.

14. The availability of reliable and comparable data on the coverage of employers' and workers' organizations and of collective bargaining remains a problem. Published data vary and contain contradictions. The data also need to be compared to the volume of economic activities, and to take into

account any restrictions on or obstacles to organizing and collective bargaining. This would require an agreed baseline on what union membership or coverage of an employers' organization means, as these organizations may have different figures for different categories of members (active, full or associated members, apprentices, unemployed, pensioners, and so on). It is essential that employers' and workers' organizations have the capacity to collect and manage such data, which can help them to develop more effective policy responses to their changing circumstances.

15. Consequently, this Report proposes that a major effort be undertaken during the coming four-year period to improve data collection and analysis so that the next Global Report on this topic, in 2008, can help in establishing reliable and transparent baselines for future action.

16. *Your voice at work* identified groups of workers who face particular difficulties in organizing. This year's Report looks more closely at developments concerning these groups: the public sector, agricultural workers, workers in export processing zones, migrant workers and domestic workers. Some of these work in the informal economy, and many of them are women. In the public sector, both economic trends and privatization pose serious challenges to existing organizations and their modalities of operation. Trade unions continue to face the challenge of ensuring that workers are provided with effective protection when activities are privatized and employers and their approaches change. In the public sector, tight budgets often limit the possibilities for reaching settlements comparable with the private sector. The potential for confrontation in the foreseeable future appears to be particularly strong in this sector, where organization rates are often high, where there is a perceived threat to the maintenance of rights, and where employer representatives and governments have limited room to manoeuvre.

17. In agriculture, persisting difficulties range from exclusions under the law and harassment of those who try to organize, including acts of violence, to obstacles inherent in the nature of employment – remoteness and spread of workplaces, the seasonal nature of work, lack of communication, and language barriers. Nevertheless, there are some reports of increases in membership of workers' organizations.

18. Growing public and consumer attention to international conditions of production and greater transparency in highly visible global markets have led to increased awareness of freedom of association and the effective recognition of the right to collective bargaining in export processing zones. These zones can become entry points for better labour relations practices, just as they can pioneer the introduction of new technology, production methods and forms of employment. However, all too often these zones remain an area where fundamental principles and rights are denied to workers.

19. As regards migrant workers, the trade unions have continued their efforts to create structures which serve the interests of migrants and bring their special concerns to the bargaining table. The main focus has been on improved outreach to migrants and organizing them in existing unions, rather than the creation of separate organizations, in order to ensure that they are not excluded in the collective bargaining system.

20. Domestic workers increasingly receive assistance from existing trade unions, including for organizing activities. Despite the individual rather than collective nature of the employment relationship, organizations representing domestic workers are developing. As there are few counterparts on the employers' side, the focus is naturally more on legislative protection than on results through collective bargaining.

21. A still largely unexplored area is the informal economy, where economic actors including workers, entrepreneurs and the self-employed must have the right to organize. Obviously, it is inconceivable that there should be fully viable representative structures for only a fraction of the workforce and employers. Through alliances, assistance, cooperation and services, trade unions can reach out to those who are organizing in the informal economy. Employers' organizations have a direct link through subcontracting and other commercial arrangements, as production chains extend deep into the informal economy. One question facing employers is how to foster respect for fundamental rights without hampering the potential for entrepreneurship and growth in the informal economy. The fact remains that neither employers' nor workers' organizations can, by themselves, fill the growing governance deficits in the informal economy that were identified by the general discussion on this subject at the International Labour Conference in 2002.

22. In view of the continuing difficulty of obtaining a systematic picture of the situation of workers facing particular obstacles to organizing, this Report proposes systematic data collection and analysis of legal and practical obstacles and progress in achieving freedom of association and effective recognition of the right to collective bargaining. It is essential that these data be disaggregated according to sex, to document the extent to which women are often predominant among such workers.

23. A generally positive trend over the last years has been widespread recognition of the importance of social dialogue to economic and social development and, more recently, to good governance. For the ILO, the term "social dialogue" covers all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. Freedom of association and the right to bargain collectively are essential enabling conditions for, as well as elements of, the proper functioning of social dialogue. The interrelationship between social dialogue and freedom of association and the right to collective bargaining is reflected in the large extent to which technical cooperation under the follow-up to the Declaration is carried out jointly by the Office's InFocus Programmes on the Declaration and on Social Dialogue. However, it should also be noted that certain countries with serious freedom of association problems established by the supervisory mechanism have tried to claim that the forms of social dialogue they practice are proof of their respect for this fundamental principle.

24. This Report also looks at the relationship between freedom of association and the settlement of labour conflicts. This is particularly important in societies in transition. In a centrally led single-union system, labour conflict was not supposed to exist; to the extent that it did exist, it was dealt with by the centralized structure. When economic transformation leads to insecurity and unemployment, if no appropriate mechanisms are in place to deal with their effects with the full participation of those concerned, protest action and conflicts which erupt are dealt with by the law enforcement authorities, and criminal charges may be brought against the leaders of such action. Rather, such conflicts need to be addressed within a labour relations framework, through bargaining, consultation and properly functioning dispute prevention and settlement machinery. To this end, it is essential to recognize the workers' right to organize and choose their own representatives for the purpose of negotiating on their behalf.

25. There are considerable differences across countries as regards the relative strength of employers' organizations and workers' organizations, the level, scope and coverage of collective bargaining, and the effectiveness of

legal and administrative frameworks in place for giving effect to and enforcing that right. Irrespective of these differences, the law needs to remain relevant, its enforcement adapted to evolving circumstances, and the social partners' capacity to engage in organizing and negotiation requires continuous upgrading, as does the process through which conflict is resolved. This groundwork needs to be done within a broader policy framework that includes fostering constructive political will and attitudes not only on the part of the immediate partners to labour relations but also among a broader range of actors, from key policy-makers and administrators to the public at large. Work by the ILO, its constituents and other international bodies in the areas of knowledge, service and advocacy outlined by the action plan proposed in this Report will help to build and consolidate a culture of freedom of association and collective bargaining.

26. The examples of action given in this Report illustrate a wide variety of ways in which the ILO and its constituents tackle different aspects of freedom of association and the effective recognition of the right to collective bargaining. The approach of the ILO Declaration is based on the premise that these principles and rights are not part of the problem – they are part of the solution. Again, the real question is not *whether* to respect, realize and promote them, but *how* best to do this.

1. *Freedom of association and collective bargaining: The foundations for democratic development*

Enabling rights

27. The fundamental principles and rights which are the subject of the Declaration seek to enable people “to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential”.¹ Freedom of association and the effective recognition of the right to collective bargaining are the foundation for a process in which workers and employers make claims upon each other and resolve them through a process of negotiation leading to collective agreements that are mutually beneficial. In the process, different interests are reconciled. For workers, joining together allows them to have a more balanced relationship with their employer. It also provides a mechanism for negotiating a fair share of the results of their work, with due respect for the financial position of the enterprise or public service in which they are employed. For employers, free association enables firms to ensure that competition is constructive, fair and based on a collaborative effort to raise productivity and conditions of work.

28. All workers and employers have the right to freely form and join organizations to promote and defend their interests, without interference from one another or the State. Although the primary aim of organizing has been to bargain for wages and conditions of work, organizations play, at different levels, an important role in the economic, social and political development of their communities and countries as a whole. They also provide important services to their members, ranging from welfare and social security to technical assistance and representation at different institutional levels of the economy and society.

29. Employers and workers and their organizations, by their very nature, have different interests and objectives. Both have an interest, however, in the good functioning of the economy. For workers, engaging in collective

¹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, fifth preambular paragraph; see Annex 1 for the full text of the Declaration.

bargaining entails coming to terms with the reality of the market in which the enterprise competes or, in the case of the public service, fiscal constraints. For employers, there are benefits in maximizing the potential of the workforce, gaining security for longer term economic planning, and accommodating the concerns of workers before they reach the point of damaging conflict. In its most effective forms, collective bargaining identifies long- and short-term trade-ins that can be realized by agreement but might, in its absence, be missed. Collective bargaining also has to address situations where divergent interests have reached a breaking point. It is a system for both fair and foul weather.

30. How do freedom of association and the right to collective bargaining fit in today with the concern expressed in paragraph 3(c) of the Declaration regarding member States' efforts to create a climate for economic and social development? To answer this question, one must first consider the links between this principle and right and human rights and democracy in general; its relationship to labour conflict; its socio-economic effects; and its role in the context of poverty reduction. The latter aspect is particularly relevant today, given the current focus of the international community, including the multilateral system, on poverty reduction.

Freedom of association and building democracy

31. Freedom of association has historically been closely linked with freedom of expression, freedom of the media, freedom of assembly and universal suffrage. Employers' and workers' organizations are key players in national and international democratic movements, both past and present. They have at times been able to provide democratic models and have been the voice of workers and employers, where political opposition is silenced or restricted.

32. A specialist on political democracy has suggested that there are a number of steps along the continuum from authoritarianism to democracy,² and it is useful to consider them in the light of the parallels with freedom of association and collective bargaining. In a country that is at the authoritarian end of the continuum, democratization may start by fostering access to alternative sources of information. The next step would be to achieve freedom of discussion. The third step would be the freedom to form independent associations, ranging from trade unions to political groupings and parties. The fourth step would be to hold free and fair elections. Identifying these steps helps place the importance of freedom of association and the right to collective bargaining in a democratic perspective.

33. Freedom of association and the practice of collective bargaining provide checks and balances that are central to the larger democratic process. In the three elements suggested by a former chief economist of the World Bank³ as ensuring government accountability and the rule of law, the connection to freedom of association and collective bargaining is evident. These are:

- recognition of the basic right of people to know what the government is doing, including exceptions made to rules and regulations;

² R.A. Dahl: "A note on politics, institutions, democracy and equality", unpublished document, July 1999.

³ J.E. Stiglitz: "Participation and development: Perspectives from the comprehensive development paradigm", in *Review of Development Economics*, 6(2), 2002, pp. 163-182.

Box 1.1**Seeds of democracy in the Gulf States**

In January 2002, Saudi Arabian Ministry of Labour officials responsible for labour relations, assisted by a leading Saudi Professor of Labour Law, discussed with visiting ILO officials in Riyadh the issue of how workers can elect their representatives to leadership positions of workers' committees. In April 2002, more detailed discussions took place, soon followed by a Decree providing for the establishment of such committees in enterprises employing at least 100 Saudi workers. In January 2003, a public meeting was held in Riyadh, addressed by the ILO and the Ministry of Labour, to inform a broader public of both government agencies and business enterprises about fundamental principles and rights at work, and the Government's obligations vis-à-vis the ILO in this respect. At the end of the meeting, the local media questioned senior government officials about the slow rate at which workers' committees were being established. The Government responded that while it had provided the legal and administrative framework, it was now up to the parties to come forward.

In June 2003, while recognizing the few companies that had shown the way in terms of establishing workers' committees, Dr. A.S. Dahlan, (Employer member of Saudi Arabia of the Governing Body of the ILO) appealed through the media to other enterprises in his country to allow the formation of such organizations, reminding his fellow employers that otherwise they risked losing their own rights and inviting excessive government intervention. This underscores the crucial need for supportive action in terms of information and capacity, once a right is recognized and accepted. This seems to be among the first steps required on the long road ahead to freedom of association and of collective bargaining in Saudi Arabia.

Similar discussions were held in the United Arab Emirates and in Qatar (where the Constitution adopted in 2003 by referendum provides for an elected legislative assembly). New labour laws are being passed or are in the process of discussion in Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. In each case, there is a necessary process of information and consultation with newly established consultative mechanisms. In Bahrain, where national elections to a legislative assembly were held in February 2002, the first trade union law was passed in September 2002.

Clearly, the authorities at the highest level in these countries are aware of the far-reaching socio-political implications of establishing mechanisms for electing people to leadership positions in representative associations in the world of work. This realization, backed by political will, led States to adopt a rapid yet measured approach in this area. It also prompted the Minister of Labour of Saudi Arabia to say (speaking in Manama, Bahrain, in October 2001), "We do not wish to be seen as seeking to hide behind our specificity." Recognizing the need to develop labour relations capacity, the Minister of Civil Service Affairs and Housing of Qatar, speaking on behalf of the member States of the Gulf Cooperation Council (GCC) at the International Labour Conference in June 2003, pointed out that: "The GCC countries are making huge efforts in order to achieve better results in this regard [the development of labour legislation, particularly workers' representation mechanisms]."¹ These efforts must be supported.

¹ ILO: *Provisional Record* No. 7, International Labour Conference, 91st Session, Geneva, 2003, p. 7/26.

- recognition of citizens' right to legal recourse in case of abuse of power;
- strengthening civil society as a source of countervailing power – political parties, consumer groups, research bodies and non-governmental organizations (NGOs), including trade unions.

Interest reconciliation and the modernization of the State

34. A key turning point in the long evolution of societies towards democracy is acceptance that there can be legitimate differences of opinion and interest and justified reasons for workers to join together to seek to rectify perceived injustice. Equally, recognition of the right of employers to organize freely to advance their legitimate aspirations is often a significant step in the transition from a state-controlled economy to a free market system. For the majority of countries, feudal relations are a thing of the past, but certain features of societies where people were subjects with duties to the crown rather than citizens with rights still influence the present. This is the case even in the countries where industrialization and the struggle for human, political and labour rights began over 200 years ago. Even after it was repealed, the underlying concepts of the Master and Servant Act cast a shadow over British labour relations well into the twentieth century. In countries with shorter and more hesitant histories of self-determination, democratization, industrialization and the achievement of human and labour rights, patterns of production and social relations from the agricultural and autocratic era tend to influence the present even more.

35. Societies have emerged from feudal structures in different ways. One path has been through social upheaval that in some cases has led to centralized communist regimes. Single political parties established States that ruled in the name of the working people. They provided basic needs to workers and their families in terms of food, clothing, housing, health and education. Trade unions were turned into an arm of the ruling party, thus ensuring that they could not be used as instruments of political opposition. The State controlled all economic activity and denied freedom of association to employers as well. The concept of the workers' State did not include collective dispute settlement mechanisms, since by definition conflicts were not supposed to exist. As the events since the late 1980s have shown, this centralized form of governance ultimately broke down, because it suppressed the democratic and independent economic and social forces that spur development and the spread of the benefits of growth.

36. Most developing countries have come to independence through a nationalist political movement, in which trade unions often played an important part. In many cases both unions and leading national employers have been associated with the independence movement and allied to the political party or coalition that assumed national government. Where political activity was controlled and restricted by the colonial power, trade unions often acted as a channel for economic and social discontent and, in many cases, an outlet for the pursuit of political freedom.

37. The movements towards democratic freedoms at work and in society at large have led employers and workers to assert the independence of their organizations. They have thus at times challenged regimes that attempted to control the economic and political life of the country. The suppression of divergent views and interests limits the freedom of economic actors, and thus the potential for innovation and productivity growth. It also inhibits the search for solutions to genuine social grievances. Where growth and development grind to a halt, more often than not respect for freedom of association and the right to collective bargaining falters.

38. It certainly is in the often-evoked "national interest" to prevent conflicts and try to resolve them by peaceful means. However, this will not be achieved by denying conflict or by suppressing it, sometimes by force. If institutions and methods to deal with labour conflict are not developed,

there will be a tendency to deal with conflict in the traditional authoritarian ways – through the forces of law and order, and eventually through the criminal courts. Authoritarianism often survives longest in the employment relationship even as other parts of society and the economy become more open to differences of opinion and institute dialogue as means of determining policy. The criminalization of workplace dissent and labour conflicts that still takes place, even in some industrialized and industrializing countries, shows that law reform and the adaptation of social institutions and attitudes have not always kept pace with economic and political change (for instance in China, Indonesia and the Republic of Korea). Many of the problems in countries undergoing such change stem from the lack of appropriate mechanisms to ensure that the workers' right to designate their own representatives freely is respected. Independent representation of workers – and employers – is still perceived as a threat to an order and stability that may persist in the minds of the powers that be but no longer exist on the ground.

39. In addition, seeking to maintain imposed order and stability is self-destructive, as it denies society, including economic decision-makers, access to information on real conditions and, as the logical next step, a debate on the best ways of dealing with problems. Real stability can only be created if divergent interests can be legitimately expressed and a process is engaged for finding a reasonable settlement. Denying this opens the way to disruption and revolt, which foster instability instead of preventing it.

40. In a world economy characterized by growing economic interdependence, countries must make the best use of their comparative advantages to promote investment and trade and thus stimulate development. For many developing countries, such advantages include wages that are lower than in other countries and parts of the world. Indeed, if productivity is low, the only way to achieve a competitive cost of production is through low wages. Some economists argue that the human right to freedom of association should be curtailed to prevent workers from trying to claim wages that might make production uncompetitive on world markets. This however is a very static view of how labour markets work.

41. Increased productivity is essential to staying competitive and improving wages and working conditions. Finding ways to improve work performance, for example through better organization, skill development and investment, is in the joint interests of workers and employers. How a wage level that is appropriate for the enterprise is determined has a significant effect on whether it is also accepted by workers as a fair reward for their commitment. Dialogue enables employers and workers to find ways to improve work performance and rewards and move away from the low-quality, low-productivity and low-wage basement of the global market. Parallel to the democracy continuum discussed earlier, there is an economic and social development continuum in which the practice of freedom of association and effective recognition of the right to collective bargaining plays a major part.

Dialogue for development

42. Growing evidence and analysis, including experience gathered by the ILO and its constituents, point to the importance of an infrastructure of social and economic institutions in and around the world of work that promote equitable growth and assist in the resolution of conflicts. At the heart of this infrastructure is the recognition that people are different from other factors of production and that freely formed associations of workers and employers are vital to the efficient and equitable functioning of labour markets. As asserted in the ILO Constitution, labour is not a commodity and people

have the right to be treated with respect.⁴ People are guided by their aspirations, personal qualities, motivation, family and financial circumstances and health, as well as the desire to see themselves in relation to, and in association with, other people. These have to be taken into consideration in the governance of labour markets.

43. As the World Bank's former chief economist put it, "The work environment is of no concern for steel; we do not care about steel's well-being. Steel does not have to be *motivated* to work as an input."⁵ Enhancing the contribution of working women and men to productivity growth is an integral part of all development processes and goes hand in hand with measures to enable workers to organize and express their views in a manner that also provides employers with a mechanism of dialogue and negotiation.

44. Through participation and organized activity, people can affect the performance of their immediate work environment and the economy as a whole, and find ways of managing change. Denying the role of initiative and cooperation robs the economy of a key productive factor. It perpetuates a situation where, by treating labour as a commodity, opportunities for sustainable economic development are wasted.

45. Collective bargaining and the wider process of social dialogue improve the availability of information to workers and employers. In the world of work, employers usually know more than workers about the current and projected performance of their own enterprises, as well as about alternative supplies of labour. Workers with incomplete information about available employment, and without easy access to employment best suited for them, do not automatically end up in the jobs that best match their skills. Individual workers usually do not have the information they would need to be able to bargain unilaterally for a desired job and a fair wage. However, workers do have a sound knowledge of production and service processes and are thus well placed to assess the effect of changes on them.

46. In open competitive market economies, resources need to be constantly reallocated from less to more efficient uses. This in turn requires a constant change in workplaces and in the employment structure of the economy. In an enterprise this can mean transferring or laying off workers. In the wider economy, such "creative destruction"⁶ entails structural change, enterprise failures, bankruptcies and dislocation.

47. One way of viewing this process is as a recurring choice between "exit" and "voice". "Exit" essentially means the liquidation of poorly performing assets and the investment of the money realized elsewhere, leaving the redundant workers to find new jobs. In practice, most enterprises have a longer-term strategy to avoid the threat of bankruptcy by evolving and adjusting their organization and commercial strategies to meet competitive challenges. Success in this hinges to a great extent on the ability of the people involved to work together. For this to happen, there must be communication – the organized exercise of "voice" in the process, discussions between em-

⁴ Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) annexed to the Constitution of the ILO (article I). See also ILO: *Working out of poverty*, Report of the Director-General, International Labour Conference, 91st Session, Geneva, 2003, p. 69.

⁵ J.E. Stiglitz: "Employment, social justice and societal well-being", in *International Labour Review*, Vol. 141, No. 1-2 (2002), p. 10.

⁶ On the concept of "creative destruction", see J.E. Schumpeter: *Capitalism, socialism and democracy* (New York, Harper, 1975).

ployers and workers or their representatives. This builds up commitment and trust, facilitating further adaptation and gains in productive capacity.⁷

48. There is similar scope for positive benefits when organized representation and interaction exist on socio-economic matters beyond the realm of individual companies and workplaces, for example through national or sectoral social dialogue.

49. The threat of bankruptcy is an important underpinning of efficient market economies because it prevents good money being thrown after bad. However, the social and economic dislocation that results from enterprise failures can be substantial. Encouraging dialogue and the shared management of workplace change through the adaptation of production to new competition, consumer preferences or technological innovations is equally important to the creation of dynamic labour markets.

A rights-based approach to dynamic labour markets

50. A growing body of evidence suggests that freedom of association and the right to collective bargaining contribute to improving economic and trade performance and do not have the negative effects often predicted by some economic theorists.

51. In its study on trade and labour standards, the Organisation for Economic Co-operation and Development (OECD) concluded already in 1996 that the impact of freedom of association and the right to collective bargaining on productivity and wage growth depended on a series of factors, including national and enterprise contexts and the way in which bargaining was conducted. The study found no empirical evidence to justify assertions that freedom of association would lead to faster real wage growth or that lack of it would keep wages down. In 2000, the OECD published the results of a survey of empirical studies on all four categories of fundamental principles and rights at work for 75 developed and less developed countries. It found that countries which strengthen the observance of core labour standards can increase economic efficiency by raising the skill levels of the workforce and by creating an environment that encourages productivity growth and innovation.⁸

52. More recently, a World Bank study in 2002 on trade unions and collective bargaining considered a number of possible correlations between freedom of association and collective bargaining and economic effects at the individual, enterprise and macroeconomic levels, and found very insignificant, if any, negative correlation.⁹ The study concluded that the impact of freedom of association and collective bargaining depends strongly on the context in which they operate. It also found that highly coordinated bargaining, usually associated with high rates of unionization, can contribute to positive economic trends. A World Bank report on East Asia in 2003 found

⁷ For an in-depth look at how the concepts of “exit” and “voice” function in both the economic and political spheres, see A.O. Hirschman: *Exit, voice and loyalty: Responses to decline in firms, organizations, and States* (Cambridge, MA, Harvard University Press, 1970).

⁸ OECD: *Trade, employment and labour standards: A study of core workers’ rights and international trade* (Paris, 1996), pp. 86-88, and idem: *International trade and core labour standards* (Paris, 2000), p. 14.

⁹ T. Aidt and Z. Tzannatos: *Unions and collective bargaining: Economic effects in a global environment* (Washington, DC, World Bank, 2002).

evidence that strong labour rights are associated with higher exports of labour-intensive goods.¹⁰

53. Research carried out by the ILO's International Institute for Labour Studies also disproves the contention that freedom of association and collective bargaining, or other fundamental principles and rights at work, depress foreign direct investment (FDI) in developing countries. "If anything, the balance of evidence leans in the opposite direction, with all evidence of statistical significance suggesting that FDI tends to be greater in countries with higher labour standards", finds a 2002 study on core labour standards and FDI. This was despite the fact that stronger freedom of association and collective bargaining were estimated to be associated with higher labour costs. "The negative effect of freedom-of-association and collective-bargaining rights on FDI through labour costs is found to be offset by other positive effects", such as greater political and social stability.¹¹

54. A 2003 study by the ILO Institute found that these rights and democracy enhance export competitiveness.¹² Analysing data for up to 162 countries, the study concluded that both democracy and stronger freedom of association and collective bargaining rights were associated with higher manufacturing exports. For exports of labour-intensive products, the picture was somewhat mixed. Depending on which indicators were used, stronger organizing and bargaining rights either had no effect on labour-intensive exports or were associated with lower exports of such goods. This reflects the likelihood that labour-intensive industries are particularly sensitive to higher wages resulting from freedom of association and collective bargaining. However, when the study looked solely at the relationship between democracy and labour-intensive exports, it found a strong positive correlation.

55. Another ILO study on informal employment in Latin America challenges the view that freedom of association and collective bargaining lead to an expansion of the informal sector. It found "robust evidence that countries with stronger 'civic rights' have higher shares of formal employment and lower shares of informal employment, even accounting for GDP per capita and other control variables".¹³

56. Conversely, there is evidence of social and economic problems in countries where freedom of association and collective bargaining are weak. For example, a study for the OECD on inequality in Latin America concluded that income inequality increased under military rule and subsequently failed to decline with the return of democracy because of the enduring damage inflicted on the trade union movement and hence the scope for social and political action in favour of redistribution.¹⁴

57. Collective agreements resulting from joint negotiations tend to make business conditions more predictable and accountable. As a result, employers have a better knowledge of their expected labour costs and other terms of employment, at least for the duration of the agreement. In a system where there is sufficient information on other agreements, employers also

¹⁰ World Bank: *East Asia integrates: A trade policy for shared growth* (Washington, DC, 2003).

¹¹ D. Kucera: "Effects of labor standards on labor costs and FDI flows", Ch. 6, in H. Corbet and J. Bhagwati (eds.): *Labor standards in an integrating world economy* (Washington, DC, Cordell Hull Institute, forthcoming).

¹² D. Kucera and R. Sarna: *International trade and freedom of association and collective bargaining rights: A bilateral gravity model* (forthcoming).

¹³ R. Galli and D. Kucera: *Informal employment in Latin America: Movements over business cycles and the effects of worker rights*, International Institute of Labour Studies Discussion Paper DP/145/2003 (Geneva, ILO, 2003).

¹⁴ J. Robinson: *Where does inequality come from? Ideas and implications for Latin America* (Paris, OECD Development Centre, 2001).

know the terms offered by their competitors. Collective bargaining makes wage determination more transparent as a process for the parties directly concerned, and also for the larger public. This contributes to greater certainty and stability, essential for making sound investment decisions.

58. This may be one reason why employers' and workers' representatives have come together in Pakistan under the aegis of the Workers and Employers Bilateral Council of Pakistan (WEBCOP)¹⁵ in 2000 to overcome conflict and nurture cooperative means of addressing industrial problems in the face of globalization. Both sides of industry claim genesis of the Council. This is a promising sign of cooperation in overcoming the often acrimonious labour relations of the earlier phase of industrialization. The improvement in labour relations – despite the very real problems that industry continues to suffer – may be attributed to a combination of historical factors: education of the workforce; professionalization of management and human resource functions; the advocacy and training role of the Employers' Federation of Pakistan; more strategic responses of the labour movement in the face of industrial crisis; and, above all, the joint will to seek recourse to the established industrial relations procedures.

59. Furthermore, greater involvement of workers in the enterprise may improve the quality of managerial decision-making. Such worker participation, in an atmosphere of cooperation, tends to elicit the knowledge and creativity of more people to find better solutions for adjustment or innovation issues. If workers have a say in the organization of work and in setting the terms of employment, it is more likely that the terms of the agreement will be respected and implemented.

60. One example of the difference in corporate performance when cooperation replaces confrontation involves New United Motor Manufacturing, Inc. (NUMMI), a successful California automobile plant jointly owned by General Motors (GM) and Toyota. Union–management relations were so poor at the plant that its low levels of productivity and poor-quality cars helped convince GM to close the facility. The system of lean manufacturing put in place by Toyota when it linked up with GM in the early 1980s and reopened the plant depends on a high level of union–management trust and respect, which the company and the union work hard to foster.¹⁶ The system emphasizes teamwork, job security, employee involvement and worker self-confidence. NUMMI has become known for high levels of productivity and car quality as well as smooth management of change. The company's experience shows the important role of unions in the introduction of new production methods. NUMMI also illustrates the benefits that can come from foreign direct investors working together with a unionized workforce.

61. Rather than causing labour market distortion, collective bargaining can improve the market clearing and adjustment process. In a sustained relationship of confidence between workers and employers, neither side uses its market power to the full to achieve unilateral results. Trade unions would not push for wages beyond a point where their members would be forced out of their jobs. Employers in turn would not decide to pass on the full cost of a business slump to the workers by cutting wages and jobs as far as they

¹⁵ WEBCOP: *Partnership for Peace – Productivity – Prosperity* (Karachi, Skill Development Council, undated).

¹⁶ N. Rogovsky and E. Sims: *Corporate success through people: Making international labour standards work for you* (Geneva, ILO, 2002), pp. 71-74.

could. “Such behaviour is neither a sign of market imperfection nor benevolence, but good economics using the advantages of collective action and mutual trust.”¹⁷

Participation, poverty reduction and decent work

62. The ILO has in many ways been a pioneer of international action against poverty. The preamble of the 1919 Constitution mandates the ILO to pursue social justice, and the 1944 Declaration of Philadelphia states that “poverty anywhere constitutes a danger to prosperity everywhere”. The World Employment Programme launched in 1969 led to extensive work on how employment strategies could help realize people’s basic needs and overcome poverty, which has contributed to subsequent developmental thinking.

63. The debate on the Director-General’s report *Working out of poverty* at the 91st Session of the International Labour Conference in 2003 gave a renewed impetus to the ILO’s action for poverty reduction. Action to improve the living and working conditions of people in poverty is an integral part of the four strategic objectives within the ILO’s mission of decent work for all:

- *Employment.* The principal route out of poverty is work, and to this end the economy must generate opportunities for investment, entrepreneurship, job creation and sustainable livelihoods.
- *Rights.* Poor people need to obtain recognition of rights and respect. They need representation, organization and participation. They need good laws that are enforced and work for, not against, their interests. Without rights and empowerment, the poor will not escape poverty.
- *Protection.* People living in poverty are unprotected and marginalized. New ways must be found to provide social protection, especially for vulnerable groups. It is important to strengthen women’s capacity to renegotiate the distribution of unpaid work caring for family needs.
- *Dialogue.* The poor understand the need to negotiate and that dialogue is the way to solve problems peacefully. Those living in poverty can gain from the ILO’s experience in negotiation, dialogue and conflict resolution.¹⁸

64. The approach of the ILO is consonant with the multifaceted concept of poverty developed during the 1990s and into this millennium by the international development community. These approaches include concepts of “voicelessness” and “powerlessness” as international measures of poverty, and help to redefine the reduction of poverty along the lines of a rights-based approach to development and poverty eradication. Some examples are the “capability poverty measure” and the Human Poverty Index published by the United Nations Development Programme (UNDP), and reports issued by the World Bank and the United Kingdom Department for International Development (DFID).¹⁹

65. In line with this broader approach to poverty reduction, other actors in the multilateral system have made progress in developing practical means of

¹⁷ W. Sengenberger: *Globalization and social progress: The role and impact of international labour standards* (Bonn, Friedrich-Ebert Stiftung, 2002).

¹⁸ ILO: *Working out of poverty*, op. cit., pp. 7-8.

¹⁹ UNDP: *Human Development Report 1996: Economic growth and human development* (New York, 1996) and *Human Development Report 1997: Human development to eradicate poverty* (New York, 1997); World Bank: *World Development Report 2000/2001: Attacking poverty* (New York, Oxford University Press, 2001); DFID: *Labour standards and poverty reduction*, consultation document, Sep. 2003.

giving effect to the fundamental principles and rights. The World Bank adopted a toolkit on core labour standards in 2000 to guide the work of its operational staff. The Bank's private sector lending arm, the International Finance Corporation (IFC), requires that its borrowers abide by the principles of prohibition of child labour and forced labour. At the 2003 Annual Meeting of the Bank and the International Monetary Fund (IMF) in Dubai in 2003, the IFC announced that it intended to include the two remaining principles of freedom of association and collective bargaining and non-discrimination as standard conditions for its loans. Nineteen global financial groups have adopted the "Equator principles", based on the policies and guidelines of the World Bank and the IFC relating to the environmental and social impact of infrastructure projects funded by private banks.²⁰ The Asian Development Bank has agreed with the ILO to promote cooperation in recognition of each other's expertise, with special emphasis on fundamental principles and rights at work.²¹ While such an agreement is still pending with the African Development Bank, that Bank has already started initiatives in this area, following discussions with the ILO in 2001. The European Bank for Reconstruction and Development (EBRD) approved a core labour standards policy for guiding its work in 2003, but this does not include the principles of freedom of association and the right to collective bargaining.²²

66. These developments constitute considerable progress towards meeting the concern expressed in paragraph 3 of the Declaration to encourage other international organizations to support Members' efforts to give effect to the fundamental principles and rights at work. However, the question still remains of how to promote the necessary conditions for extending freedom of association and collective bargaining to poor people, who do not currently enjoy these rights.

67. In its current emphasis on the poverty reduction strategy (PRS) process as central to development planning, the international development community is concerned to ensure that this process is locally owned. To this end, the potential role of employers' and workers' organizations as primary actors needs to be enhanced, as this is vital to the participation of poor people in policies to improve their lives. The ILO has encouraged governments to invite employers' and workers' organizations to join fully in all phases of the PRS process.

68. The first generation of Poverty Reduction Strategy Papers (PRSPs) has been dominated by macroeconomic concerns for growth and the contribution of foreign aid to the national budget, which are quite understandable but rather blunt approaches to poverty reduction. In broader developmental efforts, it is likely that the focus will increasingly be on social expenditure and its allocation as means of sustainable development. In transition and developing countries more progress has been achieved in macroeconomic policies than in social sector policies and public sector governance, and there is

²⁰ <http://www.equator-principles.com>.

²¹ See ILO: *ILO cooperation with the Asian Development Bank: Core labour standards and ADB activities*, Governing Body doc. GB.286/LILS/9, 286th Session, Mar. 2003.

²² See EBRD: *Environmental policy*, July 2003. The omission of freedom of association and collective bargaining is paradoxical, given that all European countries have ratified both Conventions relating to this principle, and that a recent resolution of the European Parliament refers to the ILO Declaration and calls for the European Commission to ensure the practical implementation of this principle in all its development activities (European Parliament resolution on the Commission communication to the Council, the European Parliament and the Economic and Social Committee entitled "Promoting core labour standards and improving social governance in the context of globalization").

Box 1.2**Promoting freedom of association and collective bargaining through poverty reduction strategies**

In countries as diverse as the United Republic of Tanzania and Sri Lanka, the ILO is helping to boost the role of workers and employers in devising and implementing the Poverty Reduction Strategy Papers (PRSPs) that are linked to World Bank and IMF financial assistance. This effort builds on the stated desire of the Bretton Woods institutions to make poverty reduction programmes “country-owned” rather than imposed from Washington.

Through the ILO’s seminars and training programmes, as well as analytical advice, both a national and an international audience are becoming aware of the significance of freedom of association, trade unions and employers in economic and social development. Getting employers and workers together to discuss poverty reduction means fostering social dialogue in countries where communication and cooperation between unions and employers has not always been the norm.

Both workers’ and employers’ organizations are beginning to see their role in a wider perspective, because effective participation in poverty reduction strategies (PRSs) entails focusing on the interests of all workers and employers, not just their own members, and the training provided to workers and employers enhances their capacity to represent existing members and reach out to new ones. In some cases, there have been important changes in PRSPs to reflect the views of employers and workers, as well as the ILO’s Decent Work Agenda. In Cambodia, for example, the initial drafts of the PRSP made no mention of the importance of employment in reducing poverty. This changed considerably after the Government consulted with employers’ and workers’ organizations, as well as NGOs. The national PRS now places considerable emphasis on employment creation, as well as rights at work. In Mali, employment policy also became an important part of the PRS as a result of consultations with the social partners.

In some countries, such as the United Republic of Tanzania, the ILO became involved after the adoption of a national PRS. In such instances, the ILO’s work centres on bringing workers and employers into the process of implementing, monitoring and reviewing the strategy.

Still, in too many cases these organizations are sidelined, or involved too late in the PRS process. The effort to associate workers and employers more closely with PRSPs is not easy. When existing relations between the government and trade unions or employers are poor, it can be difficult to get dialogue going. And some trade unions are reluctant to be linked with programmes they see as similar to the structural adjustment of the past.

However, the level of consensus emerging among workers and employers on PRSPs is encouraging. Their emphasis on employment creation, health, education and agriculture reform can bring a new set of issues to the bargaining table, and energize the organizational and bargaining agenda of the social partners.

concern that public spending in the education and health sectors still disproportionately benefits high-income groups.²³ Ensuring that both employers and workers in these sectors have a greater say in decisions relating to them is an important means of providing countervailing checks and balances to oppose corruption and to ensure better transparency, accountability and governance.

²³ IMF/World Bank: *Achieving the MDGs and related outcomes: A framework for monitoring policies and actions*. Background paper, Development Committee (Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries), DC2003-0003/Add.1, 28 Mar. 2003.

69. In the new deal that is being mapped out for development and poverty reduction, long-standing institutions like national employers' and workers' organizations, clearly at the core of civil society, are carefully considering the best role they can play. They may sometimes suspect the representativeness of some new civil society organizations, and are fully taken up with trying to deliver on their own mandates under increasingly difficult circumstances and with diminishing resources. At the same time, the Bretton Woods institutions are establishing extensive mechanisms for assessing how national policies and institutions are achieving the Millennium Development Goals (MDGs) and the PRS. This process includes identifying and consulting with groups representing the poor, in order to ensure that they have a voice in determining social sector policy. It is not clear who these groups are, how comparable they are across countries, how representative they are, or to what extent national employers' and workers' organizations might be able and willing to work together with them.

70. In practice, many workers' organizations (and, to a lesser extent, employers' associations) have developed close links with NGOs that share their concerns relating to issues such as poverty, equality and disadvantaged groups.²⁴ But it is important not to confuse the role of NGOs, which are often single-issue organizations, and do not claim to be representative, with the role of employers' and workers' organizations. They can work in a complementary manner, but have quite distinct aims and functions. Even where national social dialogue includes such civil society organizations (as in Ireland and South Africa, for example), the collective bargaining role of the social partners remains distinct.

71. A two-fold approach may be adopted towards these groups and their involvement in providing voice to the poor in development. Firstly, they should be firmly grounded in the principles of freedom of association and collective bargaining, since there is no other comparable principle in the multilateral system to guarantee this aspect of rights in development. This implies examining not only the ILO jurisprudence relating to the subject, but also practical examples of how the principle has been applied in different circumstances and economic sectors. Secondly, employers' and workers' organizations need to decide how they relate to these organizations, as part of operating within the new development framework, while retaining their basic role of representation and of providing services to their evolving membership.

72. Many employers' and workers' organizations are seeking to expand their membership base and spread the scope of representation to low-income groups, the low-skilled, the disadvantaged and the unemployed. This will enhance their ability to influence national policy-making – for the benefit of the wider interests of all their members. Whether workers and employers in the unorganized sectors of the economy seek to join existing organizations or to form their own, existing employers' and workers' organizations have in practice a critical role to play. They can either extend membership and services to those not currently covered by the law and practice of freedom of association and collective bargaining, or support the creation of new accountable and democratically managed representative organizations.²⁵

²⁴ See, for example, Trade unions, NGOs and tripartism, resolution adopted by the 17th World Congress of the ICFTU, Durban, 3-7 Apr. 2000, at www.icftu.org/www/english/congress2000/econres2000_XIII.pdf.

²⁵ ILO: *Working out of poverty*, op. cit., p. 73.

Conclusion

73. The Preamble to the Declaration states that “economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions”. Free associations of employers and workers and the collective bargaining and other mechanisms of dialogue that they establish are foundations for a democratic development path. A central feature of a successful process of poverty-reducing development in an increasingly competitive global economy is the construction of a dynamic labour market in which institutions representing workers and employers are able to manage change and, in partnership with government, deal with the social consequences of reallocating investment away from established and into new production systems.

2. From principles to practice: The challenges ahead

Increasing ratification, but problems remain in the exercise of rights

74. The disturbing reality is that in many parts of the world and in a number of economic sectors, freedom of association and the right to collective bargaining are not respected. Even where they are recognized in law, those seeking to exercise their rights can face serious difficulties. In a process of progressive realization of rights, the first step is ratification of international labour standards; the second, putting into place the necessary legal and administrative framework for enforcing rights; and the third, ensuring that rights are practised on the ground by empowering and strengthening the social partners through technical cooperation and policy advice. Political will is indispensable if a society is to go through all the steps in the process. However, political will can easily flag unless it is sustained by concrete institutional and procedural results. In practice, there is no clear-cut progression from one step to another, and work in each of these three areas will overlap to a certain extent.

75. Within this broad framework of different means of giving effect to rights, this chapter assesses the situation in terms of ratification and implementation. It has to recognize that ratification does not necessarily translate into full application. It highlights examples of situations where these rights are not respected, based on information from the ILO supervisory machinery over the last four years, as well as other sources. Lastly, it considers how particular categories of workers stand today as regards these rights, and gives some recent examples of practical means of achieving progress towards better realization of their rights.

Ratification trends

76. The trends in ratification of the two Conventions since their adoption in the late 1940s are shown in table 2.1. There is a close relationship between the growth of ILO membership and the number of ratifications. This is because in many cases – although not all – accession to membership has been followed by ratification of these Conventions. It is thus natural that developing countries account for a growing percentage of ratifying States; among developing nations, there is a high rate of ratification by African countries.

Table 2.1. Number of member States having ratified Convention No. 87 and/or Convention No. 98 since 1950

Region	1950	1970	1995	2000	Jan. 2004	
					Number	Percentage ³
Africa						
Convention No. 87	0	23	32	42	46	87
Convention No. 98	0	30	40	51	51	96
Americas						
Convention No. 87	1	18	28	30	32	91
Convention No. 98	0	18	26	30	30	86
Asia and Pacific						
Convention No. 87	0	5	8	12	13	46
Convention No. 98	0	7	12	15	18	64
Europe¹						
Convention No. 87	7	26	43	48	48	96
Convention No. 98	2	27	45	48	50	100
Arab States²						
Convention No. 87	0	2	3	3	3	27
Convention No. 98	0	4	5	5	5	45
No. of member States	62	121	173	175	177	

¹ Includes Azerbaijan, Israel, Kyrgyzstan, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan. ² Includes Bahrain, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen. ³ Percentage of member States in the region.

77. The historical trend of ratifications reflects significant political will on the part of countries emerging from colonial rule. Many of these nations ratified the Conventions soon after independence or, where the Conventions had been ratified by colonial regimes, committed themselves to adhering to these Conventions. Just under half of the member States of the Asian-Pacific region have ratified Convention No. 87, and just over half have ratified Convention No. 98 – compared with ratification levels of between 85 and 98 per cent in Africa and the Americas and up to 100 per cent for Europe in the case of Convention No. 98. It should be noted that the high level of European ratifications is partly attributable to the ratification campaign of all fundamental Conventions since 1995, which has certainly also had an effect on ratifications in Africa. The ratification campaign has not yet been reflected in ratification levels among Arab States.

78. Since the discussion of *Your voice at work* in 2000, 15 countries have ratified Convention No. 87 and nine have ratified Convention No. 98. During this four-year period, the following six countries ratified both Conventions: Equatorial Guinea, Eritrea, Gambia, Kazakhstan, Kiribati and Saint Kitts and Nevis. Nine countries that had already ratified Convention No. 98 ratified Convention No. 87: Angola, Bahamas, Democratic Republic of the Congo, Fiji, Libyan Arab Jamahiriya, Papua New Guinea, Saint Vincent and the Grenadines, United Republic of Tanzania and Zimbabwe. Three countries ratified Convention No. 98: Armenia, Mauritania and New Zealand.

79. This leaves 18 member States that have ratified neither of the two fundamental freedom of association Conventions: Afghanistan, Bahrain, China, El Salvador, India, Islamic Republic of Iran, Republic of Korea, Lao People's Democratic Republic, Oman, Qatar, Saudi Arabia, Solomon Islands, Somalia, Thailand, United Arab Emirates, United States, Vanuatu and Viet Nam. Sixteen member States have ratified Convention No. 98, but not Convention No. 87: Armenia, Brazil, Guinea-Bissau, Iraq, Jordan, Kenya, Lebanon,

Malaysia, Mauritius, Morocco, Nepal, New Zealand, Singapore, Sudan, Uganda and Uzbekistan. Another four countries have ratified Convention No. 87, but not Convention No. 98: Canada, Kuwait, Mexico and Myanmar.

80. While the ratification record may be impressive in numerical terms, it eclipses the fact that about half the world's workers and employers do not enjoy protection under Conventions Nos. 87 and 98, given that some of the largest countries in terms of population size have not ratified the two fundamental Conventions.¹ The largest non-ratifiers include Brazil, China, India, Mexico and the United States.

81. The situation in large non-ratifying countries varies considerably. China maintains a single-union system, under political control of the leading party – a situation repeatedly criticized by the ILO supervisory machinery. Other countries have indicated they are unable to ratify because of divergences between the Conventions and national law and/or practice. Among these are Canada, the Government of which has said it “would continue to examine the situation ... with the provinces and territories”.² Brazil is considering ratification of Convention No. 87. India has indicated that, because of the special situation of government servants, it is currently unable to consider ratification. The United States has not ratified the Conventions, although it has affirmed that it is committed to the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining.³ The main difficulty preventing Mexico from ratifying Convention No. 98 lies in differences between provisions of its Constitution and national legislation and a provision of the Convention.⁴

82. Under the provisions of the Declaration follow-up concerning unratified Conventions, a number of countries have pointed out that their Constitution does recognize the right to freedom of association and collective bargaining. Among these are: Brazil, Canada, Guinea-Bissau, the Republic of Korea, Mexico, Nepal, El Salvador, Thailand and Viet Nam. Others report that their labour law recognizes the principle. These include Iraq, Kenya, Lebanon, the Lao People's Democratic Republic, Malaysia, Mauritius, Morocco, Qatar, Sudan and the United Arab Emirates. Still others recognize the principle but point to current problems of an economic, political or cultural nature in giving legal effect to it. These are Bahrain, India, Jordan, Kenya, Malaysia, Morocco, Oman, Qatar, Sudan and the United Arab Emirates. Most of the countries that have not ratified both Conventions request technical cooperation from the ILO and receive advisory missions to help identify difficulties preventing ratification, with a view to putting in place legal reforms designed to promote the principle.

Problems in giving effect to ratified Conventions or the principles and rights underpinning them

83. It is useful to recall the basic reality in this area. For their active engagement in pursuing rights, trade unionists can pay with their freedom and

¹ ILO: *Evaluation of the InFocus Programme on Promoting the Declaration*, Governing Body doc. GB.285/PFA/11, 285th Session, Geneva, Nov. 2002.

² idem: *Ratification and promotion of the ILO fundamental Conventions*, Governing Body doc. GB.285/LILS/4, 285th Session, Geneva, Nov. 2002.

³ See idem: *Review of annual reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Part II: Compilation of annual reports by the International Labour Office*, Governing Body doc. GB.277/3/2, 277th Session, Geneva, Mar. 2000, p. 144.

⁴ ILO InFocus Programme on Promoting the Declaration: *Compilation of annual reports by the International Labour Office*.

even with their lives. In 2002, according to the International Confederation of Free Trade Unions (ICFTU), 213 trade unionists were killed worldwide, some 1,000 were injured or subjected to violence, 2,562 were arrested and detained, and 89 were sentenced to prison terms. This does not include the many more who were dismissed or harassed on account of their membership of a trade union.⁵ With the tragic exception of Colombia (see box 2.1), the number of trade unionists who were murdered has declined in recent years, but the cases are spread among more countries.

84. During the period 2000-03, the Conference Committee on the Application of Standards examined 32 individual cases relating to Convention No. 87 and 12 cases relating to Convention No. 98. These have resulted in the inclusion of a total of 13 special paragraphs in its report, mainly regarding failure to apply Convention No. 87: Cameroon and Venezuela in 2000, Belarus, Colombia, Ethiopia, Myanmar and Venezuela in 2001, Ethiopia and Venezuela in 2002, and Belarus, Cameroon and Myanmar in 2003. Zimbabwe was mentioned in a special paragraph in 2003 under Convention No. 98. In 2002, Belarus did not appear before the Conference Committee, which resulted in a special section in the Committee's report.

85. The Governing Body Committee on Freedom of Association (CFA) receives complaints in respect of freedom of association and collective bargaining; and it covers countries that have ratified the two core Conventions as well as countries that have not. Since its creation in 1950, the CFA had examined 2,273 cases as of June 2003. Half of these came from the Americas (44 per cent from Latin America), a quarter from Europe, and about 13 per cent each from Asia and Africa.

86. In the period between the discussion of *Your voice at work* and the time of writing of this Report (November 2000 to November 2003) the CFA adopted 273 reports, which have covered different kinds of complaints involving 72 countries. As before, the majority of reports (159) have concerned the Americas region. The second most widely covered region is Europe, with 45 reports, 24 of which related to Central and Eastern Europe. The Asia and Pacific region (35 reports) and Africa (33 reports) have maintained roughly their earlier level. One report has concerned an Arab State.

87. During this period the Committee on Freedom of Association designated a certain number of cases as *serious and urgent*, namely those that involve murder or death threats, physical assaults, dismissals of trade unionists, arrests and detentions of trade union leaders and members, obstruction of trade union meetings and activities, disciplinary measures following industrial action, legislation seriously restricting the activities of trade unions (and employers' organizations), harassment and hostility of authorities towards trade unions, and the prohibition of independent trade unions. The cases coming under one or more of these categories in 2000-03 have concerned Belarus (five times), China, Colombia (five times), Cuba, Djibouti, Ecuador, Ethiopia, Guatemala (twice), Haiti (twice), Republic of Korea, Venezuela (five times) and Zimbabwe (twice).

88. Over the last four years, six Committee on Freedom of Association cases have been presented by employers' organizations. Four of them concerned Europe and one each Africa and the Americas. These complaints alleged

⁵ ICFTU: *Annual Survey of Violations of Trade Union Rights 2003* (Brussels, 2003); idem: *ICFTU Online Bulletins on Trade Union Rights*, 10 June 2003, at www.icftu.org.

Box 2.1**Protecting fundamental rights in Colombia**

According to trade union sources, 184 trade unionists were murdered in 2002 in Colombia. By October 2003, the figure for that year was 62. The vast majority of human rights violations directed against trade unions in Colombia appear to come from paramilitary groups, while a minority are committed by armed opposition groups. The public service, and teachers in particular, is one of the most affected sectors. In these circumstances, the violence undermines the activities of trade unions and threatens their very survival.

During the period under review, there have been repeated calls for a Commission of Inquiry. However, there has not been sufficient support for this measure in the Governing Body of the International Labour Office.

In June 2000, the Governing Body requested the Director-General to appoint a Special Representative for cooperation with Colombia, to assist in and verify actions taken to implement conclusions of a direct contacts mission (which took place in February 2000) as well as the recommendations of the Committee on Freedom of Association. The Special Representative, Mr. Rafael Alburquerque, former Secretary of State for Labour of the Dominican Republic, made several recommendations between October 2000 and June 2001. In June 2001, the ILO was asked to prepare a special technical cooperation programme for Colombia. An ILO Desk in Bogotá was functional until September 2002 as a focal point for putting this programme in place.

The purpose of the programme was to create a minimum basis for protecting fundamental rights, developing freedom of association and promoting social dialogue. The six components of the programme were:

- human rights and the right to life;
- freedom of association and promotion of the right to organize;
- encouraging the development of collective bargaining;
- the promotion of fundamental labour rights;
- bringing labour legislation into line with international labour standards;
- the promotion of social dialogue.

Under the first component, 47 trade unionists – some with their families – have so far been taken out of Colombia to the United States, Germany and

Canada. Other trade union officials are scheduled to leave in the near future. This component for the protection of threatened leaders has taken over half of the financing available for the special programme.

A map on freedom of association is being elaborated. The most frequent complaints are mass dismissals in the public sector, anti-union action by public and private employers, discouraging workers from joining trade unions and refusals to grant leave for trade union activities. In 2003, at least 40,000 public employees were dismissed.

Tripartite workshops have been carried out to help align national legislation with the recommendations of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations. For the development of collective bargaining, the most critical area is the public sector. Colombia has ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), but its application is weak. A particular concern is thus to bring national legislation into conformity with this Convention. Accordingly, a training programme has been carried out for judges and magistrates on international labour standards, and freedom of association in particular.

The promotion of an atmosphere of trust between the social partners and the Government is needed to encourage social dialogue. The tripartite constituents in Colombia have carried out a series of activities to promote the ILO Declaration on Fundamental Principles and Rights at Work, and a National Forum on Fundamental Human Rights and Rights at Work has been held. Studies have been carried out to analyse the economic effects of Colombia's legislation on labour stability, employment, training and productivity. Support has been given to a recently created Special Committee for the Handling of Conflicts referred to the ILO. Trade union leaders at different levels and in different parts of the country have improved their knowledge of dialogue and negotiation techniques. Support has also been given on the technical aspects covered by the Consultation Committee on Labour and Wage Policies.

The sustainability of this special programme depends on three factors: the readiness of donors to contribute to this kind of programme; the political will and capacity of government and other institutions to continue it; and the future conditions in the country and its prospects for finding peaceful solutions.

harassment, threats, repression and the failure of the Government to maintain dialogue with employers (Guatemala); unlawful arrest of the chairperson of the employers' organization (Kenya); use of compulsory arbitration (Greece) and the difficulties faced by employers' organizations in obtaining registration, participating in collective bargaining and choosing their representatives freely (Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia, Serbia and Montenegro).

89. Table 2.2 on all types of restrictions under examination by the Committee on Freedom of Association reflects approximately the varying degrees of gravity of violations of Conventions Nos. 87 and 98 or of the principles and rights enshrined in them. These data are presented for the period starting March 2000, together with a reminder of the figures for the second half of the 1990s.

90. What factors explain the growing trend of complaints submitted to the CFA? One general reason could be that the democratization of regimes since the 1980s in Latin America, Africa and Central and Eastern Europe enabled trade unions and new employers' organizations to act and express themselves freely, both nationally and internationally. However, democratization has not gone as far and as fast as initially hoped. The UNDP recently pointed out that "the spread of democratization appears to have stalled, with many countries failing to consolidate and deepen the first steps towards democracy and several slipping back into authoritarianism".⁶

91. A second reason is that national and international workers' organizations have become more vigilant and have endeavoured to assert their rights in previously unorganized or sparsely organized sectors. In addition, conflicts in traditionally well-organized industries suffering under economic pressure and structural change have sometimes involved questions of rights as well as of interest representation. Restrictions in the public sector and in export processing zones (EPZs) have also come to the fore, and are taken up in more detail below.

92. A third general factor may lie in certain aspects of globalization. Through the liberalization of capital flows, deregulation of labour markets and privatization of public services, globalization can undermine the power that workers have traditionally exerted through their essentially national organizations. More employers are thus in a position to exercise the option of disinvesting and shifting production elsewhere or threatening to do so. Furthermore, some governments in transition and developing economies still look askance at unions, and certain employers appear to go as far as boasting that they are "union-free".

93. The question of the political will and action required to bring about changes in law and practice necessary for realizing the rights at issue is complex. The tendency to subjugate employers' and workers' organizations to a party or authority, or even an individual in power, is not unique to any particular region. It goes hand in hand with a paucity of democratic institutions, with political instability, and with efforts to counter new and alternative democratic forces. In some cases, the very movement toward democracy and trade union pluralism may give rise to attempts by political parties to influ-

⁶ United Nations Development Programme (UNDP): *Human Development Report 2002: Deepening democracy in a fragmented world* (New York and Oxford, Oxford University Press, 2002), p. 13.

Table 2.2. Allegations examined by the CFA between March 2000 and May 2003, by type of restriction (percentages)

	Denial of civil liberties	Restrictive legislation	By-laws, elections and activities	Establishment of organizations	Right to strike	Acts of anti-union discrimination	Interference	Collective bargaining
2000	14	7	13	10	14	22	6	14
2001	6	9	5	9	16	27	5	22
2002	10	5	6	15	13	24	6	20
March-May 2003	9	12	11	5	6	33	6	18
Total 2000-03 ¹	10	8	9	10	13	26	6	19
Africa ²	28	4	6	6	19	17	9	11
Americas ³	8	6	9	9	11	33	5	20
Asia and Pacific ⁴	11	6	3	8	17	31	8	17
Europe ⁵	1	19	12	16	13	10	6	22
March 1995-2000 ⁶	30	6	8	9	9	23	4	11

¹ These cover 350 allegations arising out of 210 cases over an incomplete four-year period. ² These cover 47 allegations arising out of 31 cases. ³ These cover 199 allegations arising out of 116 cases. ⁴ These cover 36 allegations arising out of 24 cases. ⁵ These cover 68 allegations arising out of 39 cases. ⁶ These cover 540 allegations arising out of 277 cases over a full five-year period.

Source: ILO: *Your voice at work*, op. cit., fig. 2.1, p. 26, and LIBSYND database. Rounding can result in figures not adding up to 100 per cent.

ence the establishment of trade union organizations. Means of influence can range from encouragement or promotion of alternative organizations to more intrusive methods, such as interfering in meetings or premises, and hard-line action, such as harassment or imprisonment of trade union leaders.

94. The relationship between employers' and workers' organizations and the political sphere is important; it is also delicate. This holds true for all countries, whether industrialized, developing or in transition. In some cases unions bring strength to back the political leadership, while in others they

Box 2.2

Fighting for rights: Belarus

At the root of the freedom of association problems in Belarus are two issues that are typical of post-communist societies in the early stages of transition: the reluctance to tolerate new, independent unions and the potential of traditional unions to become a centre of political opposition when other channels for this are blocked. The Governing Body of the ILO appointed in November 2003 a Commission of Inquiry into complaints of violations of freedom of association in Belarus, following allegations that, among other things, the trade union organization had been taken over by the state power. The Commission's report, due later in 2004, will no doubt shed more light on the situation in that country.

Persistent violations of the right to freedom of association in Belarus began in the mid-1990s, soon after the election of President Aleksandr Lukashenko in 1994, and are seen as part of a wider pattern of systematic harassment and human rights abuse.

In the ILO, the Belarus Government has been criticized on a number of occasions for actions and laws that run counter to Convention No. 87. The report of the Committee on the Application of Standards at the International Labour Conference twice included a special paragraph referring to Belarus (2001 and 2003). These pointed to restrictions on the right of workers and employers to establish organizations of their own choosing and to government interference in trade union affairs, and called on Belarus to take all steps necessary to correct the situation.

play a significant opposition role. In addition to policy stances adopted by organizations, this can also be seen in the union and political leadership. Union leaders may move on to hold political office, ranging from Labour Minister to Prime Minister or President. Central and Eastern European countries where prominent trade unionists have become political leaders include Romania, the Czech Republic, Estonia and, of course, Poland. In Ukraine, the head of the employers' organization has held the post of Prime Minister, and the main leaders of employers' and workers' organizations are members of parliament. Another recent example is that of a popular trade unionist rising to the presidency in Brazil.

95. Trade unions have the right to act on economic and political issues. According to the ILO's principles, however, when a trade union engages in political relations or action in accordance with national law and practice and the union members' decisions, these should not be such as to compromise the continuance of the trade union movement or its social or economic functions. Governments should not attempt to transform trade unions into an instrument for the pursuance of political aims; neither should trade unions promote essentially political interests.⁷ As provided in Article 8 of Convention No. 87, trade unions should respect the law of the land, but the law of the land should not impair freedom of association. Recent examples show that this is not always easy to translate into practice.

96. When pursuing their occupational, social and economic interests, trade unions will continue to play a political role, which may or may not coincide with the interests of the current government. The normal democratic process should allow for both employers and workers to express their views and pursue their interests within the limits of the law. In a democracy, a balance between these interests usually evolves over time. In countries under authoritarian rule, where the law is selectively applied, broadly accepted solutions are rarely achieved.

97. Labour law reform is the first step in introducing and strengthening the legislative and enforcement framework, not only to ensure the independence of employers' and workers' organizations, but to provide the other enabling conditions necessary for giving effect to this principle and right. It is instructive to review the extent to which the social partners have been empowered to claim and secure their rights in particular sectors that have experienced difficulties in organizing, as a measure of what is possible even in constrained situations. These sectors will be examined below.

98. What is encouraging is that an increasing number of countries turn to the ILO for advice and assistance on the ways to reach the necessary balance between competing concerns. The ILO is regularly called upon to discuss problems involving lack of respect for freedom of association when these arise, including the delicate political aspects of the matter. Its work can be an effective force for change, usually with labour law reform as the starting point (see box 2.3).

⁷ See ILO: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th edition (Geneva, 1996), paras. 449-458.

Box 2.3**Legislative changes in the Islamic Republic of Iran**

In the Islamic Republic of Iran, the trade union movement after the revolution against the Shah developed around the workers' councils that were established in various enterprises. In 1985, a law was adopted to regulate the establishment of these councils. The Labour Code of 1991 provided for three alternative types of workers' representation: workers' councils, trade unions and elected workers' representatives.

During the 2002 session of the International Labour Conference, the Government of the Islamic Republic of Iran asked the Office to review the country's labour legislation in terms of its conformity with freedom of association standards and principles. Two advisory missions took place in 2002-03 to assess current law and practice and advise on a framework within which workers and employers would be free to establish and join independent workers' and employers' organizations of their own choosing at all levels.

Amendments to the Labour Code were drafted in order to set out the framework within which freedom of association and collective bargaining rights could be fully exercised. They maintain the existence of workers' councils and workers' representatives at the enterprise while allowing for trade union pluralism. Trade unions are designated as the representative body with collective bargaining rights, while workers' councils will have clearly defined functions that complement but do not replace the role of trade unions. Workers' representatives may also be elected if there are no trade unions or workers' councils at the workplace.

The proposed amendments have been approved by the Council of Ministers for submission to Parliament. The Ministry of Labour has initiated consultations on them with the social partners. The Government has undertaken to continue cooperation with the ILO aimed at preparing specific framework regulations for applying these amendments, once adopted.

The ILO is committed to assisting the Government in ensuring that all workers in the Islamic Republic of Iran can choose freely the organization to represent their occupational interests.

Groups of workers facing barriers to organization

99. In 2000 *Your voice at work* highlighted a number of categories of workers facing particular challenges in terms of freedom of association and collective bargaining: workers in the public sector, in EPZs, in agriculture, migrant workers, domestic workers and, more generally, those in the informal economy.⁸ When these workers are able to enjoy freedom of association and engage in collective bargaining, this is also a step forward for women, who tend to be disproportionately represented among these categories. At the same time, addressing issues of the right to organize for workers in agriculture and for migrants, among others, often means dealing with informal economy workers.

⁸ *Your voice at work*, op. cit., pp. 30-32.

Public sector employees

100. According to a 2003 estimate, there are about 435 million people employed in the public sector worldwide,⁹ doing jobs ranging from government administration to fire fighting, teaching and health care. Until the 1980s, public sector employment grew in both developed and developing countries. In the industrialized world, this expansion contributed to economic growth, with the public sector becoming a main provider of social services. In developing countries, the public sector attracted a growing number of educated young people and accounted for a relatively high percentage of wage employment. In the former communist countries, public employment encompassed large sections of the industrial and service economy. In a number of nations, public sector employment policies included efforts to address issues of inequality, resulting in affirmative action programmes and other innovative human resource strategies.

101. During the past 25 years, however, there have been major changes in the structure of public employment and in attitudes toward the public sector. While developments vary from country to country, the global trend has been toward reform, staff cuts, outsourcing and privatization. For example, in 2001 the ILO estimated that 15 million public sector jobs had been lost worldwide in the previous two years alone.¹⁰

102. These trends reflect the heavy pressure to curb government spending and debt in both the developed and developing world, as well as the transition to market economies in Central and Eastern Europe. To a certain extent, such efforts are part of a wider drive to improve efficiency and performance in activities funded by the State, and hence by taxpayers. But there has also been a policy bias, especially within the international finance community, in favour of private sector solutions. Public employees face increased uncertainty over job prospects, pay and working conditions. They also face implicit – and often explicit – criticism from those who put their faith in privatization.

103. This transformation and, even more importantly, the way in which it takes place has affected organizations representing public workers and their relations with employers. When pay and conditions do not improve or are eroded in a way that appears arbitrary to public servants, including through settlements imposed without discussion or negotiation, public employees' organizations tend to become demoralized or radical – or both. This is especially true where restrictions on organizing and bargaining rights are accompanied by deteriorating conditions. In many countries, such circumstances have undermined, if not destroyed, the sense of a public service ethos that motivated public employees and provided for shared values with employers, encouraging cooperation rather than conflict. Moreover, when the employer is the State, and curbs on rights are seen to reflect economic and other policy decisions, disputes tend to become politicized.

104. At the same time, the international commitment to fighting poverty has underlined the need to provide more and better public services, most notably health care and education, to a greater number of people. This, combined with the key role of emergency services in responding to disasters, security threats and even acts of terrorism, heightens the importance of good working conditions and labour relations in the public sector. These depend

⁹ M. Hammouya: *Statistiques de l'emploi public 1995-2000*, Rapport soumis à la Réunion paritaire sur l'impact de la décentralisation et de la privatisation sur les services municipaux (Joint Meeting on the Impact of Decentralization and Privatization on Municipal Services), Geneva, 15-19 Oct. 2001.

¹⁰ *ibid.*

on involving employees in the process of change and ensuring that they can defend their interests adequately. Social dialogue based on organizing and bargaining rights is at the heart of this process.

105. It is against this backdrop that developments regarding freedom of association and collective bargaining in the public sector should be viewed. As *Your voice at work* pointed out four years ago, public employees are among those most often subjected to restrictions on the right to organize and bargain collectively.¹¹

106. Convention No. 87 applies to all workers, without distinction, although it allows national authorities to make exceptions for the armed forces and police. Convention No. 98 also leaves it up to national authorities to decide on the extent to which the guarantees laid down in it apply to the armed forces and the police. Convention No. 98 does not deal with the position of “public servants engaged in the administration of the State”, but also states that the Convention shall not “be construed as prejudicing their rights or status in any way”. In 1978, the ILO adopted the Labour Relations (Public Service) Convention, 1978 (No. 151). It guarantees the right to organize for “all persons employed by public authorities, to the extent that more favourable provisions in other international labour Conventions are not applicable to them”. In particular, this Convention calls for protection from anti-union discrimination and the involvement of public employees in decisions affecting them. As of December 2003, 42 countries had ratified Convention No. 151.

107. The ILO’s supervisory bodies have commented on many instances in which rights are denied to public sector workers, including during the past four years. A common problem involves legislation on collective bargaining and/or organizing that places all or most public sector workers in the category of those engaged in the administration of the State. This can happen through specific provisions or because the legal wording is open to interpretation. Since 1999, the Committee of Experts on the Application of Conventions and Recommendations has highlighted problems in this respect in more than 20 countries. Another obstacle is the requirement for prior approval before unions can be formed. Restrictions affect certain groups of public sector workers more than others. For example, in some industrialized countries, fire-fighters have difficulty in exercising organizing and bargaining rights.

108. Some of the complaints examined by the CFA in recent years involving public sector workers related to restrictions on the right to strike and organize for health and education workers in Canada and legislation regarding the rights of public service employees in Japan and the Republic of Korea. While there has been some progress toward legislative change in the latter two countries, as of the end of 2003 public sector workers in these countries still did not enjoy adequate legal guarantees to exercise their rights. Recent examples of improvements included Kenya, where the Civil Service Union was re-registered following an ILO seminar on Conventions Nos. 87 and 98, and Burundi, which adopted legislation in 2002 that resolves most of the problems raised by the ILO supervisory bodies. Portugal, meanwhile, has adopted legislation giving police the right to organize.

109. The extent to which legal constraints pose a problem for public sector workers is reflected in the current work programme of Public Services International (PSI), the global union federation for public service workers. At its World Congress in September 2002, PSI adopted a programme of action on

¹¹ *Your voice at work*, op. cit., para. 75.

winning workers' rights. Among other issues, the programme focuses on achieving the following outcomes: increasing the number of workers able to exercise their rights, improving ratification levels of ILO Conventions, informing public sector workers about the ILO's supervisory bodies and raising the number of complaints submitted to the ILO by public sector trade unions.

110. Legislation, however, is not the only obstacle to organizing in the public sector. In developing countries, many public sector workers are poorly paid, with wages sometimes months in arrears. As a result, workers may hold two or more jobs or run a business on the side. The trend towards outsourcing and casual labour in the public sector can also have an adverse impact on union membership. In such circumstances, the dividing line between the formal and informal economies can become blurred. The shortage of public sector workers in some developed countries has led to increased migration, especially among nurses and other health workers. While organizing migrant workers can be difficult (see section on migrant workers below), international and national trade union organizations have established links to facilitate the process. For example, PSI is working with nursing organizations in the Netherlands, the Philippines and the United Kingdom.

111. The issue of public sector reform can also become a focal point for trade union activities. In a number of localities, unions have been planning and implementing change. For example, in New York State, labour-management committees helped implement restructuring programmes, and in Malung, Sweden, changes were devised by trade unions.¹² Sometimes such efforts involve improved conditions for employees. In Mali, for example, an effort to reform the judicial system to prevent corruption included the negotiation of pay increases for civil servants working in the court system.¹³ In Norway and South Africa, reforms were more successful following negotiation and consultation.¹⁴

112. Accordingly, the ILO is working with its constituents to expand the role of social dialogue in public sector reform. In January 2003, the ILO held a Joint Meeting on Public Emergency Services: Social Dialogue in a Changing Environment. Guidelines adopted by the Meeting emphasized the importance of public emergency services and called for an expansion of social dialogue based on the principles of the ILO Declaration on Fundamental Principles and Rights at Work. The ILO is also in the process of developing educational and training materials on social dialogue and public sector reform, including health care. This includes drawing up case studies, for example concerning Brazil, Bulgaria, Ghana and Uganda.

113. However, some approaches of other international agencies regarding the public sector would seem to act against the aim of strengthening social dialogue and bargaining rights. For example, the World Bank's "indicative framework" under the Education for All initiative calls for teachers to be paid up to 3.5 times per capita GNP,¹⁵ which could undermine their ability to bargain collectively. The *World Development Report 2004* contains such

¹² Public Services International (PSI): *Public services work! Information, insights and ideas for our future* (Sep. 2003).

¹³ *Programme Décennal de Développement de la Justice (PRODEJ)*. See www.justicemali.org.

¹⁴ T. Olsen: *Best practice in social dialogue in public service reform: A case study of the Norwegian Agency for Development Cooperation (NORAD)*, Sectoral Activities Programme Working Paper No. 191 (Geneva, ILO, 2002); B. Mgijima: *Best practice in social dialogue in public service emergency services in South Africa*, Sectoral Activities Programme Working Paper No. 192 (Geneva, ILO, 2003).

¹⁵ IMF/World Bank Development Committee: *Progress report and critical next steps in scaling up: Education for all, health, HIV/AIDS, water and sanitation, Addendum: Accelerating progress towards education for all*, doc. DC2003-0004/Add.1, 3 Apr. 2003.

allegations as “teachers show up drunk, are physically abusive, or simply do nothing” and that midwives hit patients.¹⁶ Such categorizations do little to bring on board those who will, in many instances, be involved in delivering public service reforms.

114. There are many examples of change leading to conflict if those affected feel they have not been adequately consulted. For example, in Chile a national strike by municipal and public employees was held in protest against the application of a constitutional article that allows city mayors a broad-ranging freedom to privatize services,¹⁷ since this decision had not been subject to prior negotiation. In December 2003, the imposition of budgetary restrictions on France’s foreign service led to the first-ever strike involving both ministry officials and diplomats stationed abroad.

115. Given that the welfare and long-term sustainability of society and individual countries rest on those that look after its health and education, it is important for employees in the public sector to contribute to the broader thinking on the future of these key national services. Their ability to do this is closely dependent on organizing and bargaining rights. When bargaining rights are restored, as they were to teachers in New Mexico, United States in 2003,¹⁸ the result can be a more committed workforce with a bigger stake in its workplace and community.

Agricultural workers

116. Nearly half of the world’s workforce is engaged in agriculture, which remains the biggest source of employment in Africa and most of Asia. In Africa, an expanding labour force means the number of people working in agriculture is increasing, even though its share in total employment has declined in recent years.¹⁹ In countries undergoing rapid economic transformation, such as China, workers move in and out of agriculture depending on job opportunities in other sectors. Throughout the world, the number of people who rely on agriculture for their livelihood vastly outweighs those who work directly on farms. Whereas about 1.33 billion people were engaged in agriculture worldwide in 2001, the number dependent on the sector was nearly 2.58 billion, or 42 per cent of the world’s population.²⁰

117. Agricultural workers are to be found in a wide variety of working arrangements, ranging from wage workers to tenant farmers, sharecroppers and owners of small farms who work the land themselves.²¹ Wage earners account for approximately 40 per cent of those engaged in agricultural work. About 70 per cent of the world’s child labour occurs in farming,²² and different forms of forced agricultural labour persist in certain parts of the world.²³

¹⁶ World Bank: *World Development Report 2004: Making services work for poor people* (World Bank and Oxford University Press, 2003), pp. 19, 112.

¹⁷ PSI: “Chile: ASEMUCH and ANEF hold national strike”, in *InterAmerican Flash*, May 2003, at www.world-psi.org.

¹⁸ L. Fine Goldstein: “Collective bargaining gets new life in New Mexico”, in *Education Week* (Washington, DC, 19 Mar. 2003).

¹⁹ ILO: *Global employment trends* (Geneva, 2003), p. 82.

²⁰ Food and Agriculture Organization: FAOSTAT database, at www.fao.org.

²¹ For a more detailed picture, see ILO: *Sustainable agriculture in a globalized economy*, Report for discussion at the Tripartite Meeting on Moving to Sustainable Agricultural Development through the Modernization of Agriculture and Employment in a Globalized Economy, Geneva, 2000.

²² ILO: *A future without child labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), International Labour Conference, 90th Session, Geneva, 2002, p. xi.

²³ ILO: *Stopping forced labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), International Labour Conference, 89th Session, Geneva, 2001.

Difficult working conditions, low pay, violence and harassment, including sexual harassment, are all too common in agricultural work. Despite some instances of improved income brought by export opportunities, the expansion of world trade in agricultural products has failed to translate into better living conditions for most of those working in farming in the developing world. On the contrary, the persistence of high levels of subsidy and protection in developed countries has made it hard for many of those involved in agriculture in the developing world to break out of poverty.

118. As noted four years ago in *Your voice at work*, agricultural and rural workers are still often denied the right to organize and bargain collectively either by legislative or by practical barriers. This is despite the fact that recognition of the need to protect the rights of those working in agriculture dates back to 1921, when the ILO's member States adopted the Right of Association (Agriculture) Convention (No. 11), according to which agriculture workers should have the same rights "of association and combination" as industrial workers. It was another 27 years before the ILO adopted Convention No. 87, which applies to all workers, without distinction, although it allows national authorities to make exceptions for the armed forces and police. The right to freedom of association for all rural workers, including smallholders, tenants and sharecroppers, is specifically provided for under the Rural Workers' Organisations Convention (No. 141), adopted in 1975 in recognition of the importance of involving rural workers' organizations in land reform.

119. Ratification of Convention No. 11 has slowed to a virtual standstill over the last two decades, with 121 ratifications as of October 2003, compared with 142 for Convention No. 87. However, Brazil, China and India, all countries with large farming populations, have ratified Convention 11, but not Convention 87. Thirty-eight countries have ratified Convention 141, including Brazil and India, but not China.

120. Although the ILO Conventions provide that all workers shall enjoy the same rights, the most common legal obstacle to organizing in the agriculture sector remains the full or partial exclusion of agricultural workers from legislation guaranteeing the right to freedom of association and collective bargaining.

121. Countries where such exclusions apply include Bangladesh, where the Industrial Relations Ordinance of 1969 applies only to large-scale, organized farm enterprises; Bolivia, where agricultural workers are excluded from the General Labour Act of 1942 and do not have the right to bargain collectively; and Canada, where the provinces of Alberta, New Brunswick and Ontario until recently excluded agricultural and horticultural workers from labour relations legislation. The Bolivian Government has asked for ILO technical assistance to bring the country's legislation into conformity with ILO standards. And in response to a December 2001 decision by the Supreme Court of Canada, which found Ontario's exclusion of agricultural workers unconstitutional, Ontario enacted legislation (Agricultural Employees Protection Act 2002) that allows agricultural workers to form employee associations. However, the new law does not explicitly guarantee trade union and collective bargaining rights.

122. In Morocco, national trade unions argue that the 1957 trade union law does not provide adequate guarantees for the right of association in agriculture. In Pakistan, the Industrial Relations Ordinance of 2002 does not cover the agriculture sector, and in Sri Lanka, according to the Lanka Jathika Estate Workers Union, a majority of agricultural workers are small farmers operating fragmented smallholdings, sharecroppers and landless labourers and therefore are not covered by labour legislation.

123. It is clear from the above that even when the agriculture sector is not specifically excluded from labour legislation, the informal or small-scale nature of much farming, especially in the developing world, means that the rights of agricultural workers are not always legally protected. In some countries, legislation guaranteeing the right to organize does not apply to small enterprises, while in others it does not cover casual labour. In Costa Rica, for example, agricultural and livestock enterprises permanently employing fewer than five workers were excluded from the scope of the Labour Code until recently. Following a Supreme Court ruling that this exclusion was unconstitutional, the March 2001 edition of the Labour Code was amended.²⁴ In Ecuador, the establishment of workers' organizations requires a minimum of 30 workers. As a result, large plantations are sometimes subdivided into units of 29 workers, according to the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

124. Another problem involves the requirement in some countries that trade unions represent at least half the workforce of an enterprise or bargaining unit in order to gain recognition or bargain collectively. This limits the scope of collective bargaining in all economic sectors. However, it is especially difficult for a union to attract such percentages of agricultural workers, given that seasonal employment can involve moving from one job to another, not necessarily in the same place. The Dominican Republic, Ecuador, Fiji, Jamaica,²⁵ Lebanon, Peru, Swaziland, Uganda and Venezuela are among the countries where such restrictions apply.

125. Over the years, the ILO's Committee on Freedom of Association has examined dozens of complaints related to the agriculture sector, several of which entail serious allegations of human rights violations, including murder, violence and death threats. Cases have involved mass dismissals, anti-union discrimination and refusal to recognize unions. These have been, and continue to be, among the most serious cases examined by the supervisory mechanisms of the ILO.

126. A survey carried out by the ILO underscores the degree of harassment faced by officers and members of agricultural workers' organizations.²⁶ Of the 44 organizations in 37 countries that responded to an ILO questionnaire on freedom of association and collective bargaining, 52 per cent said their officers or members had experienced some type of harassment. Threats – of dismissal, arrest or even violence – were the most common form of harassment and were faced by 45 per cent of respondents. About one-third of organizations said union members had been subjected to outright discrimination or job loss. And 16 per cent of respondents said union members or officers had been arrested. These figures help to explain why several respondents pointed to fear, either on the part of workers or of their family members, as a barrier to organizing in the agriculture sector.

127. Even in the absence of legal barriers or harassment, farm workers face practical problems in organizing and bargaining collectively, including the

²⁴ The Committee of Experts on the Application of Conventions and Recommendations noted with interest that the March 2001 edition of the Labour Code explicitly acknowledges that this provision has been ruled unconstitutional by the Supreme Court. ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 91st Session, Geneva, 2003, p. 247 (subsequently referred to as *Report of the Committee of Experts*, 2003).

²⁵ In Jamaica, unions need 40 per cent of the workforce to negotiate collectively, but this can become 50 per cent if the Government requires a recognition ballot. For details, see *Report of the Committee of Experts*, 2002, p. 373.

²⁶ An analysis of trade union responses to the ILO Declaration/ACTRAV questionnaire on freedom of association and collective bargaining in agriculture, carried out in conjunction with the International Workers' Symposium on Decent Work in Agriculture, Geneva, Sep. 2003.

remoteness of some rural communities and the seasonal nature of much agricultural work. In recent years, organizing has been made more difficult by changes in employment patterns linked in part to globalization. These include the shedding of permanent employees, the use of labour contractors and greater reliance on independent suppliers. Moreover, in countries that rely heavily on foreign workers for farm labour, obstacles to organizing can include language barriers and fear of expulsion, especially in the case of undocumented workers (see section on migrant workers below). And it is difficult to enforce trade union rights and collective agreements in remote rural areas.

128. Such non-legislative obstacles were also cited in the ILO survey, especially as most respondents were in countries with laws guaranteeing freedom of association, including for agricultural workers. While many of the unions said they had attempted to organize new groups of workers, they often found their resources and capacity stretched. Among the specific practical problems they faced, respondents focused mostly on logistical issues, such as difficulties in meeting members, collecting dues and dealing with bureaucracy. However, some also cited impediments that were more cultural in nature – communication, language and attitudes towards labour organizers.

129. Membership drives were most likely to focus on women, with 82 per cent of respondents saying they had made efforts to organize women. However, only 36 per cent of respondents reported attempting to organize migrant workers. Regarding collective bargaining, a number of organizations said collective agreements were either not well respected (41 per cent) or systematically violated (14 per cent). When asked about the level of trust between the social partners, 52 per cent said it was satisfactory, 7 per cent rated it very high, while 20 per cent described it as very low and 2 per cent called it non-existent. A large proportion, however, did not reply to this query.

130. Given all these factors, it is hardly surprising that representation rates among farm workers have generally been low in most countries, with the exception of large plantation sectors in Asia and some African countries.²⁷ At the global level, the ILO survey showed no strong indication that the number of mass-based organizations representing agricultural workers had increased in recent years.

131. Nonetheless, there have also been positive developments. At the national level, some agricultural organizations appear to be gaining in strength. Of the respondents to the ILO survey, 51 per cent reported an increase in membership, compared with 37 per cent citing a decline and 12 per cent stable membership. The survey also pointed to encouraging trends regarding women's participation in unions. Two-thirds of organizations said that at least 30 per cent of their members were women. Membership rates, however, do not necessarily indicate a greater role for women in planning or decision-making.

132. There has been some progress on the legislative front in the past four years. In addition to the Canadian and Costa Rican Supreme Court judgments mentioned earlier, in December 2000 the Syrian Arab Republic repealed legislation prohibiting strikes in the agricultural sector. In 2003, Jordan amended its laws to extend the Labour Code to agricultural workers in the public sector and part of the private sector.²⁸

²⁷ ILO: *Decent work in agriculture*, Background paper for the International Workers' Symposium on Decent Work in Agriculture, Geneva, 15-18 Sep. 2003, pp. 20-21.

²⁸ *Report of the Committee of Experts*, 2004, p. 95.

133. In Uganda, the National Union of Plantation and Agricultural Workers in Uganda (NUPAWU) more than doubled its membership since 1990, reversing a massive decline that had accompanied the country's economic and political crises of the 1970s. Women now account for nearly one-third of its approximately 47,500 members.²⁹

134. International framework agreements, discussed in Chapter 3, can also play a role in increasing representation for agriculture workers. For example, after the agreement concluded in 2001 between Chiquita Brands International Inc., the IUF and the Latin American Coordinating Committee of Banana Workers' Unions (COLSIBA), agricultural trade unions in Latin America are expanding membership at Chiquita suppliers. Under the framework agreement, Chiquita requires its suppliers to provide reasonable evidence that they respect national legislation and fundamental labour rights, including the right to freedom of association and collective bargaining. According to Guillermo Rivera Zapata, president of Colombia's National Trade Union of Workers in the Agricultural Industry (SINTRAINAGRO), the Chiquita accord helped his union to recruit 1,500 new members and to sign seven new collective agreements in the country's Magdalena and Urabá regions. Such progress is especially remarkable given the extent of violence against trade unionists in Colombia (SINTRAINAGRO estimates that over 400 of its members have been murdered since 1989). In Honduras, the Chiquita accord enabled IUF's affiliate Trade Union of Workers of the Tela Railroad Company (SITRATERCO) to organize and bargain collectively at a Chiquita supplier, Buenos Amigos.

135. In Malawi, an effort has been made to address the lack of protection and representation of tenant farmers in the tobacco sector, most of whom work without written or oral contracts and are not covered by labour legislation. An agreement was signed between the Tobacco Association of Malawi employers' group, on the one hand, and the Tobacco Tenants and Allied Workers' Union of Malawi and the Malawi Congress of Trade Unions, on the other. The Government has also begun discussions with a view to enacting a Tenancy Labour Bill.³⁰

Workers in export processing zones

136. The ILO defines export processing zones (EPZs) as "industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again".³¹ Initially zones were mainly devoted to the assembly and simple processing of manufactured products, but they now encompass high technology, science, finance, logistics and even tourism. Such zones no longer always take the form of geographically separate enclaves, and some cover a single industry, commodity, factory or company.

137. This expanding scope has been accompanied by rapid growth in the number of zones, as well as of EPZ workers, most of whom are women. While in 1975 there were 79 zones in 25 countries, by 2002 this had grown to

²⁹ *Decent work in agriculture*, op. cit., p. 21.

³⁰ M. Mwasikakata: *Tobacco: An economic lifeline? The case of tobacco farming in the Kasungu Agricultural Development Division, Malawi*, Sectoral Activities Programme Working Paper No. 184 (Geneva, ILO, 2003), p. 56.

³¹ ILO: *Labour and social issues relating to export processing zones*, Report for discussion at the Tripartite Meeting of Export Processing Zones-Operating Countries, Geneva, 1998, doc. TMEPZ/1998, p. 3.

3,000 in 116 countries. At the end of 2002, at least 43 million people were employed in EPZs, with 30 million in China alone.³² However, as definitions can differ, there is some question as to the extent to which China's special zones fit into the EPZ category.

138. Efforts to improve organizing and bargaining rights for EPZ workers have implications for socio-economic development as well as human rights. As emphasized by a Tripartite Meeting of Export Processing Zones-Operating Countries held by the ILO in 1998, restrictions on trade union rights, lack of enforcement of labour legislation and the absence of workers' organizations' representation undermine the ability of zones to upgrade skills, improve working conditions and productivity and thereby to become more dynamic and internationally competitive platforms.³³ This is especially important if EPZs are to result in the transfer of technology, expertise and improved production methods to host countries, thereby contributing to long-term economic and social development.

139. These developments help explain the increased attention focussed on EPZs by the international community, including the ILO. A highly visible feature of globalization, EPZs have the potential to provide social and economic opportunities for individual workers and countries. However, when rights are denied to those employed in EPZs, the zones become symbolic of the pressures on workers that fierce competition to attract capital and production orders can produce.³⁴ The way in which global production chains currently function means that workers and companies in EPZs often struggle to meet tough production deadlines and pricing requirements. Analysis of these production chains also shows that profit margins are very small at the labour-intensive end in which many EPZs operate, with higher levels of value added from activities involving knowledge and technology.

140. In most EPZ-operating countries, national labour and industrial relations legislation is applicable to the zones.³⁵ Nonetheless, ILO official sources point to a range of difficulties involving the right to freedom of association and collective bargaining, in terms of both law and practice.

141. For example, in Bangladesh the 1980 legislation on export processing zones does not recognize freedom of association for zone workers,³⁶ and this non-union status has been publicized as a non-fiscal "incentive."³⁷ The Government has announced that trade union activity will be authorized in EPZs from January 2004 and, at the Government's request, the ILO has been providing technical assistance to facilitate this change. It remains to be seen whether freedom of association will be introduced as promised. At the start of 2004, the lifting of the ban had been postponed by court order, after a challenge to the lifting of the ban was brought by 22 companies investing in the EPZs. Although other countries have not been as explicit as Bangladesh in advertising non-union status, several highlight the zone authority's discretion over labour matters.³⁸

³² ILO: *Employment and social policy in respect of export processing zones (EPZs)*, Governing Body doc. GB.286/ESP/3, 286th Session, Geneva, Mar. 2003, table 1.

³³ ILO: "Conclusions: Priorities and guidelines for improving social and labour conditions in EPZs", in *Note on the proceedings*, Tripartite Meeting of Export Processing Zones-Operating Countries, Geneva, 1998, doc. TMEPZ/1998/5.

³⁴ See, for example, ICFTU: *Export processing zones – Symbols of exploitation and a development dead-end*, Sep. 2003.

³⁵ ILO: *Labour and social issues relating to export processing zones*, op. cit., p. 21.

³⁶ ILO: *Report of the Committee of Experts*, 2003, op. cit., p. 224.

³⁷ ILO: doc. GB.286/ESP/3, op. cit., para. 17.

³⁸ See the web site of the Special Economic Zones scheme, India, for example, at www.sezindia.nic.in.

142. In Nigeria, a 1992 decree provides for resolution of disputes between workers and employers by the authority running EPZs. However, the law does not mention workers' organizations or trade unions and requires previous authorization for those seeking physical access to EPZs. In Pakistan, despite the Government's announcement of forthcoming legislation allowing freedom of association and collective bargaining for workers in EPZs, this has yet to be adopted.

143. Even where the law does not bar organizing and bargaining, unions can face strong employer resistance and logistical difficulties. Many zones are far from population centres, and in some cases employees are housed on or near the site. Such conditions can make it hard for activists to communicate with workers and intensify concern among workers that they will be punished for joining a union.

144. In the Dominican Republic, despite the conclusion of a number of collective bargaining agreements between EPZ companies and trade unions, the ICFTU reports that unions are for the most part unable to carry out activities in EPZs for fear of reprisals.³⁹ The ILO's Committee of Experts on the Application of Conventions and Recommendations has asked the Government to respond to these allegations, as well as to the Committee's questions on the recognition of and respect for trade union protection in EPZs.⁴⁰

145. In Togo, although the Government states that its Labour Code provisions on freedom of association and collective bargaining apply to EPZs, employer resistance to unions has led to the designation of staff delegates to negotiate with employers. An agreement signed by employee and employer representatives in 1996 "was vague and afforded no safeguards for ... the right of access for trade union officers, the right to form unions and the right to nominate candidates".⁴¹

146. Under one survey carried out by the ILO, the Kenyan Government noted that it was "very common" for multinationals in EPZs not to allow their workers to join trade union movements, although workers had the right to form associations and bargain collectively.⁴²

147. Reports submitted under the follow-up to the 1998 Declaration by countries that have not ratified Conventions No. 87 and/or No. 98 reflect a divergence between governments and trade unions over the situation in EPZs. While nearly all governments presenting such reports state that freedom of association and collective bargaining rights apply to EPZs,⁴³ the most frequent observations made by workers' organizations in relation to EPZs concern the principle of freedom of association and effective recognition of the right to collective bargaining.⁴⁴

148. The Committee on Freedom of Association has also examined a number of cases involving EPZs. These include complaints of harassment and interference in trade union elections in the Philippines, and non-recognition of

³⁹ ICFTU: *Internationally recognized core labour standards in the Dominican Republic*, Report for the WTO General Council Review of Trade Policies of the Dominican Republic, Oct. 2002.

⁴⁰ *Report of the Committee of Experts*, 2003, op. cit., p. 254.

⁴¹ *ibid.*, p. 311.

⁴² ILO: *Seventh Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: Summary of reports submitted by governments and by employers' organizations* (Part II), Governing Body doc. GB.280/MNE/1/2, 280th Session, Geneva, Mar. 2001.

⁴³ ILO: *Review of annual reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Governing Body doc. GB.286/4, 286th Session, Geneva, Mar. 2003, para. 62.

⁴⁴ ILO: doc. GB.286/ESP/3, op. cit., para. 19.

workers' organizations and failure to respect the right to collective bargaining in Honduras.

149. However, there are signs of progress, due to a variety of factors. These include pressure from the international community and consumers in industrialized countries, as well as global union campaigns.

150. On the legal front, the ILO's Committee of Experts has noted with satisfaction that in Namibia the 1992 Labour Act now applies to all parts of the country, including EPZs.⁴⁵ Turkey has repealed legislation that barred workers in EPZs from taking industrial action.⁴⁶ As mentioned earlier, both Bangladesh and Pakistan have promised legislative change.

151. There are also examples of collective bargaining and trade union recognition in EPZs. The ICFTU's report on the Dominican Republic, while critical of the overall situation in EPZs, mentions three functioning collective agreements. In Sri Lanka, the Free Trade Zones Workers Union (FTZWU) and Jaqalanka Ltd. concluded an agreement in October 2003 that recognizes the FTZWU as the legitimate workers' representative and provides that the company shall refrain from harassment of union members.

Migrant workers

152. Over 80 million persons are economically active today in countries other than their own, mostly labouring at the bottom of the occupational ladder and with little knowledge of the local language. Women make up half or more of the migrant workers in Asia and Latin America, and their proportions are rising elsewhere. Migrants who are undocumented or in an irregular situation experience worse conditions than others. They may constitute up to one-fifth of all foreign workers. Migrant workers will be the subject of a general discussion at the current session of the International Labour Conference.⁴⁷

153. The 2000 Global Report, *Your voice at work*, identified migrant workers as one of the groups often denied the right to organize in law or in practice. Even when legal hurdles do not exist, migrant workers face particular difficulties due to lack of knowledge of their rights, fear of encountering problems with their employers or the police, etc. The unionization of migrant workers is a fundamental step towards realization of the effective recognition of their right to collective bargaining. Equality needs to be promoted within unions; and migrant trade union representatives should be able to sit side-by-side with others when collective agreements are negotiated. Such agreements can include clauses dealing with discrimination based on sex, race and religion – to which migrant workers are particularly vulnerable.

154. Despite difficulties, there are numerous encouraging cases of migrants joining mainstream unions in their countries of employment or setting up their own organizations. Trade unions in industrialized countries have increasingly recognized that organizing and protecting migrants is part of the challenge posed to the labour movement by globalization and international migration. Organizing migrant workers and defending their rights also reflects stronger commitment by trade unions to fighting racism and racial dis-

⁴⁵ *Report of the Committee of Experts*, 2003, op. cit., p. 285.

⁴⁶ *ibid.*, p. 314.

⁴⁷ ILO: *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session, Geneva, 2004.

crimination at work.⁴⁸ Existing unions can revitalize their membership by admitting migrants. One example is the Industry and Construction Trade Union (GBI) in Switzerland, where, as a result of a deliberate policy and activities relating to migrant workers, two-thirds of the members are now foreigners; another is the Portuguese Workers' Project that led to many of the 20,000 Portuguese workers in the United Kingdom joining unions there. Out of the 600,000 new members gained by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) since 1999 – after years of decreasing membership in the United States – many are migrant workers from Latin America and the Caribbean.

155. In Germany, unions in the construction and agriculture sectors established links with Polish unions, and opened an office in Warsaw to disseminate information on working conditions and labour rights as well as to encourage workers to join unions before arriving in Germany. The International Federation of Building and Wood Workers (IFBWW) has supported the conclusion of bilateral and trilateral agreements between unions in sending and receiving countries, recognizing common union membership.⁴⁹ For example, the Austrian and Hungarian unions have concluded bilateral agreements, while the German Construction, Agriculture and Environment Union (IGBAU) has signed agreements with the Italian unions and is in the process of signing a solidarity agreement with a Polish union.⁵⁰ In Italy, the Italian Confederation of Workers' Unions (CISL) has signed collaboration agreements with unions in migrant-sending countries such as Cape Verde, Morocco, Peru, Senegal and Tunisia.

156. Trade unions in sending countries have likewise initiated cooperation with unions in countries of employment. This is the case, for example, of the National Union of Autonomous Trade Unions of Senegal (UNSAS), the National Confederation of Dominican Workers (CNTD), the Ceylon Workers' Congress (CWC) of Sri Lanka and the Moroccan Labour Union (UMT).⁵¹ Union Network International (UNI) has established a "UNI passport" that allows service workers to maintain their rights as union members as they move from country to country. This initiative was prompted by the creation of professional forums in Indian cities by information technology (IT) workers who requested affiliation to UNI.⁵²

157. Migrant workers in receiving countries face several obstacles that make it difficult for them to approach unions. One is the language barrier. A number of unions, such as GMB in the United Kingdom, have issued recruitment and information material in the languages of the workers targeted or have used interpreters or union officials speaking the language of the workers. In Israel, the National Federation of Building and Wood Workers prepared information brochures on labour laws in Bulgarian, Chinese, English, Romanian and Turkish⁵³ and distributed them among migrant workers in the construction sector.

⁴⁸ See ICFTU: *Trade unions say no to racism and xenophobia! Plan of Action for trade unions*, report prepared for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 Aug.-7 Sep. 2001, at www.icftu.org/www/pdf/CISLantiracismeEN.pdf.

⁴⁹ *Forced labour outcomes of irregular migration and human trafficking in Europe*, Report of the Trade Union Consultation Meeting, InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, Special Action Programme to Combat Forced Labour (Geneva, ILO, 2003), p. 19.

⁵⁰ IFBWW: *Exploitation of construction, forestry and wood workers in connection with migrant and cross border work* (July 2003).

⁵¹ N. David: "Migrants get unions back to basics", in *Labour Education* (Geneva, ILO, 2002/4), No. 129, p. 73.

⁵² *ibid.*, p. 74.

⁵³ IFBWW, *op. cit.*, p. 32.

158. Various trade unions in migrant-receiving countries have established union structures specifically dealing with migrants' concerns and migration issues. In the United States, a number of unions have created the Immigration Rights Advocacy, Training and Education Project (IRATE) in the Boston area, to assist migrant workers and to help them to organize. IRATE provides information and legal assistance and helps to form workers' committees with the aim of training future union advocates.⁵⁴ In Italy, the Italian General Confederation of Labour (CGIL) established in the late 1980s a department on migration policies and a coordinating committee for migrants. More recently, the CGIL has put out television programmes for migrants in different languages. The second major Italian confederation, the CISL, in addition to a national migrants' coordination committee, has a committee for women migrants, both chaired by migrant workers. The CISL promoted the creation in 1989 of the National Association Beyond Boundaries (ANOLF) that had a membership of over 55,000 foreign and 400 Italian workers. It informs and advises migrants about their rights and runs broader workers' education courses, including language training.

159. Migrant workers who are undocumented or in an irregular situation pose a delicate problem. A 1996 ILO study showed that, in the migrant-receiving countries surveyed, only the All Ceylon Federation of Free Trade Unions, the National Confederation of Dominican Workers and the General Confederation of Portuguese Workers stated that they would accept undocumented workers as members.⁵⁵ A number of unions have since taken initiatives aimed at lobbying for, defending and organizing this particularly vulnerable category of workers. In the Netherlands, for example, the Netherlands Confederation of Trade Unions (FNV) opened membership to undocumented migrant workers in 2000. In Switzerland, unions have worked together with the movement of undocumented workers – “*sans-papiers*” – and have obtained some positive results in terms of legalization of the status of a number of undocumented migrant workers. In the United States, the Union of Needletrades, Industrial and Textile Employees (UNITE) and the Hotel Employees and Restaurant Employees International Union (HERE) are negotiating clauses obliging employers to inform the union of impending visits by immigration officials, in response to some employers threatening to denounce illegal immigrant workers who tried to organize.⁵⁶ In Canada, the Canadian Labour Congress (CLC) has started campaigning on regularizing immigration laws.

160. The rights of undocumented workers have also recently come up in cases before the ILO's supervisory system. In a case involving Spain, the Committee on Freedom of Association concluded that Spanish legislation denying trade union rights to undocumented foreigners, which took effect in 2001, was not in line with Convention No. 87. The case referred to a Spanish law that sought to draw a distinction between the rights of legal and illegal immigrants.

161. The Committee also examined a complaint against the Government of the United States referring to a ruling by the Supreme Court that an undocumented worker was not entitled to back pay for lost wages after having been illegally dismissed for exercising trade union rights. The Supreme Court decision overturned the findings of the National Labor Relations Board (NLRB) in a case involving Hoffman Plastic Compounds, Inc. The CFA con-

⁵⁴ ILO: *Promoting gender equality: A resource kit for trade unions, Booklet 6: Alliances and solidarity to promote women workers' rights* (Geneva, 2002).

⁵⁵ See S. Barwa and A. Ibrahim: *Protecting the least protected: Rights of migrant workers and the role of trade unions – Guidelines for trade unions* (Geneva, ILO, 1996), p. 7.

⁵⁶ ICFTU: *Trade unions say no to racism and xenophobia*, op. cit., p. 11.

cluded that denial of the back pay ordered by the NRLB left workers without adequate protection against anti-union discrimination.

Domestic workers

162. Domestic workers, and particularly those who move abroad, play a growing socio-economic role in the current global labour market. Women working in the formal economy sometimes depend on domestic workers to look after their household and children. The decline of the welfare state and the predominance of the nuclear family also mean that more and more people are turning to domestic help. At the same time, many families in developing countries rely on remittances sent by migrants working in the domestic sector. In return for their contribution to society, however, domestic workers are all too often subjected to abuse and the denial of fundamental rights at work. In 2000, *Your voice at work* noted that a number of countries exclude domestic workers from the scope of their labour legislation and deny them the right to organize.⁵⁷ Since then, little has changed.

163. The personal nature of the employer-employee relationship and the worker's extreme dependence on the employer make it difficult for domestic workers to organize and claim their rights. The living-in pattern of domestic work creates a dependence on the employer that is both factual and psychological in nature. Cohabitation nurtures the perception that the domestic worker is "part of the family", in an ambiguous situation with no clear boundaries between labour and personal relationships; as a result, it is difficult for employers to recognize domestic workers' rights and for workers to claim them. Labour law's silence on domestic work is often excused by invoking the principle of non-intervention by the State in the private sphere. Domestic work has ended up "occupying some twilight zone between market and non-market relations".⁵⁸

164. Isolation is an obstacle hindering domestic workers from forming unions, as it is difficult for domestic workers to be in contact with their peers. As a result, they are largely invisible and difficult for trade unions to reach. This is complicated by the fact that some unions have traditionally shared the prevailing social perception of domestic employment as a "different" type of work. The organization of domestic workers is a key tool in combating the violations of all the fundamental principles and rights at work, including in respect of freedom from forced labour, child labour and non-discrimination. It is worth noting that there is virtually no demand for forced or trafficked labour in sectors where workers are well unionized and labour standards on working hours, health and safety, wages and employment contracts are not only set but also enforced.⁵⁹

165. Despite these obstacles to organizing, there are success stories. Associations of domestic workers have established some form of collaboration with existing trade unions, and members of such associations have joined existing trade unions. In some cases trade unions have been a driving force for the organization of domestic workers. The South African Domestic Service and

⁵⁷ It is symptomatic that all of the Global Reports dealing with the four categories of fundamental rights have singled out domestic workers as one of the groups of workers which are significantly affected by a rights deficit; see ILO: *Your voice at work*, op. cit., pp. 31-32; *Stopping forced labour* (Geneva, 2001), p. 30; *A future without child labour* (Geneva, 2002), pp. 29-30; and *Time for equality at work* (Geneva, 2003), p. 21.

⁵⁸ B. Anderson: *Migration policies and vulnerabilities of domestic workers*, paper presented at the Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, Hong Kong, China, Feb. 2003, p. 16.

⁵⁹ *ibid.*, p. 21.

Allied Workers Union in South Africa, described in Chapter 4, is a case in point.

166. Organizing domestic workers requires innovative strategies and approaches. The provision of a wide range of services, including addressing the lack of self-esteem and workers' consciousness, is crucial to attracting domestic workers. In Costa Rica, the Household Workers' Association (ASTRADOMES), which was set up in 1991, adopted a holistic approach, providing domestic workers with services such as telephone inquiries, advice, support, legal and social guidance, temporary shelter for dismissed workers and training on various subjects including both labour rights and duties. Today this organization has 400 members – migrants from Nicaragua, Salvador, Honduras and Guatemala.

167. There are examples of migrant domestic workers organizing themselves, such as the Indonesian Migrant Workers' Union (IMWU) established in Hong Kong, China, in 2000. The creation of this union is the result of a process started in 1996, in which the Asian Migrant Centre played a pivotal role. Indonesian domestic workers felt encouraged by the example of other migrants' unions and their interaction with them. Today, in Hong Kong, China, approximately 240,000 women migrant domestic workers are organized in some 20 trade unions, which have the support of the Hong Kong Congress of Trade Unions.

168. Trade union sensitivity to domestic workers' rights and efforts to reach out to them have been rewarded with unionization. In the United Kingdom, for example, the organization of Filipino migrant domestic workers (*Waling Waling*, now called United Workers Association) has encouraged its members to join the Transport and General Workers Union (TGWU). The TGWU itself encouraged Filipino domestic workers, many of whom were undocumented, to join and take part in its activities. The unionization of Filipino domestic workers helped the union to enhance its action on migrants' rights and empowered domestic workers, who played an active part in the union campaign aimed at changing the immigration rules on domestic workers.

169. In the domestic sector, giving effect to the right to collective bargaining is an even more complex issue than that of the right to organize. The exercise of collective bargaining is made difficult not only by legal barriers and the general lack of unionization of domestic workers, but also because there is a problem in identifying a collective counterpart. This is why the action of unions or domestic workers' associations tends to focus on promoting legislative and policy changes. However, collective bargaining does take place in the domestic sector in some countries, such as France and Italy.

The challenge of the informal economy

170. In recent years, particularly in developing countries and transition economies, the majority of new jobs and income opportunities have emerged in the informal economy. Informal employment absorbs half to three-quarters of non-agricultural employment in developing countries: 48 per cent of non-agricultural employment in North Africa, 72 per cent in sub-Saharan Africa, 65 per cent in Asia and 51 per cent in Latin America. The share of people in informal employment increases significantly in countries that include informal employment in agriculture in their estimates. In India, it increases from 83 per cent of non-agricultural employment to 93 per cent of total employment and in Mexico, the proportion rises from 55 to 62 per cent.⁶⁰

⁶⁰ ILO: *Women and men in the informal economy: A statistical picture*, Employment Sector (Geneva, 2002).

171. The International Labour Conference discussed decent work and the informal economy in June 2002.⁶¹ The Conclusions it adopted provide a conceptual and policy framework to deal with the informal economy. Inappropriate, ineffective and badly implemented macroeconomic and social policies, adopted without tripartite consultation, are at the heart of the problem of lack of good governance in the informal economy. The absence of labour legislation governing the employment relationship, coupled with lax enforcement of labour rights, contribute to poor governance.

172. The emphasis on the employment relationship is consistent with the use of the term “informal economy” instead of “informal sector”, broadening the concept to cover not only informal production units, but also informal employment in formal enterprises. This means that in addressing rights in the informal economy, the focus is on both the features of the production units in which activities take place and the characteristics of the jobs held by those working informally. Such a framework has important policy implications. Enterprises may be informal because they have difficulty in complying with regulations. Workers may be informal because the enterprises they work for are unregistered. But workers may be misclassified as self-employed or micro-entrepreneurs and therefore excluded from the scope of labour law, while in fact they work under conditions of subordination or dependence. Another implication of the use of the term “informal economy” is that formal and informal sectors are no longer seen as distinct and separate, but as a continuum, with grey areas between formal and informal activities.

173. In today’s globalized world, the transformation of production systems and employment relationships plays a critical role. Through outsourcing and subcontracting arrangements, more and more firms are decentralizing production and reorganizing work, relying increasingly on smaller production units, some of which are unregistered and informal. As part of cost-cutting measures and efforts to enhance competitiveness, flexible employment arrangements are becoming the norm.

174. Flexible employment is not necessarily synonymous with informal employment, but often workers in “atypical” work and contractual situations tend to fall into the gaps in coverage by labour law and social protection.⁶² There are situations in which the employment relationship may be disguised or ambiguous, thus giving rise to uncertainty as to the scope and protection of labour law, including with regard to the right to organize and to bargain collectively. Such ambiguous and disguised employment relationships are widespread in the informal economy. Women tend to predominate in occupations such as domestic work, sales jobs and home work, where such employment relationships are prevalent.⁶³

175. The term “informal economy” covers a wide variety of workers, including own-account workers in survival activities, ranging from street vendors to homeworkers (who may be disguised wage workers), employees “hired” unofficially by formal enterprises, workers in sweatshops in supply chains, contributing family workers or informal apprentices. The needs and problems of such a diverse workforce are as varied as the barriers and constraints they face in organizing. In some countries, the self-employed are denied the

⁶¹ ILO: *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session, Geneva, 2002.

⁶² ILO: *The scope of the employment relationship*, Report V, International Labour Conference, 91st Session, Geneva, 2003.

⁶³ ILO: Conclusions concerning the employment relationship, *Provisional Record* No. 21, International Labour Conference, 91st Session, Geneva, 2003, para. 15, p. 21/55.

right to join or establish trade unions. As a result, they form non-profit organizations to advance their occupational interests. The legal recognition of the right of informal workers to join or establish organizations of their own choosing is crucial.

176. The discussion of the International Labour Conference in 2002 focused on addressing decent work deficits in the informal economy, in an effort to deal with the diversity of situations found in the informal economy and their underlying causes. The issue is no longer seen as a dilemma between rights and social protection, on the one hand, and job creation, on the other. The challenge lies in devising policies that do not translate into the creation of poor-quality jobs, but lead to the progressive upgrading of jobs, through the representation and organization of those in the informal economy. Governments have primary responsibility for providing an enabling regulatory and institutional framework.

177. In response to the serious public safety problems in South Africa stemming from the “taxi wars” that ravaged the transport sector during the 1990s,⁶⁴ the National Department of Transport encouraged taxi owners to form united provincial taxi associations to negotiate the re-regulation of the taxi industry. Today, about 127,000 “kombis”, or minivans, are operating in the country, about 90 per cent of which are owned by black people – mostly men. Some of the taxi owners have registered with their provincial transport departments, but many others have not, and thus operate informally. The kombi is the most common form of public transport and is vital to commuters from poor black communities. The industry is undergoing major changes aimed at improving the very poor working conditions prevailing in the industry, addressing public safety problems, recapitalizing the industry and establishing mechanisms for dialogue and negotiation with the major stakeholders. As a result, the South African National Taxi Council (SANTACO) was established in September 2001. It has national and provincial structures, each with elected bodies. Local associations affiliate to the provincial ones, but they set their own membership fees and elect their own leaders. SANTACO not only focuses on routes and permits. It also aims to help members in negotiations on service, maintenance and supply of vehicles, tyres and fuel.⁶⁵

178. The devolution of power to local authorities may generate both new opportunities and further challenges to organizing efforts in the informal economy. Street vending, one of the most visible and fastest-growing segments of the informal economy in developing countries, is a case in point. In many countries, the organization, regulation and administration of local public services, as well as urban planning, fall under the responsibility of local governments. Sometimes, however, national governments may engage in inspection operations on issues such as health and safety, without prior consultation with local authorities. This generates a climate of insecurity and distrust among local street-vending organizations that may undermine the dialogue between them and local governments.

179. In several countries, local governments have gradually shifted from repression and harassment of street traders to a more business-friendly policy.

⁶⁴ During apartheid, it was nearly impossible for a black person to obtain a permit to operate a taxi. The kombi taxi industry emerged in the late 1970s to satisfy the demand for transport of black people who lived far away from urban commercial and industrial centres. Getting a permit was difficult, however; hence many operators worked illegally. In 1989 around 50,000 kombis were working nationally. Because of the lack of business opportunities for black people, too many wanted to operate taxis. As a result, “taxi wars” broke out between different owner-associations fighting over taxi routes. These wars resulted in the death of hundreds or even thousands of people, including owners, drivers and commuters. ILO, Community Agency for Social Enquiry (CASE), South African Transport and Allied Workers’ Union (SATAWU): *Organizing in the taxi industry: The South African experience* (Johannesburg, ILO, 2003).

⁶⁵ *ibid.*

Street vending is no longer seen as just an obstacle to traffic, but as an important contributor to national GDP and a source of income for many who lack viable alternative income opportunities. The main challenge lies in ensuring that public space is used in an orderly manner, while securing jobs and decent working conditions for an ever-growing contingent of street vendors. The Association of Owners of the Polvos Azules Commercial Centre in Lima, Peru, is an example of how a vibrant local organization of street traders and sensitive local governments can help achieve this goal. Created in the early 1980s in response to the displacement of hundreds of street vendors by the local government of one of the most populous municipalities of Lima, this organization has over 2,000 members. They generate direct employment for 5,000 people and indirect employment for another 7,000, most of whom are family members. This organization is registered as a non-profit organization and owns assets estimated at US\$25 million.⁶⁶

180. The traditions and tools of organizing in the informal economy may not be the same as in the organized part of the economy. Nonetheless, workers, entrepreneurs and all actors in the informal economy do get together and network to develop concerted approaches to common problems. These may include obtaining licenses for doing business, establishing friendly societies to obtain credit, organizing to demand better treatment from local authorities over housing, water, energy, and road and transportation issues, and to counter bureaucratic corruption and harassment by the authorities, and seeking to have a variety of rights upheld in court and through other instances of authority. In Karachi, Pakistan, a group of taxi, truck and bus drivers succeeded in being registered as a private transport sector trade union by the provincial department of labour. The union's innovation lies in the fact that the basis for organization was the route rather than the enterprise (the national law only allows trade union organization at the enterprise level), thereby facilitating organizing efforts in the informal economy.

181. It remains to be seen how these and other innumerable instances of networking and advocacy for different rights can dovetail into more focused organization for purposes of representation within the framework of negotiations, both with the State and between associations of workers and employers. These organizations suffer from the volatility of informal activity and the lack of resources for organizing. They might also be isolated in terms of geographical coverage. There is a strong case for existing employers' and workers' organizations to find means of providing appropriate services and support to such organizations in the informal economy, based on a better understanding of their particular needs, and in turn to expand their own representativity.⁶⁷

Promoting principles and rights: The challenges ahead

182. Given the present level of ratifications of Conventions Nos. 87 and 98, the prospect of universal international legal commitment to their worldwide application in law and in practice is in sight. Accordingly, the ILO will be

⁶⁶ G. Pejerrey: *Participación de las organizaciones informales en el proceso político y las reformas institucionales a nivel nacional* (Lima, Peru, Feb. 2002), study prepared by IFP/SEED and IFP/DECLARATION with the Lima Multidisciplinary Team in the framework of an interregional research project on organizational efforts in the informal economy, pp. 63-66.

⁶⁷ See conclusions and recommendations of the International Symposium on Trade Unions and the Informal Sector, Geneva, 18-22 Oct. 1999, at www.ilo.org/public/english/dialogue/actrav/publ/infconcl.htm.

able to focus its campaign on working with the few remaining States – including some of the world’s largest countries – that have yet to ratify one or both Conventions. Chapter 5 of this Report proposes some ways in which the ILO could encourage a process of identifying and implementing solutions to the obstacles that remain.

183. The ILO is currently faced with serious questions concerning the application of the principles of freedom of association. Some of these have to do with the development of democratic rights in general and their specific applicability in the world of work. The acceptance by the State of the principle that citizens can freely associate to pursue social, economic and political goals is a key phase in the democratization of countries previously under authoritarian rule. As it has on numerous occasions in the past, the ILO stands ready to assist governments and employers’ and workers’ organizations through this difficult transition.

184. Another serious problem lies in the major difficulties still faced by large groups of workers, and some employers in exercising their rights to organize and bargain. These problems arise both in ratifying and in non-ratifying States. The ILO will therefore need to intensify its work with all the constituents in finding ways to build the capacity of employers’ and workers’ organizations and governments to ensure that international commitments are respected in all parts of society and the economy – new and old, urban and rural, formal and informal.

3. Organizing and bargaining in the global economy

Trends in membership of employers' and workers' organizations

185. The information available on the membership of employers' and workers' organizations is still fragmentary and sometimes contradictory. There are many reasons for this: rapidly changing membership, different reporting by the organizations concerned for different purposes, different means of data collection, etc. The few data available indicate an overall decline in the registered membership of workers' organizations. Comparable data are not available for employers' organizations. It is difficult to draw conclusions from the global figures available, and membership figures do not reflect the role these organizations play in political and socio-economic processes and institutions at the national level.

Employers' organizations

186. There is no global information on membership of employers' organizations. There was an attempt to compile membership data in 1997¹ but this has not been considered reliable. Employers' organizations and their members have a different focus from that of trade unions. While trade unions concentrate more on issues of organizing and negotiation, employers' organizations are concerned with a variety of services needed by enterprises. Although industrial relations are a core concern of employers' organizations, only few of them engage directly in collective bargaining. Their representational services consist mainly of lobbying, information, advocacy and advice.

187. A survey carried out in 2000 by the Cranfield Network on International Human Resource Management covering over 6,000 companies in 22 European countries compared the characteristics of members and non-members

¹ See ILO, *World Labour Report 1997-98: Industrial relations, democracy and social stability* (Geneva, 1997), table 2, p. 241.

of employers' organizations.² Member enterprises tend to be larger rather than smaller companies, and they are likely to have a higher proportion of manual workers in their workforce than non-members, which have a larger share of technical workers. The survey found that there was more likely to be a union presence in companies that were members of employers' organizations than in those that were not. The vast majority of the workforce was unionized in almost 30 per cent of member enterprises, of which only 7 per cent had no unionized workers. On the other hand, 27 per cent of non-member enterprises had no unionized workers, and only 16 per cent had a largely unionized workforce. On the extent of union influence on enterprise affairs, 36 per cent of non-members reported no influence, as opposed to only 12 per cent of members of employers' organizations. These figures appear to indicate that employers that join employers' organizations are more inclined to recognize and negotiate with workers' organizations. Conversely, where bargaining relationships transcend the enterprise level, it is natural that employers' organizations provide services to their members precisely for the purpose of bargaining with trade unions. While these figures are interesting, they say little about the unorganized part of the economy.

188. Faced by a number of important challenges, employers' organizations are seeking innovative means of meeting them. The relative decline in the importance of their core industrial relations competency has meant that other business organizations are sometimes perceived as more relevant. In a growing number of countries, the major business organizations have been merging with employers' organizations, as employers rationalize their representative structures. This has occurred, for instance, in Australia, Ireland, Japan, New Zealand, Singapore, South Africa and the Nordic countries. In some cases it is the result of grassroots pressures to streamline organizations or to reduce membership dues to a single subscription. It also arises from the fact that the human resources functions of employers can no longer be kept separate from the function of overall strategic leadership of corporate affairs. In other countries, such as Denmark, Germany, Indonesia, the Philippines and Sri Lanka, both types of organizations coexist, with complementary mandates. In some countries, there is considerable rivalry among business and employers' organizations, which can undermine the effectiveness of their representational activities. However, all these situations illustrate the different ways in which employers around the world exercise freedom of association.

189. Another important challenge for employers' organizations is the competition they face from both private and public consulting firms that provide services to enterprises in human resource matters, labour law and collective bargaining. For employers' organizations to retain their edge in this area, they need to ensure that the quality of their services is better than those of their competitors. The advantages that employers' organizations have over the other providers include their relationships with their membership and with trade unions. The 2003 survey of enterprises mentioned above found a self-sustaining "virtuous circle" between membership, organizational reputation and service provision. As compared with services from consultants and lawyers, it found that employers' organizations tend to perform best in the area of employee relations, and most strongly in countries with a tradition of collective labour relations. In countries where collective employee relations are declining in importance, aspects of employee relations such as pay determination, contract management and grievance handling are more

² *Employers' organizations and the challenges facing business today*, report for the International Symposium of Employers' Organizations, 15-17 Dec. 2003 (Geneva, ILO, Bureau for Employers' Activities, Oct. 2003).

likely to be dealt with by lawyers and consultants.³ It is notable, however, that even where labour relations tend to be decentralized, employers' organizations at the higher level tend to retain the important role of providing advice, coordination and support.

190. Another challenge for employers' organizations is that different kinds of enterprises have different needs, and it can be expensive to retain capacity to respond to all of them. Large enterprises tend not to require certain direct services such as advice and training, but value information and representational services. Small enterprises, on the other hand, need business support services most of all, and industrial relations services would not figure high in their priorities. Most SMEs would find it difficult to pay regular subscriptions to employers' organizations, and it may not be feasible to provide them with business support services in such circumstances. However, despite these problems, there are important examples of employers' organizations reaching out to serve the small business sector (see below in Chapter 4).

191. Employers' organizations in countries in transition from centrally controlled economies and political structures face particular problems. The absence of a tradition of independent and democratic institutions and of corporate law has sometimes led to obstacles that do not exist in other countries. In Serbia and Montenegro and in The former Yugoslav Republic of Macedonia, employers' organizations can be registered as "citizens' associations", but not as employers' organizations. As a result, only managers and owners of enterprises in a personal capacity can become members, not enterprises as such. In several East European countries, the membership fees paid by employers to their organizations are not tax deductible, despite their not-for-profit status. The Fifth European Regional Conference of the ILO in 1995 adopted a resolution urging these countries to change this policy.⁴ While this has led to improvements in a number of countries, the problem subsists in the Czech Republic, The former Yugoslav Republic of Macedonia, the Republic of Moldova and Serbia and Montenegro. There are also difficulties with regard to collective bargaining. In the Republic of Moldova, Serbia and Montenegro and Slovenia, the law stipulates that all collective agreements have to be signed by the chambers of commerce, which are compulsory membership organizations. According to the ILO Governing Body's Committee on Freedom of Association, this situation is not in line with the principle of voluntary collective bargaining. In Bulgaria, the Republic of Moldova and Romania, the labour code makes collective bargaining compulsory. Most of these problems are hangovers from the previous system, but they appear to be taking a long time to change.

Membership of employers' organizations and attitudes towards unions

192. A survey undertaken in 2003 in a selection of countries from different regions, under the auspices of the ILO's Bureau for Employers' Activities, covered 100 enterprises in each country, with samples including micro, small, medium and large national companies and subsidiaries of multinational enterprises. Covering Estonia, Ireland, Jamaica, Japan, Philippines, Sweden and the United States, the data provided in table 3.1 show the proportion of respondent enterprises recognizing a union, as well as those recognizing it

³ *ibid.*, p. 8.

⁴ Resolution aiming at ensuring the independence and facilitating the financing of employers' and workers' organizations, Appendix III, in ILO: *Record of the Fifth European Regional Conference*, Governing Body doc. GB.264/3, 264th Session, Geneva, Nov. 1995.

Table 3.1. Percentage of respondent enterprises recognizing a trade union, 2003

Country	Recognize a trade union	Recognize a trade union for collective bargaining purposes
Estonia	43.6	37.2
Ireland	71.0	64.3
Jamaica	26.0	26.0
Japan	67.0	67.0
Philippines	29.4	25.5
Sweden	97.1	97.1
United States	30.0	28.0

Source: ILO Bureau for Employers' Activities, 2003.

Table 3.2. Percentage of respondent enterprises recognizing unions for bargaining purposes, subjects covered

	Pay	Other terms and conditions	Operational management	Strategic management
Estonia	84.0	51.2	26.2	10.4
Ireland	94.4	91.7	66.7	27.8
Jamaica	100.0	95.0	45.0	41.0
Philippines	100.0	93.3	33.3	13.3
Sweden	91.4	82.4	85.7	45.7
United States	93.0	89.0	36.0	11.0

Source: ILO Bureau for Employers' Activities, 2003.

for purposes of collective bargaining. The majority of enterprises recognizing trade unions for collective bargaining purposes negotiated with them over pay and other related terms and conditions of employment (table 3.2). Fewer employers negotiated over issues of managerial prerogative, except in Sweden and, to a lesser extent, Ireland. This seems to indicate that employers are more willing to discuss and seek agreement on managerial and strategic enterprise issues in countries with a longer history of joint consultation and decision-making, and national incomes policies.

Workers' organizations

193. More information is available on workers' organizations than on employers' organizations, but the figures are not always comparable over time or across countries. ILO data compiled in 1997 documented a general downward trend.⁵ More recent data on trade union membership are available for EU countries for 2001,⁶ from which the situation appears a little better for most of these countries. If the 1995 figures in the *World Labour Report* are compared to the 2001 data, Belgium, Denmark, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain show increases, although the data are from different sources, and are not necessarily comparable.

194. There are many reasons for fluctuations in trade union membership. The advent of less repressive political and economic regimes may coincide with growing labour movement activity. This seems to be the reason behind the growth of trade union strength in countries such as South Africa. Another

⁵ ILO: *World Labour Report 1997-98*, op. cit., p. 6, and table 1.2, p. 237.

⁶ European Foundation for the Improvement of Living and Working Conditions: "Industrial relations in the EU, Japan and USA, 2001", *EIROOnline*, at www.eiro.eurofound.eu.int/print/2002/12/feature.tn0212101f.html.

important political factor can be emergence from war or crisis into peace, allowing for more stable development of democratic institutions.⁷ Conversely, political factors may lead to a drop in trade union density, for example in transition economies with the decline of the one-party State, and of the bond between the State and a single trade union. The spread of trade union pluralism in French-speaking Africa has had similar effects. The resulting decrease in membership in these cases is more a reflection of change than of the extent to which workers wish to organize. Furthermore, new organizations generally lack the institutional backing that established organizations have enjoyed. Where union membership has been high because of compulsion or the union's role in social security and services, independence and pluralism will naturally translate into lower levels of registered membership. This does not mean that trade unionism as such has been weakened; on the contrary, it often reflects the development of genuine organizations.

195. Labour market and structural changes in the economy have placed a steady pressure on union membership. Traditional trade unions grew with the rise of large industrial conglomerates, the institutionalization of collective employment relations, and the expansion of social and industrial citizenship. In today's post-industrial society and information economy, production structures are less hierarchical, and workers' representation structures and collective bargaining are slow in adapting to this change of parameters. The delocalization and globalization of productive processes, combined with outsourcing, have led to growing dependence on more flexible forms of inter-firm relations. This in turn results in less job security for many, and an increase in the number of workplaces that need to be organized, especially in the growing small firm and service sector. Younger workers, as well as contingent and part-time workers, tend to have lower unionization rates.⁸

196. The public sector has maintained high organization rates until the relatively recent halt of welfare state growth. Table 3.3 for Europe shows that unionization rates for the public sector are consistently much higher than in the private sector. On the average, current union density in Europe's public sector is twice as high as in the private sector – an estimated 50 per cent as against 25 per cent in the private sector. In the United States, while the private sector unionization rate has been estimated at 8.5 per cent, union density in the public sector is reported as reaching 37 per cent.⁹ The public-private gap indicates that stability of employment and the absence of open forms of contestation and employer opposition have an influence on union organization.¹⁰ However, given current political and socio-economic trends, more conflict seems inevitable in this until recently relatively sheltered sector.

197. Labour market and other structural changes are not the only – or even the primary – determinants of trade union membership. Policy decisions by government play an important part in this respect. For instance, it has been argued that in some Asian countries that have adopted a neo-liberal approach, this has resulted in policies or employer practices that reduce the influence and effectiveness of unions, thereby affecting trade union

⁷ Conversely, ILO specialists working in the Middle East have pointed out that the long-standing conflict in the region is a major obstacle to nurturing strong and stable employers' and workers' organizations and sound relations between them in those countries.

⁸ See T. Boeri, A. Brugiavini, L. Calmfors (eds.): *The role of unions in the twenty-first century* (New York, Oxford University Press, 2001), Ch. 2, pp. 11-46.

⁹ "Declining unionization, rising inequality", interview with K. Bronfenbrenner, in *Multinational Monitor* (Washington), May 2003, 24:5, at www.multinationalmonitor.org.

¹⁰ Boeri et al., op. cit., pp. 24-26.

Table 3.3. Union density in Europe, private and public sectors (percentage)

	Year	Private	Public	Year	Private	Public
Sweden	1980	—	—	1997	77	93
Finland	1980	—	—	1989	65	86
Norway	1980	47	74	1995	44	79
Ireland	1980	—	—	1994	43	68
Italy ^a	1980	48	60	1997	36	43
Austria	1980	40	68	1998	30	69
Germany ^b	1980	29	67	1997	22	56
Switzerland	1980	24	71	1988	22	71
United Kingdom ^c	1980	45	69	1999	19	60
Netherlands	1980	26	60	1997	19	45
Spain	1991	14	26	1997	15	32
France	1981	18	44	1993	4	25

— = Not available.

Public sector includes public administration, education, public health, railway, and PTT (before privatization).

^a Public sector density in Italy in 1997 was probably much higher, by 10-15 percentage points, if the membership of independent unions, which are especially active in the public sector, is added. However, given the poor and scanty nature of the membership statistics of these unions, the figures are based on the membership in unions belonging to the three main confederations. ^b 1980 refers to the Federal Republic of Germany.

^c 1999 refers to Great Britain.

Source: T. Boeri, A. Brugiavini and L. Calmfors (eds.): *The role of unions in the twenty-first century* (New York, Oxford University Press, 2001), Ch. 2, table 2.3, p. 26.

membership.¹¹ The recent World Bank report on growth and labour standards in East Asia, arguing against the position that labour standards stand in the way of export-led growth, should encourage governments to adopt policies that are more conducive to freedom of association.¹²

198. The difficulty of establishing and maintaining a union is clearly a major issue in many parts of the world. Who will be first to take a stand against the established practice of *not* having a union? Once it is established, who will join? There is some scattered evidence of latent demand for union representation. In the United Kingdom, it has been reported that four out of ten non-union employees would be willing to join a union if this option were readily available at the workplace. This is consistent with similar findings in North America, where for the last quarter of a century, while membership has tended to decline, between 30 and 40 per cent of the workforce has expressed an interest in or a preference for traditional union representation over non-union status. What is telling is that twice as many want forms of representation at work which do not entail risks of conflict and employer retaliation.¹³ Positive approaches to organizing and negotiating can give reasonable assurance that acrimonious conflict can be avoided.

199. For a long time now, the role of women in trade unions has been at the top of any reform agenda. In the last two decades, membership growth in Europe has come largely as a result of an increasing number of women joining trade unions.¹⁴ Owing to the strong presence of women in the public sector and in professions such as teaching and nursing, the gender gap in unionization has narrowed in Europe, and indeed has nearly disappeared in the Nordic countries (see table 3.4). In Canada, Denmark, Estonia, Israel and Sweden, trade union density is higher among women than among men.

¹¹ S. Kuruvilla, S. Das, H. Kwon and S. Kwon: "Trade union growth and decline in Asia", in *British Journal of Industrial Relations* (London), 40:3, Sep. 2002, pp. 431-461.

¹² World Bank: *East Asia integrates: A trade policy for shared growth* (Washington, DC, 2003).

¹³ A. Verma, T. Kochan, S. Wood: "Union decline and prospects for revival: Editors' introduction," in *British Journal of Industrial Relations*, 40:3, Sep. 2002, pp. 373-384.

¹⁴ Boeri et al., op. cit., p. 27.

Table 3.4. Union density by sector and gender (percentage)

	Year	Male	Female	Agriculture	Manufacturing	Construction	Commerce	Transport	Finance	Services
Sweden	1980	79	77	53	89	95	45	79	83	84
	1997	83	90	69	100	100	61	83	58	100
Denmark	1981	83	73	—	98	89	53	60	50	73
	1997	73	78	—	94	—	—	—	53	—
Finland	1989	69	75	83	80	—	—	—	—	—
Norway	1980	69	44	31	78	44	17	68	45	60
	1995	60	51	27	79	47	13	61	33	66
Belgium	1980	—	—	74	80	47	32	63	26	27
	1995	—	—	82	100	65	39	77	23	27
Ireland	1980	54	51	—	—	—	—	—	—	—
	1994	42	39	—	55	49	—	71	—	—
Austria	1980	58	39	54	68	64	26	82	36	55
	1997	44	27	40	57	48	15	60	15	41
Italy	1980	—	—	100	56	36	22	77	33	38
	1997	—	—	100	39	42	23	57	17	29
United Kingdom	1979	64	38	23	64	38	10	80	22	59
	1989	44	33	13	44	30	14	62	26	52
	1997	32	28	8	31	22	7	45	18	46
Germany, Federal Republic of	1980	44	18	20	50	19	12	73	19	26
	1990	38	19	22	48	19	12	71	7	24
Germany – all	1991	40	26	29	53	25	16	76	8	27
	1997	30	17	21	45	13	10	61	5	24
Netherlands	1980	44	18	17	43	44	10	49	8	44
	1997	33	20	20	33	41	14	39	16	28
Switzerland	1980	41	14	—	34	65	11	62	19	28
	1987	32	11	—	34	52	9	56	14	24
Spain	1991	—	—	9	22	10	6	32	20	10
	1997	—	—	11	24	11	6	32	20	14
France	1981	29	15	16	21	8	4	25	27	28
	1993	13	7	7	9	3	3	19	20	21

— = not available.

Source: Boeri et al., *op. cit.*, table 2.2., p. 25.

200. Such growth in women's membership of unions is particularly notable, since women tend to be engaged more in part-time and temporary jobs with lower protection and tenure, which typically correlate with lower union membership. In the United States, during the period 1950-90 the fall in the numbers of organized union members was attributed in large part to women and minorities entering the workforce in such precarious jobs, matched by a commensurate decrease in traditional blue-collar and older male workers. More recently, however, most of the new trade union members have been women, including members of minorities, with a high percentage of new immigrants.¹⁵

201. Attitudes are as telling as data. Surveys in Denmark, the Netherlands, Sweden and the United Kingdom show no significant difference between men and women's attitudes with regard to the union. In fact, in Denmark,

¹⁵ Bronfenbrenner, *op. cit.*

the strongest support for trade unions did not come from the “3M” (male, manual and manufacturing) workers, but from women in the public sector.¹⁶

202. There is much less information on attitudes to trade unions in developing and transition countries. A sample survey in Bangladesh, Brazil, Hungary and the United Republic of Tanzania¹⁷ found that women were more likely than men to be in favour of trade unions. On the whole, however, this recent study finds that less than half of the unionized workers surveyed in Brazil, Hungary and the United Republic of Tanzania – and an even lower proportion of non-unionized workers – had a positive attitude towards unions, or agreed that the existing unions represented workers’ rights adequately. In this respect, Bangladesh was an exception: an average of 80 per cent of respondents, both unionized and non-unionized, had a positive attitude to unions. This is consistent with the positive union effect on wages in the sample in Bangladesh. There was an increase in unionization rates between 1990 and 2000 (starting from a very low level), and a majority of respondents came from the garment industry, an important employer of women in which unions were not tolerated until recently.¹⁸ “Furthermore, even though women, less educated workers and lower wage earning workers are not adequately represented in unions, they are more likely to have a relatively more positive attitude towards unions, or to trust unions.”¹⁹ Such attitudes may give the necessary impetus to organizing. A related notable finding of this study is that, in the four countries studied, when collective agreements or safety codes were violated, a substantial proportion of unionized members in Bangladesh, Hungary and the United Republic of Tanzania were likely to turn to the union for help and advice. In Hungary, non-union workers were likely to go to the union as well.

Collective bargaining and changes in the world of work

203. Major technological and commercial changes are altering the pattern of employment and the nature of work worldwide. The structure and membership of employers’ and workers’ organizations reflect these patterns and change with them, albeit more slowly. The available information suggests that collective organizations remain representative in many countries and are responding to the changing needs of their current and potential members. A strong legislative framework founded on fundamental principles and rights at work is particularly vital at such a time of change when new structures and methods of organizing are vulnerable.

204. The limited information available suggests that many workers feel that exercising their right to join a union poses risks to their employment and fear that collective representation will lead to conflicts. Companies that are part of organizations which have a history of working with unions are more likely themselves to accommodate a union presence.

¹⁶ Boeri et al., op. cit., pp. 26-27.

¹⁷ S. Dasgupta: “Attitudes towards trade unions in Bangladesh, Brazil, Hungary and Tanzania”, in *International Labour Review* (Geneva), Vol. 141 (2002), No. 4, pp. 413-440.

¹⁸ The ILO’s various programmes of activities in cooperation with Bangladesh relating to labour law reform, protecting workers’ rights in EPZs, eliminating child labour, strengthening women’s entrepreneurial abilities and improving labour relations generally, have contributed to greater freedom of association in this industry.

¹⁹ Dasgupta, op. cit., p. 434.

205. Exercising the right to organize is thus closely related to collective bargaining. The possibility of entering into a collectively negotiated agreement establishing mutually accepted rules for the workplace is the main reason workers, and probably employers, want to join organizations of their own choosing. Establishing and deepening confidence in constructive labour relations is thus a key factor in the promotion of the principles and rights of freedom of association.

206. One of the key elements for the effective recognition and promotion of the right to collective bargaining is legislation that allows representatives of workers' organizations to be recognized for purposes of bargaining and contains other facilitative provisions. A fine balance is necessary between legislation and state involvement and a voluntarist mode of collective bargaining, encouraged by government. The law is essential in ensuring recognition of and providing a framework for freedom of association and collective bargaining. The influence of law on workers' and employers' organizations and their relationships was clearly illustrated in New Zealand, where the adoption of new legislation reversing laws that did not support collective organization has led to major changes in the climate of labour relations (see box 3.1).

Box 3.1

Back to the bargaining table in New Zealand

In New Zealand, political change over the past two decades has had important consequences for industrial relations. Following the National Party's victory over the Labour Party in 1990, labour law was rewritten to foster a shift from centralized, industry-wide or regional pay awards to deregulated employment contracting. The Employment Contracts Act 1991 encouraged individual employment contracts and "undermined both the collective and individual rights of employees and significantly enhanced the powers of employers to deregulate and de-unionise their workplaces". At the same time, before 1990, there had been a degree of compulsory union membership which both the Labour Party and the unions wanted to mitigate.

During the 1990s, an already declining trend in trade union membership accelerated sharply; by 1999, union density had fallen from about 50 to 20 per cent. Collective bargaining dropped dramatically to cover about 25 per cent of the workforce, and multi-employer or sectoral bargaining virtually disappeared, with collective contracts concluded almost exclusively at enterprise level. Following a complaint by the New Zealand Council of Trade Unions, the ILO Governing Body's Committee on Freedom of Association criticized certain provisions in the Employment Contracts Act and called on the Government to pursue tripartite discussions to ensure that the Act was fully consistent

with the principles of collective bargaining established by the Committee.

The Labour Party's return to power in 1999 prompted another fundamental change in labour legislation. Underpinning the Employment Relations Act 2000 is the obligation for all parties to deal with each other in "good faith". The 2000 Act's core aim is to promote observance of the principles underlying ILO Conventions Nos. 87 and 98 and 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" (section 3). The law contains specific measures to encourage collective bargaining, and unlike the law it replaced, the 2000 Act allows multi-employer collective agreements. According to Margaret Wilson, New Zealand's Labour Minister, the Act is designed to support collaborative behaviour in the workplace. The adoption of the Act reflects the Government's view that the previous deregulated approach hurt the country's overall economic performance by reducing productivity, depressing wages and encouraging an exodus of skilled workers. The new legislative framework seeks to bolster the types of practice linked to high-value production. The idea is that when both parties act in good faith, it is easier to resolve the inevitable tensions and arguments arising in the workplace.

Sources: G. Anderson: "Transplanting good faith into New Zealand labour law: The experience under the Employment Relations Act 2000", in *Murdoch University Electronic Journal of Law*, Vol. 9, No. 3 (Sep. 2002), at www.murdoch.edu.au; Committee on Freedom of Association Case No. 1698 (New Zealand), 295th Report, *Official Bulletin* (Geneva, ILO), Vol. LXXVII, 1994, Series B, No. 3).

Change and diversity: Coverage and levels of collective bargaining

207. The following review of the ways in which collective bargaining systems are adapting shows the variety of mechanisms workers' and employers' organizations use to resolve differences and establish cooperation. The principles and rights of freedom of association and the effective recognition of the right to collective bargaining are the foundation for a varied and flexible system for the management of change by agreement.

Coverage of collective bargaining

208. Table 3.5 presents information available on the coverage of collective bargaining, i.e. the proportion of workers in each country whose pay and conditions of employment are set primarily by collective agreements. In some cases, the figures date back to the 1990s, but they still provide an indication of coverage. In many cases, coverage is wider than figures on membership of employers' and workers' organizations would seem to indicate. In most EU member countries, as well as some others like Australia and Norway, coverage is 80 per cent or higher. High coverage rates tend to go hand in hand with higher-level bargaining. In Austria, France, Germany and the Netherlands, sectoral agreements are extended to employers and employees who are not members of the signatory organizations.

209. In other developed countries, coverage is lower, ranging from 37 per cent in Switzerland and 34 per cent in Canada, 20 per cent in Japan down to 15 per cent in the United States. In developing and transition economies, the figures are less reliable. In Asia, coverage ranges from less than 2 per cent in India to 14 per cent in the Republic of Korea, 19 per cent in Singapore, and 33 per cent in the Philippines. In Latin America, the variation is considerable, ranging from 65 per cent in Argentina to less than 3 per cent in Costa Rica. Among the transition economies that will accede to EU membership, the average coverage rate is estimated to be well behind the European average, although it is higher in some countries, such as Slovenia and Slovakia. The information available for African countries shows an average rate of 30 per cent, although in South Africa coverage is significantly higher at almost 50 per cent.

210. As noted earlier, some countries in Europe formalize pay rates and other conditions of employment through the extension of negotiated collective agreements beyond the parties represented in the negotiations. Other characteristics of the labour relations system, such as the mandatory affiliation of enterprises to representative organizations, as in the case of Austria, can have effects similar to those of extending agreements. In South Africa, such extensions can be initiated by the most representative employers' and workers' organizations. In Finland, a collective agreement in the metallurgical and electronics industry stipulates that all subcontractors must also abide by the conditions negotiated for the sector. Thus, procedures that extend the provisions of collective agreements benefit larger numbers of workers than a measure of direct coverage might indicate. An example of spreading the gains of collective bargaining is the case of the EU, where agreements negotiated at the regional level can be converted – at the request of the social partners – into Council Directives, which then need to be integrated into national legislation by the member governments (see box 3.4 in the section on supranational levels of bargaining, below).

Table 3.5. Collective bargaining coverage rates

Country or territory	Year	Percentage of employees covered by collective agreements
Africa		
Ghana ^a	1995	25
Kenya ^a	1995	35
Mauritius ^a	1995	40
Nigeria ^a	1995	40
South Africa ^b	1998	49
Swaziland ^a	1995	25
Uganda ^a	1995	25
Zambia ^a	1995	30
Zimbabwe ^a	1995	25
Americas		
Argentina ^c	2000	65
Bolivia ^a	1995	11
Canada ^b	1998	34
Chile ^c	1999	10
Costa Rica ^c	2001	3
Cuba ^a	1995	98
Ecuador ^c	1999	5
Guyana ^a	1995	27
Honduras ^a	1995	13
Mexico ^c	1998	18
Panama ^a	1995	16
Peru ^c	1998	10
United States ^b	2000	15
Uruguay ^c	1999	16
Venezuela ^c	1998	27
Asia and Pacific		
Australia ^b	1996	80
China ^a	1995	15
India ^a	1995	>2
Japan ^b	2000	20
Malaysia ^a	1995	3
New Zealand ^b	1999	21
Philippines ^d	2000	33
Singapore ^b	1998	19
Republic of Korea ^b	1999	14
Taiwan, China ^b	1998	3
Thailand ^a	1995	27
Europe^e		
Austria	2001	98
Belgium	2001	>90
Denmark	2001	83
Finland	2001	90
France	2001	90-95
Germany	2001	67
Hungary ^g	2001	45-50
Italy	2001	90

Table 3.5. Collective bargaining coverage rates (concl.)

Country or territory	Year	Percentage of employees covered by collective agreements
Europe^e (concl.)		
Luxembourg	2001	58
Netherlands	1998	78
Poland ^f	2001	28
Portugal	2001	87
Slovakia ^g	2001	50
Slovenia ^g	2001	Near 100
Spain	2001	81
Sweden	2001	>90
Switzerland ^b	1999	37
United Kingdom	2001	36

^a ILO: *World Labour Report 1997-98*, op. cit., table 3.2, p. 248. ^b J. Visser: *Unions, unionisation and collective bargaining trends around the world*; paper prepared for the ILO, Sep. 2002. ^c M.-L. Vega Ruiz: *Libertad de asociación, libertad sindical y el reconocimiento efectivo del derecho de negociación colectiva en América latina: El desarrollo práctico de un principio fundamental*, background paper, InFocus Programme on Promoting the Declaration (Geneva, ILO, Mar. 2003), table 2, p. 17. ^d T. Fashoyin: *Social dialogue and labour market performance in the Philippines*, IFP/Dialogue Working Paper No. 14 (Geneva, ILO, Feb. 2003), table 2.3, p. 14. ^e Except where otherwise indicated, European Foundation for the Improvement of Living and Working Conditions: "Industrial relations in the EU, Japan and USA, 2001", in *EIROOnline*, at www.eiro.eurofound.eu.int/print/2002/12/feature/tn0212101f.html. ^f ILO: Trade union and collective bargaining indicators: Lessons from the pilot phase, IFP/Dialogue paper (unpublished document, 28 July 2003). ^g European Foundation for the Improvement of Living and Working Conditions: "Industrial relations in the candidate countries", in *EIROOnline*, at www.eiro.eurofound.eu.int/2002/07/feature/TN0207102F.html.

The choice of bargaining level

211. Collective agreements may be reached at different levels: they may cover the national economy, a sector or industry, an enterprise or group of enterprises, or an establishment or workplace. They may vary in geographical coverage. Different issues may be addressed at different levels of bargaining. For instance, productivity and efficiency improvements may be more appropriate for negotiation within the enterprise than at higher levels. Basic rates of remuneration for different categories of workers in an industry may be best negotiated at the sectoral level. Broader issues of social security and national training policy, as well as structural reforms involving major employment shifts, are often dealt with at national level.

212. Table 3.6 provides some recent information regarding preferred bargaining levels in EU countries, Japan and the United States. Despite a widely observed trend towards the decentralization of bargaining, most EU countries have centralized systems. As the table indicates, the national inter-sectoral level is the predominant wage bargaining level in Belgium, Finland and Ireland. The sectoral level is most important in Austria, Germany, Greece, Italy, the Netherlands, Portugal, Spain and Sweden, while there is no one predominant level in Denmark and Luxembourg. Only in France and the United Kingdom is the enterprise the primary bargaining level. Subjects other than pay are often dealt with by company bargaining, but may also be negotiated at a higher level in some cases.

213. In contrast, in Japan and the United States, the predominant level of bargaining over pay and all other issues is the individual company. However, in Japan, there is a degree of coordination on both trade union and employers' sides during the annual Shunto bargaining round each spring. The major manufacturers in leading industries take the lead in bargaining, thereby set-

Table 3.6. Wage bargaining levels, EU, Japan and United States, 2001

	Intersectoral level	Sectoral level	Company level
Austria	.	XXX	X
Belgium	XXX	X	X
Denmark	XX	XX	X
Finland	XXX	X	X
France	.	X	XXX
Germany	.	XXX	X
Greece	X	XXX	X
Ireland	XXX	X	X
Italy	.	XXX	X
Japan	.	.	XXX
Luxembourg	.	XX	XX
Netherlands	.	XXX	X
Portugal	.	XXX	X
Spain	.	XXX	X
Sweden	.	XXX	X
United Kingdom	.	X	XXX
United States	.	X	XXX

X=existing level of wage bargaining; XX=important, but not dominant level of wage bargaining; XXX=dominant level of wage bargaining; . = category not applicable.

Source: European Foundation for the Improvement of Living and Working Conditions: "Industrial relations in the EU, Japan and USA, 2001", in *EIROOnline*, at www.eiro.eurofound.eu.int/print/2002/12/feature/tn0212101f.htm, table 2.

ting a pattern followed by other large companies and then by SMEs. In the United States trade unions in some sectors seek to achieve an agreement in a particular company and have it extended to other companies in the sector ("pattern bargaining") with varying degrees of success.²⁰

214. There are economic arguments for and against different levels of bargaining. Studies have focused on how different levels of bargaining affect "efficiency", in terms of measures such as unemployment, wage increases beyond productivity, and inflationary tendencies. Some have argued that a bargaining system's capacity for wage moderation decreases with decentralization, implying a positive relationship between higher-level collective bargaining and macroeconomic performance. According to this approach, with a broader scope of coverage and content, negotiators will be better able to take into account the possibly negative efficiency effects of their decisions.²¹

215. Others have contended that centralized systems provide for more stability and decentralized systems for more flexibility. According to this view, there are advantages at both ends of the spectrum, while intermediate sectoral bargaining is inferior. The thinking here is that when bargaining takes place at the level of the individual enterprise, the negotiators have to bear the full burden of any negative consequences of excessive wage increases: any isolated wage increase in a particular enterprise reduces its competitiveness on both product and labour markets. In contrast, at the intermediate level – i.e. sectoral or occupational – the partners can pass on

²⁰ *EIROOnline*, op. cit.

²¹ B.W. Headey: "Trade unions and national wage politics", in *Journal of Politics*, 32 (1970), pp. 407-439, cited in F. Traxler: "Bargaining (de)centralization, macroeconomic performance and control over the employment relationship", in *British Journal of Industrial Relations*, 41:1 (Mar. 2003), pp. 1-27.

large parts of the costs of wage increases to other groups in society, by jointly raising the output price in response to collective wage agreements.²²

216. Recent studies throw doubt upon the validity of all these arguments, finding no systematic impact of the extent of bargaining centralization on aggregate wage increases, inflation and unemployment.²³ Reality is richer and more complex than hypothetical models. In many cases, collective agreements at the intermediate sectoral level are extended to non-associated “outsiders”, and are frequently used in combination with multi-employer bargaining (for example, in Belgium, France, Portugal and Spain). In other countries (such as Germany and Switzerland) where such extensions are rare, unaffiliated employers tend in practice to observe standards established by multi-employer bargaining.

217. It would seem that there is no “optimum” bargaining structure. Bargaining parties will aim to establish a level, scope or coverage which suits them best at a particular time. The social partners’ preferences tend to change over time, depending on where a party feels relatively strong, and where it feels it can best pursue the interests of its members.²⁴

218. When it comes to the capacity of collective bargaining to set employment-neutral wages, the real divide may not be between different levels of bargaining, but rather between coordinated and uncoordinated systems. After all, centralization is only one way of coordinating collective bargaining. Even the best of centralized systems will tend to depend, to varying degrees, on whether there are state provisions in place for ensuring implementation and on whether both parties have the capacity to secure compliance among their constituents. Bargaining at any level can usefully be supported by legal or governmental policy provisions. The aim would be to ensure that bargaining takes into account the interests of broader segments of society beyond the immediate partners to the negotiation.

219. A recent World Bank study, covering the last two decades, states categorically that coordinated bargaining reduces labour conflict: “a coordinated bargaining system can produce social peace because it either helps to institutionalize a distributional norm or improves the flow of information and thereby reduces the risk that a strike would occur because of the workers’ misconception about the firm’s profitability.”²⁵

220. While the parties are free to decide at which level they negotiate, collective bargaining frameworks are not equality-neutral.²⁶ Even if the choice of uncoordinated enterprise-level bargaining, increasingly evident in most countries, may not have any significant overall economic effects,²⁷ such a framework may hamper incentives to improve and broaden representational

²² L. Calmfors, J. Driffill: “Bargaining structure, corporatism and macroeconomic performance”, in *Economic Policy*, 6 (1988), pp. 13-61, cited in Traxler, op. cit., p. 3.

²³ Organisation for Economic Co-operation and Development (OECD): *The OECD Jobs Study*, Part II (Paris, 1994); idem: “Economic performance and the structure of collective bargaining”, in *Employment Outlook* (Paris, 1997); F. Traxler, S. Blaschke, B. Kittel: *National labour relations in internationalized markets* (Oxford, Oxford University Press, 2001), cited in Traxler, op. cit., p. 3.

²⁴ In the late 1960s and 1970s in Europe, militant shop-floor groups pressed for decentralization of bargaining, while employers tended to pursue centralization until the 1970s. Most centralized systems were initially launched or sustained by employers’ organizations (e.g. in the Nordic countries), whereas more recently employers’ organizations have sought to promote greater decentralization of collective bargaining.

²⁵ T. Aidt and Z. Tzannatos: *Unions and collective bargaining: Economic effects in a global environment* (Washington, DC, World Bank, 2002), p. 116.

²⁶ A. Blackett and C. Sheppard: *The links between collective bargaining and equality*, IFP/DECLARATION Working Paper No. 10 (Geneva, ILO, 2002), p. 2, at www.ilo.org/public/english/standards/decl/publ/papers/equality.pdf.

²⁷ Aidt and Tzannatos, op. cit., pp. 10 ff.

and negotiation mechanisms. It may provide little possibility of spreading collective bargaining to more marginal sectors and groups, such as short-term or part-time employees, contract workers or other contingent workers, who often tend to be women, of migrant origin or vulnerable in other ways.

221. Other frameworks afford greater possibilities, as do systems combining statutory mechanisms with tripartite governance (e.g. minimum wage fixing bodies or other forums governing pay, training and social security benefits). However, there are no compelling grounds for arguing that one level of bargaining is better than another. Instead, the possibilities of different systems for different purposes should be recognized. Collective bargaining forms and levels can be combined and supplemented with other bipartite and tripartite policies and practices.

Enterprise level

222. Since the end of the 1970s, there has been a growing tendency towards decentralization of collective bargaining in most parts of the world.²⁸ Enterprise-level collective bargaining is developing; and where this level is predominant, it is diversifying further. For instance, Germany, with a long history of sectoral-level bargaining, has seen marked growth in the number of companies that have concluded enterprise agreements in the last ten years, from 3,150 in 1991 to 7,063 in 2002 – an increase of 124 per cent,²⁹ suggesting that about 15 per cent of all workers in that country are covered by company-level agreements. In most countries, negotiation at this level has been aimed at enhancing enterprise capacity to adapt to product and labour market requirements.³⁰ For enterprises whose production is oriented mainly to export markets, for example, enterprise-level negotiation may help them adjust to business constraints (see box 3.2).

223. While productivity improvements or the introduction of new technology may be facilitated through enterprise-level bargaining, the latter is not only concerned with those workers who are part of the core workforce, neither does it focus only on productivity or wage issues. Negotiations are not necessarily limited to an enterprise union; an enterprise can enter into collective bargaining with unions representing a broader group of workers. In Angola, for instance, concern for the broader interests of workers led the technical consulting company Jembas and the Federation of Transport and Communication Workers' Trade Unions of Angola (FSTTCA) to reach an agreement providing all its employees with insurance covering sickness and accidents at work.³¹

224. Enterprise-level bargaining can lead to pragmatic results, where workers and their representatives confront changing economic reality by trading their acquired rights against new protective mechanisms. Some agreements include special provisions in the event of sale of the enterprise, for example the agreement between Crown Central Petroleum in Texas, United States,

²⁸ *World Labour Report 1997-98*, op. cit.

²⁹ *Der Spiegel*, No. 27, 2003, p. 56.

³⁰ See M. Ozaki (ed.): *Negotiating flexibility: The role of the social partners and the State* (Geneva, ILO, 1999).

³¹ "Jembas and transport trade union sign collective agreement", Angola Press Agency, Luanda, 25 Feb. 2003, at www.angolapress-angop.ao.

Box 3.2**Trinidad Cement Company Ltd. (TCL)**

Enterprise-level bargaining can take place in key national enterprises, with beneficial effects not only for the company and its immediate stakeholders, but also for other enterprises. The Trinidad Cement Company Ltd. (TCL), the most important producer of cement among the member countries of the Caribbean Community (CARICOM), has over 1,000 employees and also owns enterprises in Barbados and Jamaica. TCL suffered in the past from poor labour relations – with two work stoppages a year on average – and low productivity, which it sought to overcome by introducing a new production strategy in 1996. Modernizing equipment did not yield the desired higher productivity, so the company decided to improve its labour relations and managerial approach. It committed itself to treating all its employees and the organizations representing them as strategic partners and equal actors in the enterprise. Managers were held responsible for the success or failure of these human resource initiatives.

The change in the climate of labour-management relations led to the peaceful adoption of collective agreements in 1997 and in 2000. Enterprise productivity increased by as much as 50 per cent, and employee earnings progressed. The enhanced competitiveness of the enterprise and its sound labour relations helped it to oppose successfully a foreign bid to buy out the company in 2002. TCL management and the Oilfield Workers' Trade Union, which represents the employees, jointly opposed the takeover bid, and convinced the shareholders to join them in this position. According to the TCL board, "there are potential adverse implications for other, wider stakeholders of the company including customers, employees, service companies, and suppliers with the possible down-scaling of operations or outright plant closures...". TCL's defence was seen as vital, given the enterprise's key role in regional economic development.

Sources: "Trinidad Cement asks for rejection of Cemex bid", *Cement Americas*, 24 July 2002, at cementamericas.com. W. Momm and O. Nurse: "On the high road to competitiveness with decent work – Case studies from Caribbean enterprises", paper prepared under the ILO Caribbean Office Project for the Promotion of Management-Labour Cooperation (PROMALCO) (unpublished document).

and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE), which provides for job protection in the eventuality of the refinery being sold.³²

225. In many cases, the example of one enterprise can open the way for collective bargaining to gain ground. In Uganda, unions in the export flower industry have generally not been recognized. Uganda Hortech, a subsidiary of the Sugar Corporation of Uganda Ltd., decided to extend to all the workers on its plantation the provisions of the agreement negotiated with the union.³³ This helped to open the door for further negotiations in other enterprises.

226. When negotiations run into difficulties, different elements of social dialogue can introduce or restore a spirit of cooperation and collaboration between the social partners. It may require promotional support by special programmes or institutions. In the Philippines, for example, enterprises have created Labor Management Cooperation (LMCs) committees, under the guidance of the National Conciliation and Mediation Board. These are

³² International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM): "World union role in Crown Central settlement: Five-year US oil lock-out ends", *ICEM Update* No. 3/2001, 18 Jan. 2001, at www.icem.org.

³³ T. Fashoyin, A. Herbert, P. Pinoargote: *Multinational enterprises in the plantation sector: Labour relations, employment, working conditions and welfare facilities*, Multinational Enterprises and Social Policy Working Paper No. 93 (Geneva, ILO, 2003), pp. 8-10.

bipartite mechanisms of enterprise-level consultation, encouraging workers' participation in the workplace. Best practices are recognized through an award given to enterprises with outstanding LMCs. In 2001, for example, this award went to the social partners in a sugar-refining enterprise where the management and workers had been able to improve and maintain good cooperation, following a history of conflictual labour relations. The LMC programme helped the enterprise reach a collective agreement, without the intervention of the Department of Labor and Employment.³⁴

227. Perhaps more than other levels, enterprise-level bargaining requires a sound system of providing information to the parties in order to be successful. A good example is the Danish bargaining system, sometimes described as "centralized decentralization", based on information-sharing, prior consultation and shared bargaining principles. Minimum wage rates are negotiated at sectoral level, providing guidelines for wage bargaining at enterprise level. While taking these guidelines into account, enterprises adjust pay in line with profitability and other economic circumstances of the enterprise.³⁵

Sectoral level

228. Sectoral-level collective bargaining is predominant in a number of EU countries. It is less common in other regions, except Latin America, where bargaining occurs mainly at this level in Argentina, Brazil and Uruguay. Sectoral bargaining is also practised in a number of French-speaking West African countries and in South Africa. However, in other countries where sectoral bargaining has been practised, legislative initiatives have promoted enterprise-level bargaining, for example, the adoption of the Industrial and Labour Relations (Amendment) Act, 1997, in Zambia.³⁶

229. Sectoral-level bargaining covers different realities in different countries. Some legal systems use the term "supra-enterprise-level" agreement (Czech Republic, Hungary, Poland, Slovakia). These definitions can cover sectoral agreements as traditionally understood, or they can refer to multi-employer agreements reached between a number of individual employers and the union (or unions) in the sector.

230. With the imminent accession to the EU of a number of transition economies, there is considerable debate regarding the compatibility of the labour relations and collective bargaining systems between these countries and those of the EU. A major divergence is the extent of sectoral bargaining, which is more important in EU countries. This is illustrated in table 3.7, which compares the number of sectoral agreements in force in selected accession and existing EU countries.

231. Bargaining at sectoral level could have been expected to be more prevalent in the transition countries, given the legacy of centralized pay and grade classification systems developed and administered under the central planning system. One challenge for sectoral bargaining is that, as a result of major industrial restructuring, economic sectors and their common concerns are less easily identifiable. Furthermore, new independent employers are less willing to negotiate at this level. In the newly emerging SME sector – which accounts for most of the growth of the private sector in these countries – employers may be reluctant to accept rules agreed at the sectoral level, and

³⁴ C.I. Roncesvalles: "LMC: Redefining RP industrial relations", in "Weekender: Labor and Management", *Business World* (Manila), 20 Mar. 2003.

³⁵ P. Egger and W. Sengenberger (eds.): *Decent work in Denmark: Employment, social efficiency and economic security* (Geneva, ILO, 2003), pp. 50-51.

³⁶ T. Fashoyin: *The contribution of social dialogue to economic and social development in Zambia*, InFocus Programme on Strengthening Social Dialogue Working Paper No. 6 (Geneva, ILO, 2002).

Table 3.7. Collective agreements at sectoral level

Countries	Year	No. of collective agreements	Coverage rate (%)
Austria*	2000	—	95 (multi-employer)
Belgium	2001	1 398	98
Bulgaria	2001	60	20
Cyprus*	2000	12	90-95
Czech Republic*	2001	12	—
Denmark*	2000	—	45 (multi-employer)
Estonia	2001	7 + 10 (subsectoral)	<10
France	2001	1 116	94.5
Germany	2001	30 000 ¹	75 ¹
Hungary	1999	19 + 33 (multi-employer)	17.8 (sect. and multi)
Italy	2001	600-700	80-85
Luxembourg*	2000	—	60 (multi-employer)
Netherlands*	2001	—	68 (multi-employer)
Poland*	2001	136 (multi-employer)	<10
Portugal*	1999	—	84 (multi-employer)
Romania	2001	25	—
Slovakia*	2001	55	50
Slovenia*	2000	38	Close to 100
Spain*	2000	1 403	66 (multi-employer)

— = not available. ¹ This includes “wage agreements”.

Sources: Y. Ghellab and D. Vaughan-Whitehead (eds.): *Sectoral social dialogue in future EU member states: The weakest link* (Budapest, ILO/European Commission, 2003). * *EIRO*Online: “Industrial relations in the candidate countries”, op. cit., and idem: “Collective bargaining coverage and extension procedures”, at www.eiro.eurofound.ie/2002/12/study/tn0212102s.html.

prefer enterprise-level bargaining or no bargaining at all.³⁷ In Hungary and Poland, sectoral agreements tend to contain recommendations and only indicate what might be negotiated at lower levels. Sometimes they repeat provisions of the national labour code.

232. Where sectoral agreements exist in developing countries, they tend to have a general content. This is the case for example, of sectoral agreements that exist for the garment industry in the Philippines.³⁸ The growing diversity of enterprises in a given sector partly explains the decline of sectoral agreements. An intermediate level of information provision and articulation, if not coordination, is required between what is decided at enterprise level and what occurs at national level. Where sectoral bargaining cannot serve this purpose, other means come into play, such as minimum wage fixing, or wage guidelines.

233. Where decisions for an entire sector can be taken by one employer, sectoral-level bargaining can be particularly effective, for instance in protecting workers’ rights in the face of these economic and statutory changes and smoothing transition of operations from the public to the private sector. Thus, in Chile, the union in the water industry, FENATRAOS, reached an agreement in 2001 with the Government to protect workers’ rights during privatization, guaranteeing employment security for a minimum of three years.³⁹ This agreement followed a preceding privatization process which

³⁷ See *World Labour Report 1997-98*, op. cit., pp. 145-155.

³⁸ M. Ozaki, op. cit., p. 84.

³⁹ ILO: *Challenges and opportunities facing public utilities*, report for discussion at the Tripartite Meeting on Challenges and Opportunities Facing Public Utilities, Geneva, 2003, p. 61.

gave rise to a number of disruptive protests and strikes, and now provides a general framework for a more orderly transition in that sector.

National level

234. National tripartite or bipartite negotiations set the same conditions for all workers. They may also aim at establishing a socio-economic framework for bargaining at lower levels, and allowing the social partners to develop a buffer against economic shocks. Discussions and negotiations at this level contribute to better governance of macroeconomic issues, and may be important for overcoming economic crises in all economies, including the most developed. In Central and Eastern European countries in particular, tripartite negotiations have helped to initiate labour law reform governing collective bargaining. Many of the national agreements are concerned with wages. In Latvia, national bipartite agreements on minimum wages have been reached. While the provisions in the agreements only constitute recommendations, the minimum wages determined by collective agreements at various levels tend to be 30-50 per cent higher than the amount set by the Government.⁴⁰ This seems to reflect a willingness of the social partners to benefit from the room provided for negotiations, and to agree to wage increases. National-level bargaining or social dialogue can also address other broader issues, such as employment and pension reforms.

235. At these higher levels, the social partners can negotiate agreements that benefit those who are not directly the subjects of bargaining. Sometimes these can be quite explicit. In Belgium, a national inter-occupational agreement for 2001-02 frames the sectoral negotiations, and provides part-time workers the right to paid education leave. Such provisions are especially important in industrialized countries, where the proportion of those in part-time and temporary work is growing progressively,⁴¹ particularly among women and minority groups. Labour and product market flexibility and the prolongation of working life require innovative solutions. Inter-occupational national-level agreements in countries with such concerns often provide for on-the-job training and life-long learning schemes, which promote mobility between jobs and occupational renewal. Such issues are best negotiated at the national level.

236. National-level bargaining takes place in developing countries as well. In Niger and Senegal, national negotiations may be attributed largely to the influence of the system of inter-occupational collective agreements practiced in France and introduced under colonialism. These systems tended subsequently to suffer from problems of coordination with lower levels, as well as lack of capacity of the government and the social partners. However, national-level mechanisms have recently been encouraged, in part through ILO cooperation, in some French-speaking African countries. In Senegal, a supportive mechanism to collective bargaining has been developed in the form of the National Charter on Social Dialogue. This was adopted in November 2002 by the Government, all but one of the 16 national unions and the four national employers' organizations, in a successful effort at convergence between employers' and workers' organizations. This Charter

⁴⁰ European Foundation for the Improvement of Living and Working Conditions: "Industrial relations in the candidate countries", *EIRO Online*, at www.eiro.eurofound.ie/print/2002/07/feature/tn0207102f.html.

⁴¹ ILO: *Global employment trends* (Geneva, 2003), pp. 103-105.

arose out of recognition of the need to overcome labour-management conflict, to deepen dialogue at all levels, and to provide training in collective bargaining and information on a variety of socio-economic issues. A basic premise is that all parties in both private and public sectors should have the same level of information as a starting point for their discussions and negotiations.

237. National-level mechanisms can make the world of work a privileged entry point for introducing more efficient protection for the most marginalized workers, who are vulnerable to discrimination. The development of a provision for maternity leave in a number of Latin American countries, and in the Philippines and Singapore will afford women an additional chance to remain in the protected employment sector. A crucial area for cooperation at the national level is HIV/AIDS (see box 3.3). In Indonesia, the tripartite social partners have reached an agreement⁴² to give effect to the ILO code of practice on HIV/AIDS and the world of work.⁴³

238. The national level is a traditional arena for the conclusion of social pacts and consultation on incomes policies.⁴⁴ They can take a variety of tripartite or bipartite forms. Such agreements and pacts help to define the framework for labour relations in a broad socio-economic sense, with the ultimate goal of achieving a balance between efficiency and equity in national growth. The unions guarantee social peace and wage moderation in exchange for more “worker-friendly” policies relating to employment, training and social security. Such pacts have been negotiated in the past in various European countries and in Australia, for instance, but have been on the decline since the mid- to late 1980s. However, new pacts of this type have been negotiated since in Ireland and are currently being considered in Brazil and South Africa.

239. A number of European countries, including Finland, Italy, the Netherlands, Portugal and Spain, entered into a series of social pacts to prepare for the introduction of the European single currency. The goal was to build consensus between the government and the social partners on a range of macro-economic and labour market reforms. When the single currency came into effect in 2002, these economies were able to meet the strict conditions relating to debt, public expenditure, inflation, etc., without any major economic crisis or conflict.

240. The success of such pacts depends very much on the national employers’ and workers’ organizations that negotiate them, and on the State. The negotiators have to be able to convince their members of the need for such an agreement, and then to ensure respect for its provisions. This requires free organization, capacity and continuous dialogue at the different levels of the economy. At this level of collective bargaining and social dialogue, it is particularly important that the necessary socio-economic information be available, supplemented by the training necessary for analysing and using that information.

⁴² Z. Hakim: “Government, employers and workers join forces in fighting HIV/AIDS”, in *Jakarta Post*, 26 Feb. 2003.

⁴³ ILO: *HIV/AIDS and the world of work*, ILO code of practice (Geneva, 2002).

⁴⁴ For examples of national-level tripartite consultation, see A. Trebilcock (ed.): *Towards social dialogue: Tripartite cooperation in national economic and social policy-making* (Geneva, ILO, 1994) and J. Ishikawa: *Key features of national social dialogue: A social dialogue resource book* (Geneva, ILO, 2003).

Box 3.3**Working together to respond to HIV/AIDS**

As HIV/AIDS continues its spread through the working-age population, trade unions and employers are increasingly cooperating to fight the epidemic and cope with workplace-related issues. Both collective bargaining and wider social dialogue are proving very useful in this context. This was reflected in the ILO's own work through the adoption in 2001 of a code of practice of HIV/AIDS and the world of work.

The code is intended to help reduce the spread of HIV/AIDS and contains fundamental principles as well as practical guidelines. Key principles are non-discrimination related to HIV status; continuation of employment; confidentiality; a healthy and safe work environment; gender equality; voluntary testing with counselling, but no screening for employment or recruitment; and the need to address HIV/AIDS in the workplace through social dialogue, prevention programmes and care and support. The code was the result of tripartite consultations and has the support of the United Nations, and employers' and workers' organizations, as well as many individual companies and NGOs.

A further sign of the social partners' cooperation regarding HIV/AIDS is a joint statement issued in May 2003 by the International Confederation of Free Trade Unions and the International Organisation of Employers. This commits the two organizations to join forces in the fight against the pandemic.

Some unions and employers are finding the ILO code helpful when negotiating agreements on handling HIV/AIDS in the world of work. For example, in the United Republic of Tanzania, the Government, employers and trade unions are developing a code of practice intended to adapt the ILO code to national and local conditions. Once endorsed, this will apply to all workplaces. A Memorandum of Understanding on working together in the fight against HIV/AIDS signed by the Jamaica Employers' Federation and the Jamaica Confederation of Trade Unions also takes account of some of the ILO code's provisions, as does a code of practice adopted as part of the Social Partnership 2001-04 agreement signed between the social partners in Barbados.

Incorporating provisions on HIV/AIDS in collective agreements can help to build trust between workers and employers, reducing the risk that workers hide their HIV status for fear of dismissal, and thus fail to obtain medical treatment. Examples of collective agreements that deal specifically with HIV/AIDS at the workplace are a 2002 accord between AngloGold and five trade unions and a 2003 agreement between De Beers and South Africa's National Union of Mineworkers.

Supranational levels

241. Despite the fact that the world is in the process of globalization, negotiation beyond the national level is still a rare phenomenon. This section first considers agreements between multinational enterprises (MNEs) and international trade union organizations, and then looks at other forms of supranational bargaining and social dialogue.

International framework agreements

242. An important recent development in labour relations has been the emergence of global social dialogue, including in the form of framework agreements concluded between individual multinational enterprises and global union federations (GUFs). At least 27 such accords have been signed since the early 1990s, most of them in the past five years (see table 3.8). The template for these agreements is often the ILO Declaration on Fundamental

Table 3.8. International framework agreements

Multinational enterprise	Year	Global union federation (branch)	Principles of ILO Conventions mentioned: (*) by number (**) not by number	Formal structures and procedures to administer the agreement	Applicability to subcontractors and/or suppliers
Accor Group (France)	1995	IUF (Hotels)	(*) 87, 98, 135	Any difficulties in implementation or interpretation are discussed together, but there is no institutionalized committee.	
Danone Group (France)	2 in 1989 1 in 1992 2 in 1994 1 in 1997	IUF (Food)	(*) 87, 98, 135(**) 100, 111		
IKEA (Sweden)	The 1998 agreement was transformed into a procedural agreement and the substance was placed in a code of conduct in 2001	IFBWW (Furniture)	(**) 87, 98, 100, 111, 138, 29, 105	Joint meeting twice a year. The company reports on progress, the IFBWW reports any contraventions of the code of conduct. The company will then review the matter and propose appropriate measures.	Applies only to suppliers.
Statoil (Norway)	1998, revised in 2001	ICEM (Oil industry)	(*) 87, 98, 100, 111, 138, 29, 105	Joint meeting once a year to discuss issues with a view to jointly agreeing actions.	Also applies to subcontractors and licensees.
Faber-Castell (Germany)	2000	IFBWW (Office material)	(*) 87, 98, 135, 100, 111, 138, 29, 105	A committee will monitor the implementation of the agreement. The Monitoring Committee will be equally composed of representatives from Faber-Castell and IG Metall/IFBWW. It will meet at least every two years.	
Freudenberg (Germany)	2000, prolonged in 2002	ICEM (Chemical industry)	(*) 87, 98, 100, 111, 135, 138, 29, 105	Consultations once a year. This includes monitoring the agreement reached. Both sides meet immediately in the event of conflict or violation of the agreement.	
Hochtief (Germany)	2000	IFBWW (Construction)	(**) 87, 98, 100, 111, 138, 182, 29, 105	The IFBWW, IG Bau or any trade union can report contraventions to the company's board if agreement is violated. The company has an officer for the application of the code of conduct. Questions of clarification will be handled jointly by the signing partners.	Applies to contractual partners. These, in turn, shall ensure that the agreement is adhered to by any of their contractual partners.
Carrefour (France)	2001	UNI (Retail industry)	(*) 87, 98, 135(**) 138, 182, 29, 105	Company and UNI agree to monitor implementation jointly.	Applies to suppliers.
Chiquita (United States)	2001	IUF (Agriculture)	(*) 87, 98, 135, 100, 111, 29, 105, 138, 182	Signing partners are informed by company of major changes. Review committee meets at least twice a year to monitor implementation, including by suppliers and subcontractors.	Company requires its suppliers, contract growers and joint venture partners to provide reasonable evidence that they respect national legislation and the minimum labor standards outlined in the agreement.

Multinational enterprise	Year	Global union federation (branch)	Principles of ILO Conventions mentioned: (*) by number (**) not by number	Formal structures and procedures to administer the agreement	Applicability to subcontractors and/or suppliers
OTE (Greece)	2001	UNI (Telecommunication)	(*) 87, 98, 135, 100, 111, 29, 105, 138, 182	Annual meeting. If there are problems with interpretation or application of agreement, a joint monitoring group is set up.	Applies to contractors, subcontractors and suppliers.
Skanska (Sweden)	2001	IFBWW (Construction)	(*) 87, 98, 135, 100, 111, 29, 105, 138, 182	Reports on compliance and any infractions which cannot be resolved through discussions in the workplace will be addressed by an application group. Site visits are organized at least once a year. If disagreement persists, a joint arbitration board is convened.	Suppliers should be informed of the agreement.
Telefonica (Spain)	2000, agreement and subsequent code of conduct.	UNI (Telecommunication)	(**) 87, 98	Appropriate bodies are set up for workers' participation in decision-making. Joint meeting held once a year for senior representatives of the signing parties to supervise compliance with the agreement.	
Merloni Elettrodomestici (Italy)	2001	IMF(Domestic appliances)	(*) 87, 98, 135, 100, 111, 29 105, 138, 182	Monitoring shall be entrusted to the National Joint Commission already provided for in the prevailing enterprise agreement.	Applies to suppliers in respect of Conventions Nos. 29 and 138.
Endesa (Spain)	2000, updated in 2002	ICEM (Power industry)	(**) 87, 98	Participation of ICEM representative in annual meetings between Endesa and local trade unions and six-monthly joint meetings with signatory trade union representatives.	
Ballast Nedam (Netherlands)	2002	IFBWW (Construction)	(**) 87, 98, 100, 111, 29, 105, 138, 182	Joint committee meets annually to review implementation. Partners report conventions to the Executive Board of the company.	Applies to contractual partners.
Fonterra (New Zealand)	2002	IUF (Dairy industry)	(*) 87, 98, 135, 100, 111, 29, 105, 138, 182	A joint review committee meets annually. An extraordinary meeting of the committee may be convened at the request of either party in the event of a situation requiring urgent discussion.	Company will inform joint venture partners of Fonterra's obligations under the agreement.
Volkswagen (Germany)	2002	IMF (Auto industry)	(**) 87, 100, 111, 29, 105, 138, 182	The global works council and management representatives discuss implementation.	Company supports and expressly encourages its contractors to take its declaration into account in their own corporate policy.

Multinational enterprise	Year	Global union federation (branch)	Principles of ILO Conventions mentioned: (* by number (**) not by number	Formal structures and procedures to administer the agreement	Applicability to subcontractors and/or suppliers
Norske Skog (Norway)	2002	ICEM (Paper)	(* 87, 98, 135, 100, 111, 29, 105, 138, 182	Unresolved complaints will be referred to the ICEM Brussels office which will raise the matter with the company's corporate management. Annual joint meeting to review implementation and impact of the agreement.	Applies to all company operations where the company has direct control as owner. Where the company does not have a controlling interest, it will use its fullest influence to secure compliance with the agreement. The company will notify its subcontractors and suppliers of the agreement and encourage compliance with its standards.
AngloGold (South Africa)	2002	ICEM (Mining)	(* 87, 98, 100, 111, 29, 105, 138, 182	Joint meeting annually. A subcommittee looks at issues that cannot be resolved at local or national level.	Applies to operations, wherever situated, over which the company has direct managerial control.
DaimlerChrysler (Germany – United States)	2002	IMF (Auto industry)	(**) 87, 100, 111, 29, 105, 138, 182	Corporate management will regularly report to and consult with the international employee representatives on social responsibility of the company and the implementation of these principles.	Suppliers are encouraged to implement equivalent principles in their own companies. DaimlerChrysler expects its suppliers to incorporate these principles as a basis for relations with DaimlerChrysler.
Eni (Italy)	2002	ICEM (Energy)	(* 87, 98, 135, 100, 111, 29, 105, 138, 182	Annual joint meeting. In the event of violations of the agreement, the parties shall notify each other of the fact in timely fashion.	With regard to activities assigned to contractors, the company shall formulate suitable guarantees against possible violations within the framework of existing contractual relations.
ISS (Denmark)	2003	UNI (Property services)	(* 87, 98, 135, 100, 111, 29, 105, 138, 182	Implementation of the agreement is monitored jointly through regular dialogue. Meetings held whenever needed. Disagreement on implementation is examined jointly and recommendations made to the parties concerned.	Company will put the principles of this document into practice through its corporate code of conduct. This code pertains to suppliers and customers. Compliance will be monitored.
Leoni (Germany)	2003	IMF (Wire and cable manufacturing)	(* 87, 98(**) 100, 111, 29, 105, 138, 182	Implementation and compliance with these principles will be reported on and discussed during the annual European Works Council meetings.	Company supports and encourages its business partners to take its declaration into account in their own corporate policy.

Multinational enterprise	Year	Global union federation (branch)	Principles of ILO Conventions mentioned: (*) by number (**) not by number	Formal structures and procedures to administer the agreement	Applicability to subcontractors and/or suppliers
GEA (Germany)	2003	IMF (Engineering)	(*) 87, 98, 100, 111, 138, 182, 29, 105	Information on problems or amendments will be exchanged and discussed at least once a year between the parties. This exchange of information will take place in the European Works Council.	Company expressly supports and encourages its business partners to consider the agreed codes in their corporate policy.
SKF (Sweden)	2003	IMF (Manufacturing)	(*) 138(**) 87, 98, 100, 111, 29, 105, 135	Group management and the World Works Council presidium will regularly supervise the observance of the code of conduct.	Suppliers are encouraged to adhere to similar codes.
H&M (Sweden)	2003	UNI (Retail industry)	(*) 87, 98, 135, 29, 105, 138, 182, 100, 111	H&M and UNI jointly responsible for implementation.	
Rheinmetall (Germany)	2003	IMF (Defense, automotive, electronics industry)	(*) 29, 87, 98, 100, 105, 111, 138, 182	All employees have the right to address issues and problems related to the agreement. The parties exchange information on problems or amendments at least once a year, currently within the company's European Works Council.	Partners are encouraged to take the agreed guidelines into account in their own corporate policy.
International employers' organizations:					
International Maritime Employers' Committee (IMEC)	2001 agreement covering seafarers on flag-of-convenience ships	ITF			
IMEC and International Mariners' Management Association of Japan	2003 agreement covering seafarers on flag-of-convenience ships	ITF			

ICEM = International Federation of Chemical, Energy, Mine and General Workers' Unions; IFBWW = International Federation of Building and Wood Workers; IMF = International Metalworkers' Federation; ITF = International Transport Workers' Federation; IUF = International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations; UNI = Union Network International.

Principles and Rights at Work. For some companies and unions, framework agreements are a response to today's world of global production chains, greater international trade and increased economic interdependence. While they do not fit neatly into any single category of labour relations, framework accords can be viewed as a form of international social dialogue. They differ from codes of conduct, not least in that they are the product of negotiations between trade unions and management. Nonetheless, framework agreements are sometimes viewed as part of a wider trend toward improved corporate social responsibility. As noted in many of these agreements, they do not replace collective bargaining at the national or local level.

243. Unlike local and national-level agreements, which generally cover terms and conditions of employment, framework agreements aim to ensure the respect of basic principles, such as freedom of association and collective bargaining, throughout the operations of multinational companies. Most of the agreements signed to date cover subsidiaries and some extend to joint ventures, suppliers and subcontractors. In countries where workers encounter obstacles to freedom of association, the existence of a framework agreement, sometimes combined with intervention by central management, can help resolve such problems and increase union coverage, as already noted in Chapter 2 for the banana sector in Latin America. Because many framework agreements have follow-up procedures and mechanisms to deal with disputes that cannot be solved at the local level, they can also help to improve dialogue between management and workers throughout the company.

244. These agreements date back to discussions initiated as early as 1985, when the Danone Group and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) first established supranational labour relations. Annual meetings between the social partners since 1986 led to the adoption of a series of agreements between 1989 and 1997, notably the key agreement on trade union rights in 1994. The Joint Understanding signed in 1997 defines the principles that the enterprise agrees to respect "in the event of changes in business activities affecting employment or working conditions".⁴⁵ It enabled Danone to maintain its biscuit production plant in Hungary, despite restructuring in that sector. The three-month period of preliminary consultations under the agreement – when counter-proposals from the union regarding restructuring proposed by management are considered – brought up the alternative proposal that allowed the preservation of the factory. The quality of labour relations developed in the enterprise was key to managing the restructuring process, during which management enjoyed the support of the IUF in the face of boycott threats made by some national unions and NGOs. As a result of this positive experience, the two parties organized meetings in each work site of Danone, in addition to a regular system of consultation through its group-level bipartite Information and Consultation Committee, to anticipate well in advance any negative employment effects of future restructuring. Since the Danone/IUF agreement, the growth in international framework agreements has been significant, with nine signed during 2002, and a number under negotiation in 2003.

245. The broad scope of application of the framework agreement allows the recognition and application of the right to organize and negotiate in workplaces that may not otherwise have given effect to this principle. For example, under the 1995 agreement between the IUF and the Accor Group on trade union rights, the company "undertakes not to oppose efforts to unionize its employees", thus allowing national affiliates of the IUF to organize in

⁴⁵ IUF framework agreements may be consulted at www.iuf.org.uk.

the hotels belonging to the MNE. Some agreements (such as that signed between Merloni Elettrodomestici and the International Metalworkers' Federation (IMF) in 2001) provide for monitoring to ensure that the agreement is also respected among suppliers, which risk cancellation of their contract in the event of serious violations. Some agreements provide for other means of extending their application. The agreement signed between the IUF, the New Zealand Dairy Workers Union and Fonterra stipulates that the enterprise will inform its joint venture partners of its obligations under the agreement. Fonterra entered into an alliance with Nestlé to establish Dairy Partners Americas in 2002; thus, although Nestlé has not concluded an international framework agreement, it is bound by the conditions of the agreement, on the strength of its joint venture with Fonterra.

246. Some agreements were reached specifically to resolve conflicts. For example, the agreement between the IUF and Interbrew concluded in September 2002 helped to end the strike that had been under way for four months in the MNE's plant located in Serbia and Montenegro. The adoption of a new collective agreement is foreseen for 2003, under the guidance of the IUF and the international management, to ensure peaceful labour relations. The agreement between the IUF, the Latin American Coordinating Committee of Banana Workers' Unions (COLSIBA) and Chiquita – signed at the ILO in Geneva – allowed the establishment of a framework for preventing and resolving conflict in a historically conflictual sector, by providing for respect for freedom of association and collective bargaining and setting up a committee of the three signatory parties to monitor its application and identify sources of conflict. As mentioned earlier, application of the agreement by Chiquita suppliers facilitated collective agreements and organizing drives in Colombia and Honduras. The company's commitment under the agreement includes rights training (covering 14,000 employees in 2002) and communication mechanisms. "Corporate responsibility cannot be established without the understanding, support and participation of workers and their representatives", said George Jaksch, Senior Director of Corporate Responsibility and Public Affairs at Chiquita International Services Group.⁴⁶

247. Even if the framework agreement is not specifically aimed at overcoming a conflict, and does not contain a particular process for conflict resolution, it helps to achieve this purpose. Thus, it was on the basis of a framework agreement between Statoil and ICEM that the long-standing conflict at the Crown Central Petroleum refinery in Pasadena, Texas, was resolved in January 2001, even though the agreement did not apply to business partners at the time. A lockout of unionized workers at the site dated back to 1996, and local negotiations between the union and the management were frozen. In keeping with the spirit of the agreement, as updated in 2001, representatives of the Norwegian Oil and Petrochemical Workers' Union (NOPEF), affiliated to ICEM, asked Statoil to apply the principles of the agreement to its subcontractor. Statoil asked the United States company to re-establish normal labour relations with the unions if it wanted its refining contract renewed and to maintain and develop good commercial relations with the MNE.

248. More recently, in 2003, the framework agreement signed in 2002 between DaimlerChrysler and the IMF facilitated the resolution of a conflict at a supplier company in Turkey that was envisaging the termination of 200 workers. The national company signed its first collective agreement with the local union, and negotiated a deal that guaranteed full-time work and pay to

⁴⁶ Presentation at the International Workers' Symposium on Decent Work in Agriculture, organized by the ILO Bureau for Workers' Activities, Geneva, 15-18 Sep. 2003.

the majority of the workers, while providing a social plan for those who could not be retained.

249. International framework agreements can be reached in various sectors. Union Network International (UNI) has signed five framework agreements with companies in the retail, telecommunications and property services sectors. This wide range of sectors reflects the varied membership of UNI, which was created in 2000 through a merger of four international trade union federations and represents service and high-tech workers in a number of different industries. For UNI, framework accords provide a means of promoting fundamental rights in different contexts and countries. Four of the five accords cover a number of different workplace issues and rights, while UNI's agreement with Carrefour deals solely with freedom of association and collective bargaining. UNI and Carrefour are jointly responsible for implementing the agreement.

250. Framework agreements provide innovative means of ensuring freedom of association and collective bargaining in the special context of globalization. An important breakthrough is the agreement reached between power MNE Endesa and ICEM, establishing the first global management-union council in the sector. It consists of one union representative from each country where Endesa has enterprises under its direction, officials of the signatory unions and the company human resource director. This council discusses union rights, safety and health, vocational training, and other areas of labour relations, as well as the company's business prospects and employment trends.

251. Thus, a new trend may be in the making, through the international framework agreements reached and those currently in the process of negotiation. This is not collective bargaining in the traditional sense, and international action does not supplant collective bargaining at national and local levels. Rather, framework agreements help to set the minimum conditions based on fundamental principles and rights at work, in particular the right to organize.

252. The future spread of international framework agreements will be determined to a significant degree by the interplay of different employers' views on the subject, as well as on the global union federations' ability to ensure close collaboration with affiliated trade unions. Leading global enterprises and trade unions can weave together new negotiating patterns that have considerable potential. At the same time, being a relatively new phenomenon, framework agreements are considered cautiously in some employer circles. The International Organisation of Employers (IOE) suggests that companies bear in mind the potential effect of concluding global agreements in terms of legal risk, operational efficiency and reputation.⁴⁷

Other forms of supranational negotiation and social dialogue

253. Collective bargaining that goes beyond national borders can occur within the framework of regional integration. The best known and most evolved case is that of the EU (see box 3.4). Agreements have already been concluded on parental leave, part-time work, and fixed-term contracts. The framework agreement on telework, reached in July 2002, will be given effect directly by the signatories, and not through a Directive as has been the case in the past. The first three agreements are part of the body of European law (*acquis communautaire*) that will have to be applied by the countries acceding to the EU. Law is just the beginning; bringing their practice into line as

⁴⁷ "Update on global agreements", in *European Industrial Relations Review*, No. 353, June 2003, p. 30.

well entails major changes in labour relations. An important part of this process is preparing the social partners to adopt the principles of freedom of association and collective bargaining as practiced in the EU. A number of trade unions in the ten future member countries⁴⁸ are already members of the European Trade Union Confederation (ETUC), and some of the accession countries⁴⁹ have employers' organizations that have affiliated to the Union of Industrial and Employers' Confederations of Europe (UNICE).

254. Such bilateral and multilateral exchange of information, advice and training between employers' and workers' organizations will contribute to building new labour relations that will in turn promote better integration in an enlarged EU. European examples of supranational coordination include the Guideline on the coordination of collective bargaining adopted by the ETUC in December 2000 to reduce wage divergence and avoid social "dumping" in Europe.⁵⁰ At the sectoral level, the European Metalworkers' Federation (EMF) has sought to coordinate the collective bargaining that occurs at national level by establishing guidelines for negotiation to avoid unfair competition based on pay and working conditions.

255. Another means of securing respect for principles and rights at work, which is not necessarily negotiated or legislated, is voluntary initiatives to promote greater social responsibility on the part of employers. While these may not always come under the heading of social dialogue, they need to be mentioned here, since in some cases they have resulted in greater respect for the principles at issue, and can also be a form of social dialogue, depending on the extent to which consultation and negotiations are part of the process of their design and implementation.

256. Recent years have seen a proliferation of voluntary social, economic and environmental initiatives by companies, especially multinationals, sometimes in conjunction with other groups. Often termed "corporate social responsibility", this area encompasses a wide range of instruments, including codes of conduct and social labelling, auditing and reporting.⁵¹ As of November 2003, the ILO's business and social initiatives database (BASI)⁵² registered over 300 initiatives, compared with 200 in 1998. This database does not contain all existing corporate codes, which could well number into the thousands.

257. Voluntary efforts by companies can help to promote legally binding and non-binding principles enshrined at national and international level, by generally raising awareness about the issues involved by making specific reference to principles such as those contained in the ILO Declaration, or by putting in place mechanisms for the verification of compliance. The ILO's research shows that specific reference to international labour standards is much more likely when corporate initiatives are not unilateral but include other actors, such as trade unions and NGOs. For example, whereas about

⁴⁸ Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

⁴⁹ Cyprus, Czech Republic, Hungary, Malta, Poland and Slovakia.

⁵⁰ European Foundation for the Improvement of Living and Working Conditions: "ETUC Executive Committee endorses Guideline on collective bargaining coordination", *EIROOnline*, at www.eiro.eurofound.ie/2001/01/inbrief/eu0101291n.html.

⁵¹ For an in-depth review of such initiatives, see M. Urminsky (ed.): *Self-regulation in the workplace: Codes of conduct, social labelling and socially responsible investment*, Management and Corporate Citizenship Programme Working Paper No. 1 (Geneva, ILO, 2001).

⁵² www.ilo.org/basi.

Box 3.4**European social dialogue: Towards greater autonomy of the social partners**

In October 1991, the European social partners agreed that consultation be mandatory on social and labour legislation, and that the Council of Europe be given the power to transpose agreements between European-level social partners into European Community law. This agreement was included virtually unchanged in the Protocol on Social Policy to the Maastricht Treaty on European Union. The social partners can also opt to replace the traditional legislative route by the negotiation and conclusion of framework agreements, particularly on issues raised during consultations. At the request of the social partners, these can then be converted into Council Directives, i.e. European law.

The first European framework agreement, reached in 1995, was on parental leave; this was followed in 1997 by an agreement on part-time work, and in 1999 by an agreement on fixed-term work. In each case, the social partners asked the Commission to make them binding on Member States by adopting them as Council Directives.

The most recent agreement of July 2002 on telework is notable on a number of accounts. It reflects a more independent bipartite stance by the social partners, who initiated these negotiations without waiting for the Commission to invite them to do so; neither did they request that the agreement be transposed into a Directive. Rather, it will be given effect in the Member States through the modalities of collective bargaining at national level, within a period of three years from its signature. This is the first time the social partners availed themselves of the possibility allowed by the Social Protocol for agreements to “be implemented ... in accordance with the procedures and practices specific to management and labour and the Member States” (article 4(2)). The new agreement is designed to respond to, and to promote, the shift to the knowledge economy, and reconcile the needs for flexibility and security which both employees and companies need. Finally, it concerns categories of workers that are difficult to organize and cover by collective bargaining. It is estimated that there are 10 million teleworkers in Europe. These are typically a combination of home-based, self-employed, mobile and casual workers, with a high proportion of women. Anna Diamantopoulou, the European Commissioner for Employment and Social Affairs, said that the landmark agreement, “shows the coming of age of European social dialogue”.

Source: http://europa.eu.int/comm/employment_social/news/2002/jul/145_en.html .

half of the multi-stakeholder⁵³ initiatives surveyed by the ILO referred to Conventions Nos. 87 and 98, only about one in ten private codes did.⁵⁴ By comparison, all framework agreements concluded to date refer in one way or other to trade union rights. Most cite Conventions Nos. 87 and 98, while others recognize the principles underlying these Conventions or mention international labour standards in general.

258. However, codes or corporate social responsibility policies sometimes contain language that can be interpreted as undermining international labour

⁵³ In the business context, the term “stakeholder” means “any individual or group who can affect or is affected by the actions, decisions, policies, practices or goals of the organization”. A.B. Carroll: *Business and society: Ethics and stakeholder management* (Cincinnati, Ohio, United States, South-Western College Publishing, 1996), p. 74.

⁵⁴ ILO: *Information note on corporate social responsibility and international labour standards*, Governing Body doc. GB.288/WP/SDG/3, 288th Session, Geneva, Nov. 2003, graphs 1 and 2.

standards.⁵⁵ Even when this is not the case, verification of compliance with codes and policies can be problematic.

259. While there are a growing number of initiatives concerned with accreditation, certification, monitoring and inspection in the field of corporate social responsibility, it is difficult to measure their impact. There is so far no overall agreement on how to use the techniques involved in accreditation and certification programmes, such as on-site inspections, document reviews and interviews with workers, management and civil society organizations. Programmes are diverse and thus difficult to compare. Detailed public information and general studies are limited. Preliminary research shows that most of the methodologies used for such initiatives are still in early stages of development and consequently cannot ensure adherence to labour standards.⁵⁶

260. The rapid expansion of monitoring and certification schemes also raises practical problems. Manufacturers supplying a variety of multinationals can find themselves subject to multiple and repeated inspections. There can also be a certain amount of confusion among consumers about various labels or claims. Individual workers can face dilemmas due to the lack of clarity over the degree of independence from management of those carrying out audits.

261. In any event, neither employers' nor workers' organizations view corporate social responsibility as a substitute for legislation and government action to ensure that laws are enforced.⁵⁷ Although perceptions and definitions of corporate social responsibility vary, both employers and unions have tended to see it as one means of spreading good practice.

262. Cooperation between employers and unions on corporate social issues is not new. The ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was adopted in 1977 and updated in 2000. The OECD Guidelines for Multinational Enterprises were adopted in 1976. The OECD approved further guidelines in 2000, along with enhanced implementation procedures.⁵⁸ The ILO and OECD instruments are complementary, and both include the right to freedom of association and collective bargaining.

263. The two principles are also contained in the Global Compact. As noted in *Your voice at work*,⁵⁹ this grew out of the challenge issued to business leaders at the 1999 World Economic Forum in Davos by United Nations Secretary-General Kofi Annan to "embrace and enact" universally agreed values and principles regarding human rights, labour and the environment. As of August 2003, more than 1,200 companies were participating in the Global Compact – however, it is not clear what proportion of these give real effect to the principles in question.

264. Launched in 1998, the London-based Ethical Trading Initiative (ETI) is another well-known initiative in which companies, unions and NGOs work together to identify and promote good practice. The standards set out in the

⁵⁵ *ibid.*, para. 6.

⁵⁶ *ibid.*, paras. 9 and 14.

⁵⁷ See International Organisation of Employers (IOE): "Corporate social responsibility: An IOE approach" (Mar. 2003), which states that: "CSR is not an alternative to regulation. Governments must be responsible for the implementation and enforcement of national laws." See also J. Baker: "Social responsibilities of business", in Commonwealth Business Council: "Managing Globalisation: Challenges for business and governments", Sep. 2002; www.icftu.org: "However, they [businesses] cannot replace and should not be expected to replace the fundamental responsibility of governments to ensure the protection of the rights of all citizens."

⁵⁸ For more detail see Trade Union Advisory Committee to the OECD: *A users' guide for trade unionists to the OECD Guidelines to Multinational Enterprises* (Paris).

⁵⁹ *Your voice at work*, op. cit., pp. 18-19.

ETI's base code call for respect for the right to freedom of association and collective bargaining. Under the code, in situations "where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining".

265. The plethora of codes, initiatives and other instruments in the field of corporate social responsibility reflects a growing interest on the part of a variety of actors in labour and human rights issues. As the ILO's research shows, such efforts are much more likely to encompass and promote freedom of association and collective bargaining when developed and applied in cooperation with trade unions. Moreover, the process in which trade unions, companies and others work together on corporate social responsibility can help to improve dialogue and understanding of the issues related to rights at work. This underscores the need for further capacity building on the union side relating to multinational corporations. The involvement of trade unions also reduces the risk that codes or other initiatives could undermine international labour standards.

Balancing efficiency and equity in a fast-changing world

266. This chapter has briefly reviewed a world of organized labour relations that has seen remarkable changes while reflecting the enduring value of dialogue and negotiation between freely organized employers' and workers' associations. Fundamental principles and rights at work remain a solid foundation for achieving a balance between efficiency and fairness. The emergence of the first global labour-management agreements and the explosion of interest in corporate social responsibility bear out the contemporary relevance of these core values of the ILO.

4. Encouraging progress: Technical cooperation to strengthen and extend freedom of association and collective bargaining

ILO action under the Declaration

267. The adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998 opened a new window of opportunity for the ILO's work and operational activities to defend, promote and give effect to freedom of association and collective bargaining. The Declaration signalled renewed commitment on the part of all member countries and the global networks of employers' and workers' organizations – and their willingness to devote resources – to strengthening and extending freedom of association and collective bargaining. The Declaration specifically “recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs ... (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions; (b) by assisting those Members not yet in a position to ratify ... in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and (c) by helping the Members in their efforts to create a climate for economic and social development”.¹

268. In the period since the Declaration was adopted, a number of member States that have not ratified all fundamental Conventions have used the annual review procedure to express their need for technical assistance or advice.² Other governments and employers' and workers' organizations have done this by contacting ILO staff in the field and at headquarters. Countries

¹ Para. 3 of the Declaration. See also para. 2 of the Follow-up in the Annex to the Declaration, which refers to assistance by the Organization to help Members to implement the fundamental principles and rights.

² For a summary of the requests for technical cooperation in the last two rounds see ILO: *Review of annual reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Part I: Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports*, Governing Body doc. GB.283/3/1, 283rd Session, Geneva, Mar. 2002, table 6, and idem, doc. GB.286/4, 286th Session, Geneva, Mar. 2003, table 5.

that have ratified all eight core Conventions have also sought help. This chapter of the Report reviews the technical cooperation activities undertaken in response to these requests, and suggests areas for future work based on lessons learned.

Action Plan

269. The first Action Plan under the Declaration follow-up was submitted to the Governing Body in November 2000³ and focused on freedom of association and collective bargaining, following publication of the first Global Report, *Your voice at work*. It built on earlier or ongoing work of the Office and sought to give added impetus to this work. It described a multidisciplinary approach to promoting freedom of association and collective bargaining, reflecting the extent to which expertise and activities related to this fundamental principle are interrelated and spread throughout the ILO. It is possible to draw a parallel with the InFocus Programme on Child Labour (IPEC), which gave new focus and vigour to the ILO's longstanding activities to combat child labour. In contrast to IPEC, however, the 2000 Action Plan was not entrusted to a single unit. Although under the overall responsibility of the InFocus Programme on Promoting the Declaration, the Action Plan was implemented by a number of units at headquarters and in the field, in particular at the project level, in close cooperation with the InFocus Programme on Social Dialogue, Labour Law and Labour Administration (IFP/DIALOGUE).

270. The Action Plan listed some 50 countries that had asked for technical assistance, along with those that requested it by region or subregion.⁴ During the past four years, many, although by no means all, of these countries have negotiated projects or other activities with the Office (see table 4.4). The availability of donor funds (see tables 4.1, 4.2 and 4.3) meant that the Office was able to launch a number of sizeable projects of several years' duration. As shown by table 4.3, about half of the external support has gone into projects concerned with the promotion of freedom of association and collective bargaining. Africa and Asia have been the regions where most of the Declaration projects were undertaken (see table 4.2).

271. As pointed out earlier in this Report, creating the conditions in which workers and employers can exercise freedom of association and collective bargaining entails action on a number of different fronts. It is necessary to foster political will, improve legislation and develop and strengthen the institutions involved in delivering these rights. Key among these are employers' and workers' organizations, labour administrations and negotiation and dispute resolution facilities.

272. Technical cooperation can help in this process by developing the capacity of all those involved, from governments to individual workers and employers, to realize freedom of association and collective bargaining. The phrase "capacity building" is often used to refer to such technical assistance because it encompasses a wide range of activities. Advice, advocacy, awareness raising, information gathering and dissemination and training can all serve to improve the capabilities of institutions, organizations, individuals and society as a whole. To quote the UNDP: "Capacity development is at the core of development ... Capacity development is a long-term process, not

³ ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Priorities and action plans for technical cooperation*, Governing Body doc. GB.279/TC/3, 279th Session, Geneva, Nov. 2000.

⁴ *ibid.*, Appendix I.

Table 4.1. Donor-funded programmes, projects and activities approved under the Declaration, by donor, October to September each year, allocation basis (in thousand US\$ – rounded figures)

	France	Germany	Ireland	Italy	Japan	Netherlands	UNDP	United Kingdom	United States
1999-2000	805	0	0	0	200	2 220	0	121	20 000
2000-01	0	431	0	0	186	242	91	5 068	20 000
2001-02	597	501	0	0	163	3 000	0	0	10 000
2002-03	2 225	0	601	103	0	387	0	200	6 328
Total	3 627	932	601	103	549	5 849	91	5 389	56 328

Source: ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Priorities and action plans for technical cooperation*, Governing Body doc. GB.288/TC/4, 288th Session, Geneva, Nov. 2003, Appendix.

Table 4.2. Donor-funded programmes, projects and activities approved under the Declaration, by region, October to September each year, allocation basis (in percentages – rounded figures)

	Africa	Americas	Arab States	Asia and Pacific	Europe	Interregional	Core support
1999-2000	24	18	0	46	0	5	7
2000-01	14	12	5	15	8	23	23
2001-02	14	20	0	31	4	14	18
2002-03	47	13	0	15	17	0	8

Source: *ibid.*

Table 4.3. Donor-funded programmes, projects and activities approved under the Declaration, by category of principle and right, October to September each year, allocation basis (in percentages – rounded figures)

	Freedom of association	Forced labour	Child labour*	Non-discrimination	More than one category	Total US\$ (000)
1999-2000	55	6	0	21	17	23 345
2000-01	30	4	2	0	65	26 016
2001-02	47	5	0	7	42	14 262
2002-03	47	20	0	0	33	9 844

* Child labour is covered by IPEC as far as technical cooperation is concerned. The small allocation in 2000-01 went towards the drafting of the Global Report *A future without child labour*, Report I (B), International Labour Conference, 90th Session, Geneva, 2002.

Source: doc. GB.288/TC/4, *op. cit.*

amenable to delivery pressures, quick fixes and short-term results ... Capacity development means learning”.⁵

273. Accordingly, this chapter looks mainly at the ILO’s various technical cooperation activities in terms of capacity building. As reflected in table 4.4, the ILO’s work is divided into a number of different categories: labour law reform, labour administration and dispute settlement, and strengthening the ability of employers’ and workers’ organizations to engage in organizing and bargaining collectively and awareness raising. “Capacity” is explained briefly below as it pertains to these different areas of ILO expertise. This chapter also addresses efforts to reach out to less organized workers and employers.

274. The main focus in this chapter of the Report, in line with the Declaration follow-up,⁶ is on the work launched under the November 2000 Action Plan. However, ILO headquarters and field units carry out many other activities in the area of freedom of association and collective bargaining. For

⁵ UNDP: *Human Development Report 2003: Millennium Development Goals: A compact among nations to end human poverty* (New York and Oxford, Oxford University Press, 2003), box 8.5, p. 151.

⁶ See Annex to the Declaration, para. III.A(1).

Table 4.4. Ongoing Declaration-related technical cooperation activities under the Action Plan of 2000 on freedom of association and collective bargaining, by subject, means of action and responsible ILO unit

Country or region (and source of funds)	Labour law reform (LLR)	Capacity building, including of tripartism			Labour administration	Dispute settlement	Awareness raising	Main target
		Government	Employers' organization	Workers' organization				
AFRICA								
East Africa: Kenya, United Republic of Tanzania, Uganda (USDOL)	TAS in Kenya plus support to LLR in United Republic of Tanzania and Uganda	Capacity building and training on dispute prevention. Management training for senior and mid-level officials	Training in modern HR management techniques, conflict resolution and collective bargaining	Training to improve organization skills as well as negotiation and collective bargaining skills	Capacity building and training of labour officers in inspection and dispute resolution	Training G, E and W on conciliation and mediation, as well as arbitration for the labour courts	Local radio programmes, press and media coverage, web pages	GOV, E-ORG, EMP, W-ORG, and general population
Southern Africa: Botswana, Lesotho, Malawi, Zambia (USDOL)	TAS in Zambia. User-friendly handbooks on labour legislation in all countries	Capacity building and strategic policy planning	Training to improve capacity to service members. Training in collective bargaining and negotiation skills	Training to improve understanding of enterprises, negotiation, collective bargaining, and organization skills	Labour administration audits, provision of equipment, development of databases and training of inspectors	TAS to reduce reliance on the statutory system. Review of the procedures of the labour courts		GOV, E-ORG and W-ORG
West Africa: Benin, Burkina Faso, Mali, Mauritania, Niger, Togo (France and UNDP)	Studies covering all four Declaration categories. National tripartite meetings to draw up action plans, followed by TAS and training on modernizing labour law, strengthening governmental as well as employers' and workers' organizations' capacities, training of labour inspector and judges							GOV, E-ORG and W-ORG
– in addition Benin, Burkina Faso, Niger, Togo and Senegal (France)				TAS on representativity				W-ORG, Togo: EPZ
– in addition Mali (France)		Studies on equal pay						PS and GENDER
Morocco (USDOL)		TAS on management of labour administration	Training on collective bargaining and negotiation skills		Training of labour inspectors	Training in dispute settlement		GOV, E-ORG and W-ORG
Nigeria (USDOL)	Support to tripartite labour law reform task force		Promoting bipartite and tripartite consultation		Training of labour inspectors	Capacity building of the Industrial Court and the Arbitration Panel		GOV, E-ORG and W-ORG

Country or region (and source of funds)	Labour law reform (LLR)	Capacity building, including of tripartism			Labour administration	Dispute settlement	Awareness raising	Main target
		Government	Employers' organization	Workers' organization				
ARAB STATES								
Arab States, GCC: Bahrain, Qatar, Saudi Arabia, United Arab Emirates (Regular budget)						Meetings, seminars, workshops	GOV	
Jordan (USDOL)	TAS on labour legislation	TAS on integrated annual and medium-term labour administration and labour relations strategies	Improved skills for bargaining at the national, sectoral and enterprise levels			Training on mediation and conciliation capacity of labour officers, workers' and employers' representatives	GOV, E-ORG and W-ORG	
AMERICAS								
Central America: Belize, Costa Rica, Dominican Republic, Guatemala, Honduras, Nicaragua, Panama, El Salvador (USDOL)		Training on collective bargaining and tripartism	Training on collective bargaining and enterprise-level best practices	Training on collective bargaining, negotiating skills		TAS on independent dispute settlement systems. Training of judges	Web pages, periodical	GOV, E-ORG and W-ORG
Americas, regional: Organization of American States (USDOL)					Studies on labour administration and adoption of national action plans		Newspaper, radio	GOV and general population
Brazil (France)				TAS on collective bargaining to promote equality				W-ORG
Caribbean (USDOL)		Support to tripartite national taskforces: TAS on model framework agreements; meetings and training to build trust and negotiation skills				Training on conflict prevention	Radio, newspaper, web site	GOV, E-ORG, EMP, W-ORG
Colombia (USDOL)		TAS on database and training on statistics	Training on best practices, building trust and negotiation skills			Training on alternative dispute settlement	UN radio programmes, dissemination of project information	GOV, E-ORG, W-ORG and general population

Country or region (and source of funds)	Labour law reform (LLR)	Capacity building, including of tripartism			Labour administration	Dispute settlement	Awareness raising	Main target
		Government	Employers' organization	Workers' organization				
EUROPE								
Belarus (Germany)				TAS on trade union education, communication and information tools				W-ORG
Bosnia-Herzegovina (RB/RBTC)	Translation of ILO labour law guidelines	Training on collective bargaining at provincial level						GOV, E-ORG and W-ORG
Bulgaria and Romania (Germany)	Bulgaria: right to strike Romania: freedom of association, etc.	TAS on collective bargaining at sectoral levels and in public services/enterprises				Bulgaria: TAS on independent system, and on conciliation/mediation bodies	Promotion of Declaration principles in secondary schools and on Internet	GOV, E-ORG and W-ORG
Ukraine (USDOL)	TAS and capacity building on new labour law	TAS on model collective agreement			Training for labour inspectors			GOV, E-ORG and W-ORG
Stability Pact countries: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Republic of Moldova, Serbia and Montenegro (France and Italy)		TAS and training on organizational skills, collective bargaining and social dialogue Establishment of network of officials to advise on trends in labour law and to exchange experience						GOV, E-ORG and W-ORG
ASIA/PACIFIC								
Bangladesh (USDOL)		Training on improving working conditions, FPRs and workers' education			Training on improving working conditions, FPRs and workers' education		Newspaper, radio	GOV, E-ORG, EMP
Cambodia (USDOL)	TAS on implementing regulations	Training of labour inspectors. TAS on factory monitoring	Training on workplace cooperation			TAS on arbitration system	Information on rights and opportunities for recourse	GOV, E-ORG and W-ORG

Country or region (and source of funds)	Labour law reform (LLR)	Capacity building, including of tripartism			Labour administration	Dispute settlement	Awareness raising	Main target
		Government	Employers' organization	Workers' organization				
Democratic Republic of Timor-Leste (USDOL)	TAS on laws and regulations	TAS on various forums for social dialogue	Training on organizational skills, collective bargaining and negotiation skills		Training of labour inspectors			GOV, E-ORG and W-ORG
Indonesia (USDOL)	Training on new legislation. Assistance with drafting of implementing regulations	TAS in union registration. Training of labour judges and related personnel	Training in organizational and collective bargaining skills. Set up bipartite committees in pilot enterprises. Training on gender sensitivity		Train labour inspectors	TAS on and training in new system of mediators/ conciliators	TV and radio programmes. National police: fundamental rights of workers	GOV, E-ORG, EMP, W-ORG, GENDER, and general population
Nepal (part of forced labour project) (USDOL)				TAS on unionization of agricultural workers				W-ORG, AGR
Viet Nam (USDOL)		TAS on strengthening provincial social dialogue bodies	Training on workplace cooperation and negotiation skills		Training of labour inspectors	TAS on national, provincial and enterprise-level dispute settlement		GOV, E-ORG, EMP, W-ORG, EPZs
INTERREGIONAL								
Interregional (USDOL)			Training of managers on social dialogue, equality, etc.					E-ORG, EMP
Interregional (Netherlands)			Meeting and training on Global Compact principles					EMP
Interregional (Netherlands)		Project to build up capacity of ministries, workers' and employers' organizations dealing with PRSP processes						GOV, E-ORG and W-ORG

Colour-coded according to responsible ILO unit as follows: □ DECLARATION – InFocus Programme on Promoting the Declaration; ■ NORMES – International Labour Standards Department; □ IFP/DIALOGUE – InFocus Programme on Social Dialogue, Labour Law and Labour Administration; ■ ACTRAV – Bureau for Workers' Activities; ■ ACT/EMP – Bureau for Employers' Activities; ■ Employment Sector.

TAS = technical advisory services; GCC = Gulf Cooperation Council; PRSP = Poverty Reduction Strategy Paper; FPRs = fundamental principles and rights; USDOL = United States Department of Labor; RB/RBTC = ILO regular budget and/or ILO regular budget for technical cooperation. Main targets are abbreviated as follows: GOV = Government; E-ORG = established employers' organizations; EMP = individual employers; W-ORG = established workers' organizations; PS = public servants; AGR = agricultural workers; GENDER = women workers and/or gender focus; EPZ = workers in export processing zones.

reasons of space, these are mentioned only selectively here.⁷ It is also not possible to refer to each project's actions in every field. Instead, the aim is to illustrate the kind of work being done by looking at specific projects, and to point out some early impact. While certain results are forthcoming in relatively short periods of time, most notably in the area of legislative change, many of these activities are an investment in the future and may not bear fruit until after the individual projects have been completed.

275. At the same time, it is recognized that relative success in projects does not necessarily translate into changes of nationwide scope – perhaps with the exception of successful labour law reform – and that such success is not irreversible. Externally assisted technical cooperation can provide good demonstration effects and capacity building of necessarily limited numbers of actors. Sustainable change, however, depends on the commitment of the government and the social partners in each country, and on how they negotiate the change process together in this often passionately debated area and achieve a strong joint ownership of the agreed course of action.

Labour law reform

276. Labour legislation, as noted earlier, is the foundation for respect of freedom of association and the effective recognition of the right to collective bargaining. National legislation translates the principle into an enforceable statutory right. It also provides protection in instances where employers and workers may not be strong enough to stand up for these rights. Legislation is not static; it can evolve to reflect changing circumstances. Thus, in the area of labour law, governments require capacity to draft, codify and revise legislation. This capacity is not limited to technical matters and knowledge of national and international comparative law. It may also involve the ability to weigh the socio-economic implications of various labour law provisions. Governments must also have the capacity to consult the social partners in the process of labour law formulation and revision, as well as in its application.

277. Labour law reform is an area in which the ILO has longstanding experience, based upon its constitutional obligation to provide such assistance upon request from member States. Approximately 80 items of national labour legislation have been revised since 1999, in 56 countries. At the 2003 session of the International Labour Conference, 27 ministers and senior Government delegates noted the usefulness of ILO cooperation with their countries in this field.

278. Substantive areas of law reform to underscore freedom of association and collective bargaining include:

- embodying fundamental principles and rights in new labour codes (for example, the Labour Code of the Democratic Republic of Timor-Leste, 2001; the Essential Labour Law in Kosovo, 2001, of Serbia and Montenegro);
- introducing the framework for negotiation for special categories of employees, such as those in the public service (for example, the United Republic of Tanzania's Public Service (Negotiating Machinery) Bill, 2003; Venezuela's Civil Service Act, 2002);

⁷ Further information is available on the web sites of the InFocus Programme on Social Dialogue, Labour Law and Labour Administration, and the Bureaux for Employers' and Workers' Activities at www.ilo.org/dialogue/actemp and www.ilo.org/dialogue/actrav, respectively.

- drafting of detailed regulations facilitating freedom of association and collective bargaining (for example, Cambodia's *Prakas* (Decree) on enterprise-level trade union representation and collective bargaining, 2001, and *Prakas* on the Arbitration Council, 2002);
- enactment of gender equality provisions, which help ensure that women have access to freedom of association and collective bargaining rights (for example, Act No. 205(1) of 2002 to provide for equal treatment between men and women with regard to employment and vocational training, Cyprus).

279. Procedural efforts to help labour laws deliver freedom of association and collective bargaining include:

- involving the social partners in deciding upon the scope and coverage of the law, and on particularly difficult provisions. In particular, this stage affects the extent to which laws address gender issues and special categories of workers who have tended to be excluded from these rights (see Chapter 2);
- following formal adoption or revision of a law, putting into place procedural rules and regulations to trigger mechanisms of recognition of employers' and workers' organizations and of the collective bargaining process (for example, ILO cooperation in elaborating the Draft Constitution of 2003 of the National Tripartite Labour Advisory Council in the Islamic Republic of Iran is helping to move the process ahead in that country);
- once a law has been adopted, informing the social partners of the duties, responsibilities, and opportunities provided for in the legislation and providing training in how best to utilize these provisions.

280. Declaration projects were involved in a number of labour law reform efforts. For example, Benin, Burkina Faso, Mali, Mauritania, Niger and Togo, which are covered by the French- and UNDP-funded project for supporting the application of the Declaration (PAMODEC), requested comprehensive studies on how to apply the eight core Conventions. This review, carried out by national experts, showed the need to revise certain labour code provisions, particularly in relation to freedom of association. Upon completion of legislative amendments, the project will help publish a compilation of the core Conventions, national legislation and relevant jurisprudence. This will be available for judges, labour inspectors, the social partners and others involved in the realization of organizing and bargaining rights.

281. The project Strengthening Labour Relations in East Africa (SLAREA) helped focus the national labour law reform process in Kenya on giving effect to freedom of association and collective bargaining, including in export processing zones. The national tripartite task force responsible for the legal reform process has finalized bills on employment and industrial relations, using ILO expertise. These were scheduled to be discussed more widely at the end of 2003 and tabled in the legislature in 2004. Among the issues at stake is whether trade union registration will continue to be subject to prior authorization from the Labour Ministry. In Uganda, the project will address this same problem. The project was also instrumental in securing UNDP support for revising labour laws in Zanzibar (United Republic of Tanzania), while assisting the labour law reform process in the mainland of the United Republic of Tanzania.

282. Under the project on Promoting Fundamental Principles and Rights at Work in Ukraine, which – in a first for independent Ukraine – was itself developed through tripartite consultations, the draft labour code was prepared and submitted to Parliament at the end of August 2003. Consultation

and training linked to the reform process included a broad spectrum of employers' and workers' representatives. For many, this was an important source of public recognition and an opportunity to voice freely their concerns relating to freedom of association and collective bargaining.

283. The project in Indonesia entitled Promoting and Realizing Freedom of Association and Collective Bargaining by Building Trust and Capacity in Industrial Relations was launched in May 2001 on the assumption that the country would have already completed its labour law reform process, which was inspired by the *Reformasi* and democratic movement of 1998. The main aim had been to provide technical assistance for the proper implementation of the new legislation. However, reaching agreement in a newly democratic country among tripartite constituents and in Parliament on three major new pieces of legislation was a lengthy process.

284. While the Trade Union Act was passed in 2000, before the project started, approval of the Manpower Act occurred only in March 2003, 18 months into the life of the project, and the adoption of the Dispute Settlement Act took place at the end of 2003. As a result, the project had to be flexible and adapt its forms of assistance. Some training and advice focused on principles and main elements of anticipated legislation rather than on implementation. For example, before the adoption of the Manpower Act, the project provided information on collective bargaining, the right to strike and termination of employment. After the Act's adoption, the project carried out awareness raising in conjunction with the Ministry of Labour, which prepared brochures and manuals published by the project.

285. The Strengthening and Improving Labour Relations in East Timor project started the labour law reform process in a very recent ILO member State, the Democratic Republic of Timor-Leste, thereby anchoring the four Declaration principles and rights in the new nation's Constitution. The project also helped draft the new Labour Code and distributed thousands of copies of the Code to various government agencies, as well as employers' and workers' organizations; it also produced a practical guide to application of the legislation.

286. The Improvement of Labour Relations and the Promotion of Women's Economic Equality in Colombia project engaged the social partners in tripartite discussions about proposed legislation on collective bargaining that had been reviewed previously with ILO assistance. Given the country's multiple trade union confederation structure, a series of regional and national seminars involving more than 190 union leaders took place to allow consultations with the rank and file and the drafting of a unified proposal.

287. The recently launched project Strengthening Labour Administration in Southern Africa (SLASA) sponsored and supported numerous bipartite or tripartite meetings and provided technical advice on legislative reform covering freedom of association, child labour, discrimination, HIV/AIDS and how to incorporate ILO Conventions into municipal law. In August 2003 the project held a seminar with Zambian members of parliament on the ILO Declaration, core Conventions and their role as a foundation for amending existing labour law. This was in response to the need to involve different actors on the political scene in reform efforts.

Strengthening the capacity of governments

288. While legislation is necessary to underpin freedom of association and collective bargaining, the capacity of governments to enforce such laws is equally crucial. This depends on a functioning labour administration with

enough personnel, equipment, skills and training to ensure that implementation is effective. Capacity in this sense includes not only numbers of budgeted posts and skilled and motivated officials, but also the status accorded to labour inspectors. At a time of frozen or falling public expenditure, it can be difficult to build or even maintain the capacity of labour administrations. Although information remains patchy, there are indications that government spending on labour administration has tended to stagnate or decline in recent years.⁸ Even when budgets are maintained, many countries are seeing skilled personnel leave labour administrations for the private sector. The time lag involved in filling such posts makes capacity building in this field a perpetual task. Labour administration resources are particularly scarce in developing and transition countries. And in most parts of the world, the political influence of labour ministries is on the wane.

289. This situation has led to numerous calls among the ILO's constituents for reinforcing and improving labour administrations. For example, at their September 2003 meeting in Brazil as part of the follow-up to the Declaration project for the Organization of American States (Principles and Rights at Work in the Context of the Inter-American Labour Conference of the Organization of American States), Ministers of Labour of the Americas underlined the importance of strengthening labour administration and inspection in their hemisphere. At the 91st Session of the International Labour Conference in 2003, the Committee on the Employment Relationship stressed the important role of government services in ensuring compliance with and enforcement of the law to protect the growing number of workers whose contractual status is unclear.⁹

290. A number of Declaration-driven projects include efforts to strengthen the capacity of labour administrations. The aim is not only to improve application and enforcement of laws but also to encourage effective dispute resolution and arbitration, including through training, logistical support and awareness raising.

291. In some instances, relatively small amounts of funding can have a big impact. Under the SLAREA project in East Africa, the purchase of motor-cycles led to a tenfold increase in labour inspections in some regions. This success has spurred some governments to match the equipment provided by the project in East Africa.

292. SLAREA also offers an example of how technical cooperation can enable countries to learn from each other's experiences. A number of the project's training activities take place on a subregional basis. Such contacts helped governments in the three countries (Kenya, the United Republic of Tanzania and Uganda) to realize the importance of harmonizing their laws. There are also joint activities between the three projects in East Africa, southern Africa and Nigeria, such as the regional training for labour court judges, assessors and registrars, which took place in Nairobi in November 2003. In addition to sharing experiences and resources, exposing countries to what others are doing can help to speed reforms. Officials trained through one project can act as resource points for other projects. For example, the principal legal and industrial relations officer of the Federation of Kenya Employers (FKE), who attended SLAREA training activities, went on to facilitate a subregional seminar on building capacity in employers' organizations in southern Africa.

⁸ Based on direct contacts with ministries, for example during audits, technical cooperation projects and related research. However, changes in the organization of government finances and departments can make comparisons difficult.

⁹ Conclusions concerning the employment relationship, in *Provisional Record* No. 21, International Labour Conference, 91st Session, Geneva, 2003, paras. 10-12.

293. Several of the projects carried out under the Declaration have responded to the widely felt need for effective dispute-resolution training in labour administrations. In Kenya, the United Republic of Tanzania and Uganda, over 400 government officials were trained, a third of whom were women. The emphasis was on shifting the focus of labour inspectors from policing to providing advice and assistance in problem solving before disputes reach the courts. As a result, both Ministry of Labour and labour court officials in Uganda reported a decline in court cases. In Kenya, the number of disputes referred to courts dropped by 13 per cent in 2002, compared with 2001. In Zanzibar, the chief industrial relations officer reported that in 2002 for the first time his department was able to resolve all cases without reference to the courts.

294. The Promoting and Realizing Freedom of Association and Collective Bargaining by Building Trust and Capacity in Industrial Relations project in Indonesia provided training for some 6,000 constituents in seven provinces, including 2,000 labour administrators, inspectors, conciliators and mediators, along with an almost equal number of trade unionists and employers' representatives. The SLASA project in southern Africa trained 65 trainers of labour inspectors. In the Ukraine project, more than 600 inspectors were trained and supplied with technical documents, with the emphasis on better enforcement of the law, especially important given the often alarming violation of rights seen in the country.

295. On several occasions, capacity building has extended to labour courts, judges and others involved in the legal system. Under PAMODEC, initial training was provided to labour court judges in Benin, Burkina Faso, Mali and Togo. In the East African project, seminars that brought together labour court judges helped prompt Uganda to re-establish the Industrial Court and Kenya to introduce a labour court appellate division. By the end of 2003, this project had provided training to 60 labour court judges and assessor registrars. The southern Africa project trained 34 judges; 38 judges were trained by the project on Freedom of Association, Collective Bargaining and Industrial Relations in Central America, Panama, Belize and the Dominican Republic (RELACENTRO); and 117 Bar Association lawyers were trained by the project on Labour Dispute Resolution in Cambodia. In collaboration with the Judicial School in Bogotá, the Colombia project trained 90 labour court judges on international labour standards.

296. In some countries, Declaration projects complement other work the ILO is doing in accordance with decisions of the Organization's supervisory bodies. This is the case of Colombia, where the Declaration project is part of the ILO's overall technical programme. This project aims to improve labour relations in the private sector through awareness raising, training and examples of good practice. Three particularly important areas are: a review of the conflict resolution system – mainly at the request of the employers' organizations – with a view to improving it; in-depth studies of collective bargaining practices and techniques in ten sectors or enterprises, designed to highlight good practice; and development of a database on labour relations in the Ministry of Social Protection.

Strengthening the capacity of employers' and workers' organizations

297. Promoting freedom of association and collective bargaining also hinges on the ability of employers' and workers' organizations to deliver these rights. Employers and their organizations need the capacity to represent their own interests vis-à-vis the authorities and workers and their represen-

tatives. For employers' organizations, capacity means the ability to attract and retain members and to provide them with a variety of services, including in the human resources field. They must be able to address issues related to the right to organize, collective bargaining and dispute resolution. In addition, employers and their organizations need to be able to understand labour legislation and the mechanisms for its enforcement.

298. For workers and their organizations, capacity also includes the ability to organize, retain and attract members, as well as to represent their interests and protect their rights. It means being able to understand not only labour legislation and how to give laws effect through national enforcement machinery, but also how to handle grievances and negotiations in the workplace and at sectoral and national levels. To negotiate effectively with governments and employers, workers' organizations need to be able to track and analyse socio-economic data.

299. Declaration projects tend to have separate and specifically designed activities for employers' and workers' organizations, carried out chiefly by specialists from the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV), sometimes in combination with the International Training Centre of the ILO in Turin (Turin Centre).

300. Capacity starts with ensuring that there are representative partners for negotiation. Governments of French-speaking African countries requested help in this area, and the ILO has been active in Benin, Burkina Faso, Niger, Senegal and Togo. For example, the ILO has helped Benin to tackle questions of trade union representativity and to designate assessors (see box 4.1).

301. Preliminary discussions and studies under PAMODEC found that employers' and workers' organizations were often weak, typically limited to the formal economy (and more specifically to the public sector) and poorly equipped and trained. Capacity building therefore meant involving these partners in all stages of the project, from design to evaluation. The specialists on employers' and workers' activities in the region played an essential role in this respect. Specially designed activities for both social partners took place at national, sectoral and enterprise levels and were also aimed at promoting the role of women in employers' and workers' organizations.

302. The project on Promoting the Declaration (Freedom of Association and the Right to Collective Bargaining) in Bulgaria and Romania provides another example of capacity building among both employers' and workers' organizations. Following the collapse of communism, neither country had experience with independent unions or employers' organizations. There was also no tradition of negotiations among government, unions and employers at national, sectoral or enterprise level. The project helped the employers' organizations in both nations to gain new members by taking a service-oriented approach. It has improved the capacity of employers in collective bargaining. It has also reduced the fragmentation of the trade union movement by encouraging unions to work together on issues of common interest. Many new trade unions were set up in small enterprises, where violations of trade union and workers' rights had been most severe.

303. Declaration projects have trained numerous trade unionists. One innovative effort, carried out under the Indonesia project, was a seven-week course for 25 "emerging leaders" which took place over a period of nine months. Most of the trade unionists involved now have increased responsibilities, higher profiles or a role in trade union education. A similar course may be held for a new group of trade unionists. In southern Africa, the SLASA project sponsored a meeting of Lesotho trade union federation leaders with representatives of international and regional labour organizations to develop ways of promoting unity among Lesotho's unions.

Box 4.1**Putting principles into action – The case of Benin**

Benin's move to democracy in 1990, after 18 years of Marxist rule, led to rapid growth in the number of political and economic actors in the country. In trade union terms, this meant transition from a single Government-linked union to seven national centres. During this period, the Government sought to bolster labour arbitration, as well as social dialogue and collective bargaining, through a number of different tripartite bodies. But the large number of union centres raised issues of trade union representation. Who would decide which trade union centres should sit on the various bodies?

In March 2000, Benin's Government asked the ILO for advice on this problem. Through its Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), the ILO was already working in Benin to encourage the development of social dialogue at the national, sectoral and enterprise levels. It was also in the process of launching a Declaration-related technical cooperation project in Benin and other French-speaking African countries to strengthen fundamental principles and rights at work, including freedom of association and collective bargaining.

In response to Benin's request, the ILO organized a seminar in Cotonou in July 2000, with the participation of the ILO's Freedom of Association Branch. Following these discussions, which focused on criteria and methods for determining trade union representation, the Government decided to set a threshold for trade union representation. To obtain seats on tripartite bodies, unions would have to obtain at least 25 per cent of the vote in workplace elections to be held throughout the country in the public and private sectors. Organizations falling below the 25 per cent level would remain in existence and retain certain rights, including representing members in individual disputes and serving on labour tribunals.

In the elections, two trade union bodies – the Confederation of Autonomous Trade Unions of Benin (CSA-Benin) and the Confederation of Workers' Trade Unions of Benin (CSTB) – exceeded the 25 per cent mark. The elections allowed for the proportionate allocation of trade union positions on tripartite bodies, including labour tribunals. The ILO is organizing seminars to help train trade unionists nominated to serve on these labour tribunals.

This work on trade union representation is part of the ILO's wider efforts to strengthen freedom of association, collective bargaining and social dialogue in Benin. These include awareness raising and training for union members, employers and government officials as well as other civil society groups, such as journalists and students. In addition, tripartite structures were created and improved. Benin is an example of how coordination among various parts of the ILO – in this instance the InFocus Programme on Promoting the Declaration, the InFocus Programme on Social Dialogue, Labour Law and Labour Administration and the Freedom of Association Branch – can help to ensure that, once ratified, Conventions are applied in practice.

Guillaume Attigbe, General Secretary of the CSA-Benin, Benin's largest trade union confederation, sees scope for continued ILO work on freedom of association and collective bargaining in his country, especially at a more decentralized level. It would be good to hold training sessions at individual companies: "A company that is open to negotiating cannot help but improve its economic performance", he says, also stressing the need for additional labour inspectors who can move around the country.

304. There are also Declaration project activities specifically aimed at capacity building for employers. For example, a seminar held for employers' organizations under the southern Africa project resulted in a regional framework for employers' bodies and draft organizational plans to improve their operations. In East Africa, the SLAREA project's training activities resulted, among other things, in the establishment of a joint committee of the

Federation of Uganda Employers (FUE) and the National Organisation of Trade Unions (NOTU). The FUE's membership expanded significantly as a result of project activities, as noted by its Executive Director at the end of 2001. Total membership rose from 130 enterprises in 2000 to 172 by the end of 2003, an increase of 28 per cent over the three years SLAREA has been in operation. The recently launched project on Promoting Workplace Democracy and Improved Industrial Relations in Viet Nam has started similar training activities, which have so far involved some 40 employers, half of whom were women entrepreneurs and managers.

Promoting cooperation among the social partners

305. In Indonesia, employers showed particular interest and enthusiasm for project activities related to industrial relations and human resource management, information and database systems, collective bargaining and negotiation skills and international labour standards. The project familiarized managers – along with trade unionists – from 54 enterprises with the principles, institutions and practices of workplace labour-management cooperation (LMC). The enterprises underwent a survey and assessment, on the basis of which they drew up and implemented action plans that were then monitored and evaluated. Many managers reported that their companies succeeded in increasing productivity through cooperation.

306. Sixteen enterprises expressed an interest in forming a labour-management association to continue exchanging views on promoting cooperation and to spread the message to others. Many of the enterprises have maintained close contact with the ILO to report progress and seek further advice. An international sportswear manufacturer, two of whose affiliates participated in the project programme, said it is considering extending the programme to its 23 affiliate companies in Indonesia, which employ about 70,000 apparel workers and 30,000 footwear workers. The project's involvement with Indonesia's international business community – there are about 3,000 companies registered with foreign chambers of commerce – has led such companies to promote the project's work by placing on their web sites project brochures and manuals on labour law.

307. In recognition of the importance of enterprise-level work to promote freedom of association and collective bargaining, a project in 14 English- and Dutch-speaking Caribbean countries is networking with 500 firms on the Promotion of Labour-Management Cooperation (PROMALCO). The project has trained about 600 employers, 400 trade unionists and 300 government officials. It has contributed to convincing business and labour throughout the region that they must abandon a tradition of confrontation and move toward cooperation if they are to survive the pressures of a globalized economy. The project has also helped demonstrate that respect for freedom of association and collective bargaining is relevant to all companies, irrespective of sector, ownership and size. Companies with as few as ten employees have signed on as stakeholders and committed themselves to a process of transformation.

308. At the enterprise level, it is not uncommon for the principles of labour-management cooperation set out in the PROMALCO project to be invoked during negotiations. Some companies have endorsed international labour standards in recognition framework agreements, company human resource philosophies and collective agreements. Several enterprises routinely address queries to the project on how to improve labour-management relations. These might concern preparing for the entry of a union in a non-unionized

environment, development of frameworks for labour–management partnerships and establishment of gain-sharing plans. In one country, a large energy company sought guidance from the project on how to approach reorganization. A workers’ representative and an employer’s representative from one of the project’s “best practice” companies were invited to contribute to the process of change. Given the positive impact that an enabling national environment can have, the project has successfully promoted the concept of labour–management cooperation at national level. Tripartite national productivity centres have been established in eight countries, and more are planned. The project has highlighted local success stories in the media and through meetings, notably the Caribbean Enterprise Forums in 2001 and in 2003. It has used these as regional benchmarks to demonstrate that Caribbean firms have successfully managed these changes.

Role of tripartism in promoting freedom of association and collective bargaining

309. While it is crucial that employers, workers and their organizations are capable of organizing and bargaining collectively, it is equally important for governments to be involved with them in tripartite processes and institutions that support freedom of association and collective bargaining. There are many subjects that need to be dealt with on a tripartite basis, including minimum wages, social security, training and family and working life issues. In situations where the weakness of employers’ and/or workers’ organizations prevents bilateral solutions from being reached, governments take on a more important role. In some cases, governments need to help the two social partners understand better what is required of them in negotiations, in others governments themselves may need to be more aware of what negotiations will entail. Ultimately, tripartism is about embedding the right to organize and bargain within broader labour market institutions and hence making the space for a culture of collective bargaining.

310. Several Declaration projects promote tripartism by involving the three parties in activities, either through Project Advisory Committees or through existing tripartite bodies. Declaration projects have sometimes helped foster tripartite institutions. In Viet Nam, for example, the project was instrumental in the creation of industrial relations advisory service centres in seven provinces. The East Africa project helped re-establish tripartite labour advisory boards, which had been inoperative for years, and governments made funds available to ensure their functioning. Zanzibar (United Republic of Tanzania), which had a tradition of government–union bipartism, has also begun to design tripartite bodies and procedures. The Ukraine project set up a tripartite working group to develop sample collective agreements, which were then widely disseminated. While this project is still at an early stage and there are many issues to be resolved, especially regarding independence of the social partners at the national level, this is an important step in starting a culture of collective bargaining in the country.

311. The project in southern Africa held tripartite training seminars in Zambia on collective bargaining and negotiations and labour–management cooperation through joint committees. To ensure sustainability, this training was dispensed in conjunction with the National College of Management and Development Studies. In anticipation of the adoption of Indonesia’s Dispute Settlement Act, several training workshops were held in seven provinces for government officers and representatives of workers’ and employers’ organizations on mediation, conciliation and dispute settlement. The Indonesia project also provided information, advice and references on comparative international practices to parliamentarians and officials considering the Dispute Settlement Bill.

Dispute prevention and settlement

312. Industrial relations disputes are inevitable. The absence of appropriate bodies and procedures for reconciling conflicting interests is characteristic of certain totalitarian regimes in which workers and employers are not given a voice. With democratization, conflicts of interest come out into the open. In a globalizing world, dispute settlement machinery becomes an asset in correcting labour market problems and promoting peaceful industrial relations and improved enterprise performance.

313. A number of Declaration projects include the establishment or reform of dispute settlement mechanisms and training for the persons that serve on them. This is the case, for example, of the project on Strengthening and Promoting Labour Relations in East Timor, as well as of the project in neighbouring Indonesia. The project on the Improvement of Labour Relations and Promotion of Women's Economic Equality in Colombia has sought assistance from the United States Federal Mediation and Conciliation Service (FMCS) to advise business and labour on new methods of conflict resolution. The emphasis is on preventive mediation combining the FMCS's previous experience in Latin America with the results of case studies carried out by the project.

Box 4.2

Training police in Indonesia to improve dispute settlement

Indonesia's police and military were routinely involved in industrial relations during the Suharto regime. When workplace differences arose, employers often reacted by calling in the local security forces, which had a reputation for using force to suppress worker protests. In addition, military officers were employed as personnel managers and local military or police units were hired to assist companies with security. The military has also had financial stakes in companies. As a result, workers in Indonesia have tended to view the military and police as supportive of employers rather than as an independent force.

After the departure of President Suharto from office in 1998, Indonesia began a major effort to reform its labour laws and promote labour rights. The country ratified ILO Convention No. 87 and in 2000 Indonesia became the first Asian country to ratify all eight ILO core Conventions. In parallel, Indonesia adopted a National Plan of Action on Human Rights 1998-2003, which called for information, education and training about human rights, including those enshrined in ILO Conventions. In the same vein, the Indonesian National Police had undergone reform by separating themselves from the military. Furthermore, the police reinforced their mandate and structure to maintain law and order while respecting and promoting human rights, as stipulated in Law No. 2 of 2002 on the State Police of the Republic of Indonesia.

These efforts have helped to reduce the kind of police and military involvement in industrial relations seen during the Suharto years. This is important if

workers are to exercise fully their right to freedom of association and collective bargaining without fear of intimidation. Nonetheless, some past practices and habits persist, and there have been a number of cases of excessive use of police force.

As part of its work to help Indonesia implement Conventions on fundamental rights at work, the ILO was asked to assist in training police and military officers about human rights and international labour standards. This led to two workshops for high- and middle-ranking officers from Jakarta, West Java, Central Java and East Java, held in Jakarta and Yogyakarta in 1999 and 2000. The lessons from these workshops included the need to extend information and training, as well as develop government/police guidelines on the handling of demonstrations. As a follow-up, Indonesia's Government and security services raised the idea of including labour rights issues in basic police training.

As a result, in 2003 the ILO began a two-year project to develop a course on labour rights for inclusion in the curriculum of the National Police Academy and the police training schools. The training programme will familiarize the police with fundamental principles and rights at work. It will inform officers about the rights of workers to establish unions and the mechanisms for resolving industrial disputes. Given that legitimate law and order issues can arise during demonstrations, strikes or other forms of industrial action, the course will also look at international experience of police forces in dealing with such issues.

314. The Caribbean PROMALCO project, meanwhile, has sought to move away from the reactive and compulsory methods that had characterized dispute settlement provisions in the region. It has promoted a more proactive and anticipatory approach, based on partnership and joint problem solving within the context of freedom of association and collective bargaining arrangements. In 2003, 37 labour department officials were trained as facilitators in this process under the project. In Viet Nam, 70 government officials and employers' and workers' representatives received training in mediation skills. And in Kenya, the United Republic of Tanzania and Uganda, improved bipartite dialogue linked to the SLAREA project contributed to the reduction in labour disputes involving industrial courts.

315. In Asia, the project on Labour Dispute Resolution in Cambodia focuses exclusively on this issue, although the project complements the ILO's Garment Sector Working Conditions Improvement project. The dispute resolution project led to the establishment of an Arbitration Council in May 2003. Eleven cases from the garment sector (and one from the hotel and tourism industry) had been submitted to it within the first four months of operation, concerning collective disputes involving some 14,000 workers, nearly 90 per cent of whom were women. Nine cases were settled successfully through conciliation during the arbitration process or implementation of arbitral awards.¹⁰ In at least one case, a strike was averted. This project was recently promised additional funding, and there are plans to set up a similar project in a neighbouring country.

Information and awareness raising

316. Making freedom of association and collective bargaining a reality for more people also involves spreading the word about what these rights mean, how they are exercised and the possibilities they offer. In addition to encouraging a broader culture of freedom of association and collective bargaining, disseminating relevant information can facilitate specific organizing and collective bargaining efforts. All too often, however, such information is not easily available or is insufficient.

317. This Report has noted the importance of information on collective bargaining so that the partners are aware of developments in different sectors and enterprises and can seek a minimum degree of coordination. This can help to compensate for the fact that collective bargaining may not yet be solidly entrenched for reasons of history or economic development. The relative novelty of collective bargaining in the transition economies of Central and Eastern Europe, as well as its rarity in different parts of the economy, was mentioned in Chapter 3. Developing a good information base on practices in this area can help to spread knowledge on the lessons learned.

Tracking agreements

318. In the Czech Republic and Slovakia, the ILO helped set up a system of surveying and monitoring collective agreements in the early 1990s. This was subsequently taken over by national institutions, monitored by the two social partners and financed by the respective government. The surveys cover all branches of industry and are based on a statistical sample of collective agreements, which in Slovakia grew from 109 in 1992 to 1,317 in 2002. The agreements are analysed from various points of view, including:

¹⁰ See www.arbitrationcouncil.org.

- cooperation of the parties;
- minimum wages;
- compensation pay (for overtime, weekends and public holidays, night work, working in difficult conditions, etc.);
- supplementary occupational pension schemes;
- working time, flexible working hours, paid leave, remunerated time off;
- health and safety;
- compensation in the event of work-related accidents and occupational illness;
- various forms of enterprise social policy (kindergartens, crèches, housing, official cars, mobile phones, loans, social funds).

319. These statistics, available on a yearly and sector-specific basis, facilitate a comparison between industries, helping to make the collective bargaining process more realistic, transparent and replicable.

320. In 2002, the ILO provided assistance to a trade union research body in Brazil that had started mapping the “gender gap” in collective bargaining to look into how to ensure that women receive equitable treatment in negotiations. The project analysed 200 collective agreements in a large number of economic sectors. While it found that all of them provided for maternity protection, hardly any had more far-reaching provisions such as equal access to skill enhancement and vocational training. The project found that such provisions were helpful for ensuring equal treatment and opportunities at work, as well as improving productivity. The project’s approach has been repeated in Mexico and Argentina, as well as other countries in the region.

Reaching a wider audience

321. There are other means of providing information and raising awareness in countries where collective bargaining is relatively new. As mentioned earlier, under the projects in French-speaking West Africa, labour reform will be followed by publication of a compilation of the core Conventions, national legislation and corresponding jurisprudence. The PAMODEC project’s information campaign focused initially on the employers’ and workers’ organizations and government officials (ranging from labour inspectors to judges), starting with national level and moving to that of individual enterprises. The projects have since made efforts to reach a broader audience. This includes putting together a training programme, in cooperation with leading universities in French-speaking countries, to be used in the national bodies responsible for training civil servants. The objective is to provide these officials with a basic knowledge of international labour standards, particularly the core Conventions, and to improve overall training in labour law.

322. The project on Promoting the Declaration in Bulgaria and Romania carries out many awareness-raising activities, principally with trade unions and employers’ organizations, but also extending to selected local schools, where it introduced a civil education programme on fundamental rights at work. In fact, getting the media interested in the struggle faced by workers seeking to organize helped unions to gain entry to some enterprises that had strongly resisted unionization.

323. The project on the Improvement of Labour Relations and the Promotion of Women’s Economic Equality in Colombia used a recently established United Nations radio programme to promote workers’ rights. In Kenya, Uganda and the United Republic of Tanzania, radio programmes have helped sensitize various audiences to labour legislation and its effect on

economic progress and social stability. Seventeen radio stations in the East Africa subregion brought together officials from labour ministries and employers' and workers' organizations to discuss the practical application of labour law and the challenges that local people face. This resulted in an increase of requests to the ILO for information on joining unions. The programmes also had the unexpected effect of leading some radio stations to join employers' organizations and some media employees to join trade unions.

324. In Brazil and Indonesia, radio programmes appear to have influenced the views of labour officials by exposing them to the concerns and views of local populations. Partnering with well-known and respected broadcasters has reinforced credibility and respect for these issues. Greater exposure has led to a marked increase in requests for assistance and information regarding labour issues.

Research and training

325. The need for information on the effects and impact of freedom of association and collective bargaining cannot be underestimated. Through its research and education programmes, the International Institute for Labour Studies (IILS) has made important contributions in this field. Since 2000, the IILS has led a research programme addressing the relationship between a range of socio-economic and developmental outcomes and workers' rights, focusing on freedom of association and collective bargaining. The research combines in-depth country studies and the development of cross-country indicators of fundamental rights at work. One result of this work shows, for instance, that countries in Latin America with stronger freedom of association and collective bargaining rights also tend to have higher shares of formal employment.¹¹

326. In its education and outreach programme, the IILS holds courses on labour policy for middle-level and senior officials from national employers' and workers' organizations, as well as in ministries of labour, in areas ranging from standards, principles and rights, through collective bargaining and social dialogue, to employment and labour issues. The broad approach of these courses tends to provide information that will generally improve capacity to negotiate at the national level. In the period 2000-03, 100 officials took part in such courses. During the same period, the IILS also provided broader briefing courses to 180 students from different parts of the world, raising awareness among young people about freedom of association and collective bargaining.

327. It is also possible to take a more targeted approach, in terms of both audience and subject matter. The Freedom of Association/Declaration project during 2001-03 sought to reinforce assistance on freedom of association by providing in-depth training, briefing and information on a variety of levels to different groups. This project, based at the Turin Centre, first focused on building a network of outside experts able to respond rapidly to demands for technical assistance and training in this area. The project selected 17 high-level experts, typically with independent academic status and important civil society functions; for example, the expert from Senegal was a dean of law and presi-

¹¹ R. Galli and D. Kucera: *Informal employment in Latin America: Movements over business cycles and the effects of worker rights*, Decent Work Research Programme Discussion Paper No. 145 (Geneva, ILO, 2003).

dent of a women workers' civil society association. They attended a two-week intensive course, which addressed policy and technical issues linked to freedom of association and collective bargaining. The course was structured so that learning from each other was at least as important as learning from the instructor. This was followed by a three-month online course, during which the experts used exercises and e-conversations to pursue their specialization and strengthen ties with each other and with ILO specialists. The process led to cross-country sharing of expertise. For example, the expert from Barbados took part in workers' training in Malaysia; the expert from Senegal contributed to training in the Democratic Republic of the Congo and Rwanda; and the expert from Morocco trained legal specialists in the Arab States.

328. The experts network enabled the Turin Centre to launch a number of parallel and related actions, as follows.

329. *Training designed either for one section of ILO constituents or for a tripartite group at country or international level:* Through a total of 42 seminars in Africa, Central and South America, Asia, Europe and the Arab States, the project trained some 1,175 tripartite participants. Activities varied, reflecting different needs and demands, and can be grouped under the following headings:

- Strengthening the capacity of ILO constituents by providing training, in-house knowledge and documentation on freedom of association and collective bargaining. This included a course on freedom of association in Indonesia, given in Bahasa, and on promoting social dialogue and collective bargaining for the Southern Cone countries, Argentina, Brazil, Chile, Paraguay and Uruguay.
- Extending recourse to the ILO, in particular its promotional and supervisory machinery. One example was a course in southern Africa, which included as a resource person an employer member of the Committee on Freedom of Association and resulted in more informed subsequent reporting on freedom of association from the countries involved.
- Encouraging legal specialists to take more account of standards on freedom of association and collective bargaining in their daily work and judicial decisions. A subregional training workshop for judges in North Africa's Maghreb countries led to an agreement between Morocco and the ILO for a programme in this field.

330. *Mainstreaming freedom of association and collective bargaining in broader Turin Centre courses:* Participants included employers' and workers' representatives, public administrators, military personnel, legal specialists, professors and officials from other international agencies. Thus, during the period 2001-03, approximately 1,000 participants received briefings on freedom of association and collective bargaining, in sessions lasting two hours on average. An added motivation for some of these participants was the fact that, despite working in the field of freedom of association and collective bargaining, they were denied the right themselves.

331. *Major advocacy campaigns:* These included a large-scale campaign in Belarus in April 2001 for national and international workers' organizations and a four-day conference in September 2003 on the subject for 550 judges in Brazil.

332. *The development of training materials:* These included guides for training trainers and Powerpoint presentations in various languages (Arabic, Bahasa, English, French, Romanian, Russian and Spanish). The project coordinated an e-library and a database on treatment of freedom of association and collective bargaining issues by national courts.

Targeting the uncovered and unorganized

333. The biggest challenge in the area of freedom of association and collective bargaining involves extending these rights to more people, especially those in the informal economy or working in sectors less likely to be reached by the ILO's traditional constituents. The activities described above can contribute to this process, for example by widening legal coverage or generally raising awareness. However, it also requires targeted or specifically tailored actions. There is no doubt that much more can and should be done to reach out to the uncovered and unorganized, as is clear from the last column in table 4.4. Nonetheless, there have been a range of efforts, especially at the national level, aimed at organizing the unorganized. This section offers some examples of the ways in which employers' and workers' organizations, sometimes in conjunction with the ILO, are spreading their coverage. This can involve reaching out, alliance building or the emergence of new organizations.

Unions on the move

334. There are many instances in which trade unions have been active in organizing workers who traditionally have not been unionized. Such efforts span the developed (see box 4.3) and the developing world, and can bring

Box 4.3

Organizing against the odds: Justice for janitors

In one of the biggest success stories for United States trade unions in recent years, freedom of association and collective bargaining were extended to the vulnerable, low-paid workers who clean office buildings. Known as the Justice for Janitors campaign, this initially involved cleaners, or janitors, in Los Angeles and has since spread to other parts of the United States and other building service workers.

Justice for Janitors is encouraging because it overcame the traditional difficulty unions have in organizing low-wage immigrant workers in industries where subcontracting and other arrangements make for unclear relationships between employees and employer.¹ Moreover, the cleaners and their union were able to assemble community coalitions and galvanize widespread public support. Their struggle became a human interest story, serving as the basis for *Bread and roses*, a movie by British filmmaker Ken Loach.

The Service Employees International Union (SEIU) originally organized building service workers in Los Angeles just after the Second World War and continued to build membership in this sector through the late 1970s. But by the mid-1980s, the SEIU had seen its Los Angeles membership decline sharply, despite the city's office construction boom. This drop was partly due to the outsourcing of services, so that building owners no longer directly employed their cleaners. Most of the building services companies that took over cleaning cut workers' wages and benefits and sought non-union contracts. To retain its foothold in Los Angeles, the SEIU had to accept lower wages and benefits for its members.

¹ Such ambiguous employment relationships were addressed by the International Labour Conference in 2003, which adopted conclusions with the aim of better understanding this phenomenon, and to ensuring better application of the law; *Conclusions concerning the employment relationship*, op. cit.

Sources: C.L. Erickson, C.L. Fisk, R. Milkman, D.J.B. Mitchell and K. Wong: "Justice for janitors in Los Angeles: Lessons from three rounds of negotiations"; in *British Journal of Industrial Relations*, Sep. 2002, Vol. 40, No. 3, pp. 543-567. See also Justice for Janitors web site <http://www.seiu.org/buildingjanitors>.

Rebuilding union membership seemed difficult, if not impossible. The building cleaning workforce was increasingly made up of immigrants, mostly from Mexico and Central America, who were vulnerable to threats of deportation, were often unfamiliar with union rights and did not always speak much English. Moreover, subcontracting meant union gains could be short-lived, with cleaning services firms rapidly switching to non-union contractors. In fact, the remaining unionized companies had created non-union subsidiaries.

Nonetheless, janitors in Los Angeles managed to re-unionize their industry during the 1990s. By 2001 there had been three rounds of negotiations, union numbers had expanded and wages and benefits had improved. The union's success spread to another California county, as well as to supermarkets. The Justice for Janitors campaign relied on a variety of unorthodox tactics designed to pressure owners or managers to use union contractors and to pay union-scale wages. In doing this, the union appealed to the wider community, including building tenants, many of whom were unhappy at having their offices cleaned by poorly paid workers. It also worked closely with parties as diverse as the police and the Church. The union organized dramatic street protests and picketing which, however, remained peaceful and served to draw the public's attention to the plight of the working poor and immigrants.

In giving a voice to numerous building cleaners, Justice for Janitors has also aroused renewed public interest in the United States labour movement.

innovative strategies into play to represent the interests of people who often feel isolated or marginalized by society.

335. One success story in the developing world involves the South African Domestic Service and Allied Workers Union (SADSAWU). This union, with the assistance of the Congress of South African Trade Unions (COSATU), succeeded in organizing domestic workers, estimated at 10 per cent of the South African workforce. It overcame the difficulty of reaching isolated workers by setting up one committee per street and delegating a committee representative to meet and discuss with the union specific problems of workers on each street. SADSAWU actively lobbied for the new Labour Relations Act, which provides for compulsory employment contracts for domestic workers and the right to appeal before a court of arbitration. Through the mobilization of domestic workers, the union managed to obtain important concessions relating to unemployment insurance and minimum wages.

336. There are important examples of organizing in the informal economy more generally. New strategies and definitions are being developed in Latin America, where as many as 70 per cent of new jobs are in the informal economy. The Confederation of Mexican Workers (CTM) in Mexico, for example, incorporates a broad range of organizations that may not fit into the classical definition of a union, such as cooperatives, production associations, social interest enterprises, agricultural credit associations, agrarian communities and small businesses. This enables the CTM to broaden and diversify its base.

ILO action

337. The ILO has been working in this area and received new impetus following the discussion on the informal economy at the International Labour Conference in 2002. The InFocus Programme on Promoting the Declaration collaborated with other ILO units at headquarters and in the field to initiate pilot studies in Bolivia, Colombia, Pakistan, Peru and South Africa. These looked at prospects for, as well as obstacles to, organizing and negotiating in a range of informal economy jobs. Among the sectors studied were street vending, fisheries, garments and textiles, taxis and rickshaws (both drivers and owners). The aim was to distil lessons for trade unions seeking to organize in these situations.

338. There are practical reasons for existing employers' and workers' organizations to address the issue of greater informalization of work, and the growth of smaller enterprises. In the United Republic of Tanzania, a decline in trade union membership and dues motivated the Tanzania Union of Industrial and Commercial Workers (TUICO) to reach out to informal economy operators in Kariakoo market in Dar es Salaam. These operators are organized into cooperative societies, based on the type of commodity they sell. The leadership of the societies is elected by and answerable to its membership. TUICO mobilized the cooperative leaders, drawing their attention to trade union matters and the services that the union could provide. These included education, safety and health, entrepreneurship, keeping accounts and negotiating with the administration of the market corporation. In return, members pay a membership fee of 2 per cent of income. Further work is planned with hairdressing and barber shops.

339. In Zimbabwe, the labour movement was also concerned that the growth of the informal economy was leading to a decline in membership. The Zimbabwe Textile Workers' Union (ZTWU) identified tailors and women

producing tie-and-dye cloth as target groups for organizing. The National Engineering Workers' Union (NEWU), meanwhile, decided to target those engaged in welding door and window frames, security grills and electric gates (a growth industry because of the country's security problems). In both cases, the unions provide a combination of training in organizational matters and services relating to entrepreneurship and account-keeping.

340. ILO research shows that concerns about public safety and the need for preserving job opportunities, while ensuring the respect of minimum working conditions, are other factors that may induce trade unions to organize informal workers. In Africa, for instance, the informal taxi industry has become an important source of income and employment for many during the past decades, as a result of the growth of both urbanization and joblessness. Long hours, low wages, no social protection, harassment by traffic officials and pressure from passengers make taxi driving stressful work. Driving fast in overloaded vehicles to increase take-home pay adds to the stress, and taxi driving is also dangerous, as taxi drivers are often victims of crime and road accidents due to the fact that most drivers do not know traffic rules. Poor working conditions, along with lack of transport regulations or their lax enforcement, undermine the health and safety not only of taxi drivers but of passengers as well. In Benin, the National Trade Union for the Promotion of Zemidjan (motorcycle-taxi drivers) of Benin (SYNAPROZEB), which is affiliated to the National Confederation of Workers' Trade Unions of Benin (UNSTB), has been defending the interests of motorcycle-taxi drivers for the past ten years. SYNAPROZEB has negotiated and managed to persuade the City Council of Cotonou to review its decree regulating the profession. As a result, the monthly tax to be paid by taxi drivers has been reduced and other requirements have been softened so as not to erode job opportunities in the sector, while protecting the safety of both passengers and taxi drivers themselves.¹² The taxi industry has also been a target for the South African Transport and Allied Workers' Union (SATAWU), the seventh largest affiliate of COSATU. At present, SATAWU claims 10,000 members in the taxi industry, of whom 2,500 pay their dues. The majority of SATAWU's membership works in the formal economy; reaching out to workers in the informal economy has thus required changes in their traditional organizing strategies. These include recruiting where the work occurs – on the street; relying on former taxi drivers to recruit and organize; recruiting in a targeted way and focusing on one owner-association at a time; using media such as radio to improve the public image of taxi drivers and win public support; liaising with employers' representatives and cooperating with government authorities (see Chapter 2, section on the informal economy).

341. One of the biggest challenges remains that of organizing in the agricultural economy and rural society. Here too, there have been notable inroads, for example through an ILO activity that helped to initiate the process of capacity building of agricultural trade unions in the Western Cape, South Africa (see box 4.4).

¹² ICFTU: "Spotlight interview with Bonaventure Ahitcheme, General Secretary of SYNAPROZEB", in *ICFTU Online*, 7 Jan. 2004.

Box 4.4**South Africa: Promoting trade union cooperation in the Western Cape**

Agricultural workers represent one of the largest single occupational groups in South Africa, but are still among the least organized into trade unions. The two most important farm workers' unions, the National Union of Farmworkers (NUF) and the South African Agricultural Plantation and Allied Workers Union (SAAPAWU), affiliated to the National Council of Trade Unions (NACTU) and COSATU, respectively, are not very active in the Western Cape. The Western Cape has a number of very small independent trade unions that are not affiliated to any of the major trade union federations in South Africa.

Women are employed in the more labour-intensive sector, namely in horticulture. Many work throughout the year but are considered as seasonal or casual workers, irrespective of legal provisions. The equal pay principle is flouted, on the premise that women are not engaged in the same tasks as men – although in practice they may well be doing similar work.

The relatively thin presence of trade unions on farms in the Western Cape is due to employer resistance, inability of the existing unions to provide enough

services to retain their members' interest and ignorance about trade unions among many farmers and farm workers.

ILO project activities have tended to concentrate on building capacity within the NUF and SAAPAWU. However, the independent agricultural trade unions of the Western Cape were identified as stakeholders in the agricultural sector, and the ILO organized sensitization and training workshops. These covered the Declaration, the ILO core Conventions, international labour standards for rural workers and South Africa's basic labour laws. They provided basic training in organizing skills and strategic planning for trade union development.

Perhaps most importantly, the workshops created a forum for the independent unions to exchange information and experiences. As a result, they formed a coalition of independent agricultural trade unions, as an umbrella organization to deal with issues common to all the unions. The major challenge facing this coalition is building the capacity – and maintaining the unity – to defend members' rights effectively.

Employers' outreach

342. Employers' organizations have been active in organizing new members. In Latin America, in recognition of the region's large number of micro and small and medium-sized enterprises (SMEs), employers' organizations have been collaborating with associations representing such companies. In Panama, for example, the National Council of Private Enterprise (CONEP) obtained ILO assistance for strengthening the work of the National Association of Small and Medium-sized Enterprises (UNPYME), under a programme for promoting association as a strategy for reinforcing SMEs. Its aim is to attract new members to the UNPYME and to develop and provide new services to strengthen enterprise management systems. The project also highlights the advantages derived from grouping together with other employers. This has helped the UNPYME gain new members from economic sectors that were poorly represented in the association, and to extend its geographical coverage. This has in turn enhanced the representativeness of the national employers' organization.

343. In El Salvador, the national employers' organization helped women market vendors in micro-enterprises in their dealings with the authorities, and some of these women became members as a result. In Guatemala, the employers' association provided emergency assistance to micro-entrepreneurs whose business and homes were affected by climatic disasters. While the aim was not to gain new members, this welfare assistance helped to develop a relationship with entrepreneurs who were otherwise outside the reach of the employers' organization and were potential members or allies.

Box 4.5**Uganda employers raise profile**

In recent years, the Federation of Uganda Employers (FUE) has succeeded in expanding both membership and services, resulting in a higher profile for the organization and its members. Two initiatives in particular helped in this process. The first was the introduction of the Employer of the Year Award, which aims to promote best practices in human resource management/business as well as other areas. Secondly, the Federation made a concerted effort to improve services to organizations throughout the country by adding regional centres.

The award system, which was established in 2001 with the support of the Norwegian Agency for Development Cooperation (NORAD) through the Confederation of Norwegian Business and Industry (NHO), surveys and ranks participating organizations on the basis of ten criteria. Three of these relate to human resource management and development. The others are: internal and external communication, safety and health and environment, productivity, corporate social responsibility and business ethics (including compliance with labour laws), employee benefits and compensation, employee relations and welfare, and involvement in the community. In addition to prizes for the top three performers, there are awards for special categories of enterprises and organizations – opening up the process to diverse actors, including NGOs – and for specific areas of excellence, such as communication, human resource development, training and safety and health.

In 2001, all three winners were enterprises that recognize unions. Of the 13 enterprises to win awards that year, only four were not unionized. The awards serve to spread good practice; at least 30 other enterprises consulted the award winners on methods for attaining excellence. This has led to employers working more closely with unions where they are already present and increased the number of recognition agreements in the pipeline, according to the FUE.

Regional offices were established with the assistance of NORAD and the Center for International Private Enterprise (CIPE) in 2002 and 2003, respectively. Whereas queries were previously referred to the office in Kampala, the FUE's regional coordinators now visit current and prospective members. This helped the FUE identify issues relating to labour-management relations, provide advice and, in some cases, solve problems within individual enterprises. Such activities have involved both members and non-members.

Between the launch of these initiatives in 2001 and November 2003, the FUE attracted 69 new members to reach a total of 172 enterprises. In addition to large employers drawn from multinationals and public sector companies, FUE's membership now spans a range of small and medium-sized private sector companies, health service providers, consulting firms, NGOs and sector associations.

Source: Federation of Uganda Employers, at www.employers.co.ug ; www.avban.org/associations/fuewesternofficeug2/ .

Forging alliances

344. Large technical cooperation projects that were not initially designed to target one sector in particular can end up doing so. The transformation of the political, social and cultural environment in the Urabá region of Colombia may be linked to the changes that have taken place in labour-management relations in the banana sector, based on the work of the national Declaration project on labour relations in that country. Over a period of years, surrounded by some of the worst political violence in Colombia, workers and employers gradually became convinced that an improvement in union-management relations brought benefits that went beyond the workplace, helping

to strengthen the political and social fabric of the conflict-torn region. Today 350 separate farms owned by 150 different producers negotiate peacefully with over 14,000 organized workers. A management–worker committee oversees compliance with a set of basic principles and collective bargaining agreements in addition to promoting stability through similar bodies at the farm level. The project reports increased dialogue and consensus building, as well as improved productivity on the farms. Other regions of Colombia are looking to learn from the experience of this banana-producing area.

345. The project on freedom of association in the port sector of the Southern Cone countries (Argentina, Brazil, Chile, Paraguay and Uruguay), in which the Freedom of Association Branch and the Turin Centre worked closely with the Regional Office, helped establish or revive tripartite national committees for social dialogue and collective bargaining. As a result, Uruguay's port workers, who were employed on a contractual, precarious basis, sought affiliation with the Single Trade Union of the National Port Administration. This led to a collective agreement on the status of different forms of employment and pay in this sector. This is an example of a successful effort to organize precarious workers in the extended public sector.

346. There are also instances where employers' and workers' organizations opt to cooperate with other bodies, for a variety of reasons. These include the need to achieve economies of scale and difficulties encountered in making contact with certain groups, such as newly arrived immigrants or illegal immigrants. The broad concept of workers' (and employers') organizations provided for in Conventions Nos. 87 and 98 and the Rural Workers' Organisations Convention, 1975 (No. 141), encompasses many kinds of organization, as long as their basic primary aim is to promote and defend workers' and employers' interests. Based on information from a decade ago, the ILO has already noted the emergence of new organizations through gradual grassroots mobilization, which tended to be more community-based than workplace-centred.¹³ Organizing under current circumstances entails recognition of those associations that function at more local, community levels, and working alongside them. These may be less “mainstream” trade unions. They may be other kinds of organization that bring entrepreneurs and trades together.

347. Accordingly, the process of organizing may require working in close collaboration with institutions providing support services at this level, such as religious organizations, self-help groups, and local public or private efforts to help the unemployed through training and/or income generation. Employers' and workers' organizations may also collaborate with other socially oriented groups that have a narrower set of objectives. These include women's movements, environmental groups, civil rights or local interest groups, those seeking to protect particular ethnic minorities, cooperatives and consumer movements. Collaboration between such bodies and employers' and workers' organizations has often given impetus to reform movements.

348. A good example is Brazil, where the workers' movement developed close links to emerging groups struggling for other civil and civic rights, becoming part of a massive popular mobilization in favour of democracy and social reform.¹⁴ Subsequent gradual institutionalization of the reform movement under growing democracy culminated in the trade union leader of this movement being elected president of the country in 2002.

¹³ ILO: *World Labour Report 1997-98: Industrial relations, democracy and social stability* (Geneva, 1997), Chs. 2 and 8.

¹⁴ *ibid.*, p. 50.

Box 4.6**Irish employers organize SMEs**

The SME sector can prove very challenging for employers' federations to organize. A focused approach by the Irish Business and Employers Confederation (IBEC) has led to positive experience in this area. A distinct association that comes under the umbrella of IBEC – the Small Firms Association (SFA) – offers a specialized range of services directly focused on the needs of SMEs. At the national social dialogue table, it has a seat beside IBEC, representing its members in the social partnership pay talks and agreements in Ireland. The SFA was the first Irish professional association to secure ISO 9002, and achieved the new Quality Standard ISO 9001:2000 in 2002.

Small companies also choose to join IBEC directly. Reflecting the structure of the Irish economy, about 90 per cent of IBEC's direct membership falls into the SME category. Many of these companies pay an additional supplement to affiliate to the SFA for access to their specific services and networks. Others, particularly self-employed entrepreneurs and micro-enterprises, find that the SFA fulfils specific needs and are more inclined to affiliate to an organization that represents their sector more directly. Thus, this focused approach works to complement rather than to replace what IBEC does for the SME sector.

In addition to their 3,500 direct company members from the SME sector, SFA and IBEC together have 4,500 affiliate members from organizations ranging from craft associations to nursing homes to various industry federations.

In 2002, the SFA responded to 34,000 enquiries (through both telephone and correspondence) from its members, and provided direct consultations to 1,310 member companies. These activities directly benefited the business of the companies concerned. The SFA also held 21 briefing sessions and two training courses in different parts of the country, on subjects ranging from law and corporate governance to risk management and how to reduce insurance costs. In addition to services provided to member companies and associations, SFA provides information through newsletters, publications and surveys on pay and employment. It plays an advocacy role for its members directly with the Government and parliamentarians on labour relations, employment and business policy matters, serving on a number of national committees in these areas. It uses the printed and electronic media extensively in fulfilling its growing role in labour and employment matters in Ireland.

Source: Communication from IBEC (Dublin, 2003); SFA web site at www.sfa.ie.

349. Alliances between workers' and employers' organizations and community-based organizations can enable the parties to learn from each other's experiences and extend the range of tactics available for organizing. They can also provide for unity vis-à-vis the government. In the Philippines, for example, recently created "labour alliances" between trade union federations and confederations, community associations and cooperatives¹⁵ have often succeeded in presenting to the Government a united position on key issues of common interest.

350. These examples show that it may be possible to make a virtue of current trends towards decentralization of organization and negotiation and towards diversity among workers and workplaces. This will entail greater reliance on multiple organizational centres and forms of support, identifying and pursuing

¹⁵ T. Fashoyin: *Social dialogue and labour market performance in the Philippines*, InFocus Programme on Social Dialogue, Labour Law and Labour Administration Working Paper No. 14 (Geneva, ILO, 2003), p. 13.

Box 4.7**Promoting advocacy and voice for women entrepreneurs**

Women entrepreneurs are under-represented in employers' organizations and business associations throughout the world. However, in collaboration with the ILO, many employers' organizations in the Asia-Pacific region are taking initiatives to involve more women as members and better reflect their needs.

Through its project on Promoting Women's Entrepreneurship through Employers' Organizations in the Asia-Pacific Region,¹ the ILO is working with employers' groups to identify the reasons for low levels of female participation and devise ways of improving their representation.² Among the recommendations to emerge from research and discussions involving up to 13 national employers' groups³ is that such organizations should:

- carry out studies to determine the needs and characteristics of women entrepreneurs;
- formulate plans to develop and extend business development services to women entrepreneurs;
- enhance the participation of women entrepreneurs in membership and decision-making bodies;
- create strategic alliances with associations of women entrepreneurs, women's organizations and NGOs;
- develop capabilities in gender mainstreaming;
- promote networking and greater communications, including through web site development.

The project also highlighted best practices by employers' groups. These included "Springboard", a training and development programme run by public sector employers in India, which aims to help women improve their career prospects; and a wide-ranging effort by the Employers' Confederation of the Philippines to improve gender equality and women's representation. The latter involved the creation of special committees to identify issues, problems and needs and a series of seminars, workshops and training programmes.

¹ The Asia-Pacific project involved the unit on Women's Entrepreneurship Development and Gender Equality (WEDGE) of the ILO's InFocus Programme on Boosting Employment through Small Enterprise Development (IFP/SEED). It was carried out in association with the ILO's Regional Office for Asia and the Pacific. ² For more details, see ILO: *Promoting Women's Entrepreneurship through Employers' Organizations in the Asia-Pacific Region*, Final Report and Annexes, (Geneva, ILO, 2002). ³ Field missions were undertaken in Bangladesh, Nepal, Sri Lanka, Cambodia, Thailand, Viet Nam, Indonesia, Papua New Guinea and the Philippines. Research was carried out in India, Pakistan, China and Mongolia. Representatives of employers' organizations in most of these countries also attended a workshop in Bangkok in May 2002.

local synergies and coordinating local efforts. Success on this front also requires linking organizing with broader issues such as workplace discrimination, sexual and racial harassment at work, related health and safety issues, family-friendly policies, cultural, linguistic and religious rights and harassment by the forces of law and order and other government authorities.¹⁶

351. Seen in historical perspective, none of this is as innovative as it might appear. Employers and workers and their organizations have always played an important role in easing new entrants into the labour market and economic activity, providing for greater participation. Employers' and workers'

¹⁶ For examples of new approaches, see K. Bronfenbrenner et al. (eds.): *Organizing to win: New research on union strategies* (Ithaca, Cornell University Press, 1998). See also A.S. Oberai, A. Sivananthiran, C.S. Venkata Ratnam (eds.): *Perspectives on unorganised labour* (New Delhi, ILO-SAAT, 2000), on the extent to which trade unions are involved with new organizations in India.

organizations usually have the long-term goal of expanding their own membership, including through working with others. And employers' and workers' organizations typically have adapted in response to economic and labour market changes as well as political developments. Given the transformation occurring in the world of work of the twenty-first century, employers and workers and their representatives will increasingly need to take newcomers by the hand and help them learn the new language of labour and society where they work. This language has to include the practical terms of freedom of association and collective bargaining, if all workers are to participate fully and equitably in work and society. This will ultimately further strengthen employers' and workers' organizations.

Lessons learned

352. While the examples detailed above are merely a sample of the technical work being carried out, they show the breadth of elements needed to create an enabling environment for freedom of association and collective bargaining. Lasting legislative reform, the establishment or strengthening of institutions and changes in attitudes are all complex and long-term dynamic transformations. The difficulty of designing and implementing a project to address these multiple challenges is manifest. This is compounded by the fact that development experts recommend that projects focus on achieving one immediate objective. Moreover, work in this area is closely linked to economic, political and social developments at national, regional and international levels. Changing circumstances can dramatically alter the context in which individual projects operate.

353. What are some of the lessons from the ILO's experience to date with technical cooperation to promote the right to freedom of association and collective bargaining?

354. Although certain goals can be achieved in relatively short periods, four to five years is the minimum time that should be allowed before substantive results can be seen. Even then, success depends on many factors, most notably on whether the government and social partners share the project's priorities and have the will to achieve change.

355. Project design should take into account the complexity and variety of elements involved in delivering these rights. It is especially critical to demonstrate to employers, and not only employers' organizations, why modern labour law, efficient and effective enforcement, sound industrial relations and labour-management cooperation are in their interest. While workers and their organizations may understand more readily their interest in sound labour law and labour relations, they need to see that this system is not weighted against their interests in practice. Thus, it is important to build trust among governments, employers and workers, in each other and in the system of labour law and labour relations. In many cases, such trust either has never existed or has broken down as a result of armed conflicts, military dictatorships or other factors.

356. When building the case for change, one successful technique is to use local or regional success stories to help overcome the mindset that "this will never work here". A major contribution of many projects is to find these stories, promote them and encourage others to duplicate them.

357. There should be enough flexibility to respond to new needs and circumstances. Sometimes this can involve shifting priorities within a project. At other times, change can be less far-reaching, for example expanding the number of participants or adding activities at local level.

358. A related issue involves responding effectively to real needs. While these are sometimes fairly clear-cut, based on a specific request for assistance, there are instances where they emerge more slowly. Seminars, studies and the involvement of the social partners can be effective in pinpointing problems and possible solutions. The ILO Bureaux for Workers' Activities and Employers' Activities play an important role in helping define needs.

359. Legislative reform is a complex process that must involve at least the main social partners. Broader participation is also to be encouraged, to ensure that issues such as discrimination and the informal economy are addressed. It is also useful to include judges and parliamentarians during the early stages. Bringing representatives of these groups together to work with the ILO and international experts provides for a wider ownership of the process and the output, draft legislation.

360. Improving the effectiveness of labour inspection and administration often involves modernizing, rationalizing and introducing increased professionalism. As a result, information and education should cover a wider range of issues, including the need for government officials to see their role as service providers as well as law enforcers. Reducing bureaucracy can improve the effectiveness of such services. Separating the mediation/conciliation function from inspection is usually a good idea. When equipment is provided under a project, it should be accompanied by commitments from the government and social partners to use and maintain it appropriately. Matching resources or a government commitment to increase resources to the labour ministry are also to be encouraged.

361. While building trust is an over-arching aim, it is especially crucial in this area. Running a significant number of bipartite activities contributes to this goal because in most countries workers and employers do not have a chance to discuss matters of concern in a neutral and non-threatening environment. The ILO and its projects provide an important opportunity for this to happen. The next steps involve training in basic bargaining and negotiation skills, elements of collective bargaining agreements and enterprise-related economic issues, including sharing productivity gains.

362. Reinforcing and extending freedom of association and collective bargaining depends on building capacity in many different ways. It is by nature a gradual and continual process, which can at times fall victim to political, social or economic events. Technical cooperation does not and should not operate in isolation, hence the need to coordinate with policy work, both within and outside the ILO. Illustrating the kind of work that the ILO and its constituents are involved in can help feed into this policy work as well as encourage an extension of technical cooperation.

363. Developing capacity through technical cooperation projects cannot be an externally driven task. It requires the readiness of the country and its constituent partners to work in this area, and then to take over once the project is over. This ultimately has to be a nationally owned process, if technical cooperation is to help nurture real freedom of association and collective bargaining.

5. Building on progress

Promoting rights in a changing global context

364. This Report endeavours to provide a dynamic global picture relating to the fundamental principles and rights of freedom of association and the effective recognition of the right to collective bargaining. The context for this review is the expansion of democracy as a basis for government and the growing interdependence of countries in a global market economy. This perspective is particularly relevant because freedom of association is a building block of democracy and collective bargaining a vital instrument for the reconciliation of the claims that free associations of employers and workers make on each other and society as a whole. Although much needs to be done to broaden understanding of the importance and relevance of fundamental rights at work to economic, social and political development, there are encouraging signs that the climate of opinion is shifting at national and international levels.

365. The last four years have seen continued progress in the ratification of the two main Conventions defining these principles and rights. Indeed, measured in terms of the number of member States, the ILO is moving towards universal ratification of Conventions Nos. 87 and 98. However, ratification is only the beginning of a process of translating principles into practice. This Report has noted that a number of vulnerable groups continue to have great difficulty in exercising their rights to associate nearly everywhere in the world, and that these basic rights continue to be denied in some countries.

366. The Report has also examined changes in systems of collective bargaining. Although more research and analysis are needed, it is reasonable to conclude that the principles and rights referred to in the Declaration provide a strong foundation for the continuous adaptation of collective bargaining and associated mechanisms of social dialogue to keep pace with the changes inherent in a rapidly developing global market. The principles and rights allow for considerable diversity in the institutions needed for a dynamic labour market that balances the need for both flexibility and security.

367. The Report has also reviewed the effectiveness of past ILO work, particularly in the last four years, in promoting freedom of association and the effective recognition of the right to collective bargaining. Four years ago, *Your voice at work* concluded: “The prospects for the full realization of this

category of principles and rights will be immeasurably enhanced if the climate of opinion can be shifted in its favour".¹ Though progress has been made, this still remains the challenge today, in moving ahead in giving fuller effect to this human right. The technical cooperation activities of the ILO in the sphere of freedom of association and collective bargaining have developed considerably and are much appreciated by constituents. Labour law reform is a major issue in many countries, and ILO advice and encouragement, facilitated by technical cooperation, is ensuring that new and revised legislation incorporates provisions designed to give effect to the principles and rights of freedom of association and the effective recognition of the right to collective bargaining.

368. An important dimension of the promotional work under the follow-up to the Declaration is the need to see the principles and rights alongside the social and economic challenges which they can assist in meeting. Respect for freedom of association and the right to bargain collectively does not automatically translate into economic success or social peace. Much depends on how workers and employers use their rights to build institutions for representation and negotiation that can effectively reconcile competing claims and, more ambitiously, develop new forms of collaboration that raise productivity, output and employment. Side by side with the evolution of new bipartite bargaining structures, governments and employers' and workers' organizations are adapting their tripartite arrangements. The ILO is called upon to assist this process. Participation and dialogue in the formulation and implementation of policies to reduce poverty are an encouraging new activity for the Organization.

369. The global picture presented in this Report is, on balance, encouraging, although abuses of fundamental rights persist in too many countries. Freedom of association and collective bargaining touch upon issues of power, and changing the balance of power threatens the status quo and those that profit from an inequitable distribution of the dividends of economic activity. As with other fundamental democratic and human rights principles, freedom of association and collective bargaining require strong efforts and also periods of gestation to make lasting inroads, and they suffer from any setbacks that the principles and practice of democracy may encounter. Progress is materially aided by evidence that the principles and rights of freedom of association and collective bargaining enable countries to shape dynamic labour markets well adapted to meeting the economic and social priorities of a globalizing world.

370. In the face of growing evidence that this principle and right can be efficiently used to promote economic development and productivity, better management of enterprises and a good functioning of the economy and labour market, the climate of opinion is improving in many countries. Increased awareness of the achievements, success stories and good practices in this field will accelerate the process. This concerns above all the groups of workers facing particular difficulties in exercising their fundamental rights at work: those in agriculture, in the public sector, in EPZs, migrant and domestic workers, and the unprotected in the informal economy. It is also evident that persistent violations need to be addressed through all available channels.

371. It is now six years since the adoption of the Declaration and nearly four years since the ILO began its new programme on the promotion of fundamental principles and rights at work with the Action Plan introduced through *Your voice at work*. The broad conclusion of this Report is that the

¹ *Your voice at work*, op. cit., para. 155, p. 60.

mix of technical cooperation activities to promote the Declaration, ranging from advocacy to technical advice and capacity building, is having an impact. However, it is too early to make a comprehensive judgement, not least because significant elements of the programme have only come on stream towards the end of the four years under review.

372. Increasing the impact of our work means concentrating resources over the next four years on the categories of workers mentioned above. It is especially important to explore the various ways in which the right to organize and engage in collective bargaining can be promoted in the informal economy. In addition, the ILO should target its action towards assisting the countries that have not yet ratified Conventions Nos. 87 and 98 to find ways in which the obstacles can be overcome. Reinforcing and targeting the ILO's technical cooperation programmes require an investment in research and technical knowledge to ensure that advocacy is well informed.

Knowledge and advocacy: Making the case, winning the arguments

373. Many of the activities signposted under advocacy in *Your voice at work* have been undertaken, including awareness raising among constituents, as well as other actors, and intensified exchanges with other development partners to ensure that we work on this principle in a complementary fashion and not at cross-purposes. However, the information base required for advocacy and services to constituents is still inadequate at the global and country levels. Advocacy work has to continue and be intensified, but it is necessary to develop a solid information base for this purpose, and to focus on priorities.

374. In the ILO's advocacy work three issues are increasingly apparent. First, real-life examples of employers and workers exercising their rights and achieving results make a convincing case that others wish to emulate. Accordingly, information should be gathered more systematically on good practices in collective bargaining and social dialogue, based on concrete cases at country level and coming directly from the constituents or from cooperation with the ILO. When necessary, this can be presented in combination with lessons from broader studies on the socio-economic effects of applying the principle.

375. Second, information on what employers' and workers' organizations are doing for current and new members, and for civil society as a whole, is a source of considerable encouragement to others.

376. Third, information should be collected on how the ILO can work with others at different levels (from global to local) and how others are taking account of the principle of freedom of association and collective bargaining to support an integrated approach to economic and social development founded on respect for rights at work.

377. This information should be tailored in form, substance and medium to different audiences, including ILO constituents and other relevant groups (such as judges, parliamentarians, economic ministries, regional international financial institutions, educational and research institutions, media and community groups).

378. This Report has come up against the persistent weakness and fragmentation of data relating to this principle. Accordingly, better information and analysis need to be made available in four areas.

379. First, it is essential to have an up-to-date picture of the legislative situation regarding freedom of association and the effective recognition of the

right to bargain collectively, at any given time, in any given country. Upon request, the ILO could envisage carrying out national studies on labour legislation in member States, including studies on specific categories of workers and sectors. The ILO's work would then be firmly grounded in detailed knowledge of the law and practice concerning this fundamental principle.

380. Second, data on membership of employers' and workers' organizations are largely incomplete and out of date. Part of the problem lies in inconsistency in terms of what is being measured; part is due to the difficulty of obtaining reliable and objective figures. Working closely with these organizations, the ILO should establish the most reliable and recent figures available, using a variety of sources, based both on surveys and administrative records. Where possible, these should include data disaggregated by sex and sector, as well as figures on the informal economy. The informal economy is hard to measure, but it is essential to identify developed or embryonic organizations active there.

381. Third, information on the coverage, level and scope of collective bargaining and its outcomes is unreliable or non-existent for large parts of the world, and not only for developing countries. Better information in this area will help the social partners to weigh the advantages of addressing different subjects at different levels of negotiation, and to find ways of meeting the needs of different categories of workers and extending the scope of this right. It will also provide the parties to bargaining with the information on micro and macroeconomic issues that they need to engage in informed consultations and negotiations. In addition, it will shed more light on the linkages between the membership of employers' and/or workers' organizations and the coverage of collective bargaining.

382. Fourth, data from ILO technical cooperation should be better extracted and exploited, in terms of problem analysis, evaluation of impact on target groups and drawing policy lessons from the changes effected at the country level through these projects. Information gathered in the course of technical cooperation should help in designing further assistance and contribute to research and reporting. Technical cooperation programmes should have built-in components of information gathering, analysis and evaluation. This should certainly be the case for activities related to freedom of association and collective bargaining and capacity building in the areas of labour law, labour relations and empowering the social partners, discussed in Chapter 4.

383. There is considerable potential in linking the promotion of fundamental principles and rights at work to ILO activities with national constituents on other components of the Decent Work Agenda. Information on the direct or indirect effect that different technical cooperation projects have on the realization of this principle will also help evaluate the extent to which the principle is being mainstreamed in a variety of ILO activities. In addition, certain technical cooperation projects of other multilateral agencies could be studied in order to assess how the principle may be respected and given effect in these projects and to gauge the extent to which different groups and sectors are being targeted.

384. The above steps will help place the ILO in a better position to start documenting case studies of good practice that strengthen respect for freedom of association and collective bargaining, as well as research on the socio-economic benefits of these principles. Some of this can be done by the ILO and its constituents, some of it with other actors, especially research bodies, including networks of researchers such as the International Society for Labour Law and Social Security and the International Industrial Relations Association.

Services to the constituency

385. Based on the lessons drawn from selected national situations, *Your voice at work* pointed to a “winning formula” for realizing fundamental principles and rights at work in practice: a combination of political commitment, well-targeted technical cooperation, and vibrant interaction and dialogue among the social partners. In this context, legislation and its enforcement are at the heart of creating an enabling framework for constructive labour relations and the extension of collective negotiations and other social dialogue mechanisms to more people.

386. In many countries, there is a need for further improvement of the capacity to keep legislation up to date and to ensure that it is broadly disseminated and enforced, through both judicial and administrative bodies (especially labour administration and inspection services). In this regard, the design and implementation of capacity-building programmes must address the specific problems faced by less protected workers, and the best means of securing their rights. While strengthening the labour administration services of ministries of labour is essential, this is not sufficient. More innovative means of enforcement are also required, including the effective empowerment of employers and workers and their representatives in monitoring and guaranteeing rights, and providing for more effective checks and balances against abuses and violations.

387. A further priority is reinforcing the negotiation skills of the social partners on a range of issues, including the conclusion of collective agreements. Other skills include the ability of employers to respond to the initial organizing drive and initiatives on the part of workers and their representatives to obtain effective recognition for bargaining purposes. Being able to identify, share, analyse and use different types of information in negotiations is also important, in particular to ensure that government and the public at large understand the issues at stake.

388. A number of countries have expressed interest in strengthening dispute prevention and resolution processes, as well as the skills of the constituents in using both established and innovative practices designed to promote equitable and effective outcomes.

389. There is a parallel need to enhance the capacity of employers’ and workers’ organizations to retain and expand their membership. This requires focusing on sectors where organization is weak and meets with practical difficulties, such as the rural and the informal economies.

390. Complementary work is necessary to strengthen statutory labour market institutions and national tripartite councils and identify means for the articulation of their decisions with the process and outcomes of voluntary negotiations. This concerns policies in areas such as the determination of minimum wages, social security and training, as well as labour courts and other award-making bodies for determining terms and conditions of employment. Strengthening the tripartite nature of such bodies will ensure a judicious mix of statutory and voluntary processes in determining terms and conditions, in particular with a view to meeting the concerns of less organized sectors of the economy and categories of workers, while promoting the best means of giving effect to their right to organize and bargain collectively.

Delivering ILO services effectively

391. This chapter has outlined some key elements for the development of the ILO’s technical cooperation programme on freedom of association and

the effective recognition of the right to collective bargaining. In this regard, one of the lessons drawn from the Action Plans started over the last four years is the importance of joint activities involving collaboration between the InFocus Programme on Promoting the Declaration (DECLARATION) and one or more other units of the Office. The first Action Plan on the freedom of association and collective bargaining principle was carried out in close collaboration with the Social Dialogue Sector of the ILO. Only the second Action Plan on the principle of eliminating forced labour has been largely undertaken within DECLARATION, because this was a new operational area for the Office. The third Action Plan on the principle of abolishing child labour has naturally been carried out by the InFocus Programme on Child Labour (IPEC). Lastly, the implementation of the Action Plan on the principle of eliminating discrimination at work, discussed at the November 2003 session of the Governing Body, will be the responsibility of a task force involving different parts of the Office working on anti-discrimination questions.

392. Action resulting from the discussion of this Report should essentially be carried out by or in close collaboration between DECLARATION and the Freedom of Association Branch (LIBSYND) of the International Labour Standards and Human Rights Department, the Sectoral Activities Department (SECTOR), the Bureaux for Employers' and Workers' Activities (ACT/EMP and ACTRAV), the InFocus Programme on Social Dialogue, Labour Law and Labour Administration (IFP/DIALOGUE) and the Turin Centre. IFP/DIALOGUE addresses the establishment and strengthening of legal frameworks, institutions, machinery and processes of bipartite and tripartite social dialogue, including collective bargaining and dispute prevention and resolution, as well as strengthening labour administrations and providing technical support for the revision of legislation. LIBSYND will in turn continue to follow up specific cases presented to the supervisory mechanism and respond to requests for assistance by governments. SECTOR provides an opportunity to address freedom of association and collective bargaining issues in specific economic sectors. ACT/EMP and ACTRAV seek to strengthen the representation, services and influence of the social partners, which are essential for exercising freedom of association and the right to collective bargaining. The Turin Centre can also help to enhance the capacity of all three social partners in this respect.

Objectives for the next four years

393. Four years ago, *Your voice at work* stated that while significant progress had been made in the acceptance and realization of the principles of freedom of association and the right to collective bargaining, there were still too many people for whom this means of improving their position in life remained unattainable or elusive. The intervening period has not seen any radical change in this situation. This Report has reviewed developments that have occurred, as well as means of addressing the considerable challenges still ahead. Although the picture remains mixed, there are some encouraging experiences which constituents of the ILO, and the Organization as a whole, can build upon.

394. Looking ahead, the Organization faces four main challenges. First, universal ratification of Conventions Nos. 87 and 98 has to be pursued. The ILO should focus on working closely with constituents in the non-ratifying countries to further seek the means to overcome existing obstacles. Second, in nearly all countries, vulnerable groups face considerable difficulty, and sometimes personal risk, in exercising their right to freedom of association. The updated Action Plan must reinforce activities to support organizing and

bargaining by these workers. Third, the ILO should examine more closely the means by which the principles and rights of freedom of association and collective bargaining can be used to build an institutional framework for the labour market that promotes sustainable social and economic development, especially the reduction of poverty. Fourth, the ILO should deepen its knowledge base and thus strengthen its advisory services and its advocacy and awareness activities. Addressing these four areas in a more systematic and concentrated manner will help promote a global culture of freedom of association and collective bargaining, thus strengthening the political will and practical capacity to use these fundamental rights as a foundation for democratic development in an interdependent world.



Annexes

Annex 1

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:
 - (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;
 - (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.
2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour;
 - (c) the effective abolition of child labour; and
 - (d) the elimination of discrimination in respect of employment and occupation.
3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:
 - (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
 - (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and
 - (c) by helping the Members in their efforts to create a climate for economic and social development.
4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.
5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex

Follow-up to the Declaration

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.
2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.
3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e) of the Constitution; and the global report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.
2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e) of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.
2. These reports, as compiled by the Office, will be reviewed by the Governing Body.
3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.
4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global report

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.
2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.
2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. It is understood that:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.
2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

IN FAITH WHEREOF we have appended our signatures this nineteenth day of June 1998.

The President of the Conference,
JEAN-JACQUES OECHSLIN.

The Director-General of the International Labour Office,
MICHEL HANSENNE.

Annex 2

Table of ratifications of ILO Conventions Nos. 87 and 98 and annual reports submitted under the Declaration follow-up (as at 1 January 2004)

No. 87 – Freedom of Association and Protection of the Right to Organise Convention, 1948

No. 98 – Right to Organise and Collective Bargaining Convention, 1949

Explanation of symbols in the table

- R Convention ratified
- Convention not ratified
- Yes Annual report received
- No Annual report not received
- n/a Not applicable

Member States	Ratifications		2004 annual report submitted ¹
	C.87	C.98	
Afghanistan	–	–	No
Albania	R	R	n/a
Algeria	R	R	n/a
Angola	R	R	n/a
Antigua and Barbuda	R	R	n/a
Argentina	R	R	n/a
Armenia	–	R	No
Australia	R	R	n/a
Austria	R	R	n/a
Azerbaijan	R	R	n/a
Bahamas	R	R	n/a
Bahrain	–	–	Yes
Bangladesh	R	R	n/a

Member States	Ratifications		2004 annual report submitted ¹
	C.87	C.98	
Barbados	R	R	n/a
Belarus	R	R	n/a
Belgium	R	R	n/a
Belize	R	R	n/a
Benin	R	R	n/a
Bolivia	R	R	n/a
Bosnia and Herzegovina	R	R	n/a
Botswana	R	R	n/a
Brazil	–	R	Yes
Bulgaria	R	R	n/a
Burkina Faso	R	R	n/a
Burundi	R	R	n/a
Cambodia	R	R	n/a
Cameroon	R	R	n/a
Canada	R	–	Yes
Cape Verde	R	R	n/a
Central African Republic	R	R	n/a
Chad	R	R	n/a
Chile	R	R	n/a
China	–	–	Yes
Colombia	R	R	n/a
Comoros	R	R	n/a
Congo	R	R	n/a
Costa Rica	R	R	n/a
Côte d'Ivoire	R	R	n/a
Croatia	R	R	n/a
Cuba	R	R	n/a
Cyprus	R	R	n/a
Czech Republic	R	R	n/a
Democratic Republic of the Congo	R	R	n/a
Denmark	R	R	n/a
Djibouti	R	R	n/a
Dominica	R	R	n/a
Dominican Republic	R	R	n/a
Ecuador	R	R	n/a
Egypt	R	R	n/a
El Salvador	–	–	Yes
Equatorial Guinea	R	R	n/a
Eritrea	R	R	n/a
Estonia	R	R	n/a
Ethiopia	R	R	n/a
Fiji	R	R	n/a
Finland	R	R	n/a
France	R	R	n/a

Member States	Ratifications		2004 annual report submitted ¹
	C.87	C.98	
Gabon	R	R	n/a
Gambia	R	R	n/a
Georgia	R	R	n/a
Germany	R	R	n/a
Ghana	R	R	n/a
Greece	R	R	n/a
Grenada	R	R	n/a
Guatemala	R	R	n/a
Guinea	R	R	n/a
Guinea-Bissau	–	R	No
Guyana	R	R	n/a
Haiti	R	R	n/a
Honduras	R	R	n/a
Hungary	R	R	n/a
Iceland	R	R	n/a
India	–	–	Yes
Indonesia	R	R	n/a
Iran, Islamic Republic of	–	–	Yes
Iraq	–	R	No
Ireland	R	R	n/a
Israel	R	R	n/a
Italy	R	R	n/a
Jamaica	R	R	n/a
Japan	R	R	n/a
Jordan	–	R	Yes
Kazakhstan	R	R	n/a
Kenya	–	R	No
Kiribati	R	R	n/a
Korea, Republic of	–	–	Yes
Kuwait	R	–	Yes
Kyrgyzstan	R	R	n/a
Lao People's Democratic Republic	–	–	No
Latvia	R	R	n/a
Lebanon	–	R	Yes
Lesotho	R	R	n/a
Liberia	R	R	n/a
Libyan Arab Jamahiriya	R	R	n/a
Lithuania	R	R	n/a
Luxembourg	R	R	n/a
Madagascar	R	R	n/a
Malawi	R	R	n/a
Malaysia	–	R	Yes
Mali	R	R	n/a
Malta	R	R	n/a

Member States	Ratifications		2004 annual report submitted ¹
	C.87	C.98	
Mauritania	R	R	n/a
Mauritius	–	R	Yes
Mexico	R	–	Yes
Moldova, Republic of	R	R	n/a
Mongolia	R	R	n/a
Morocco	–	R	Yes
Mozambique	R	R	n/a
Myanmar	R	–	Yes
Namibia	R	R	n/a
Nepal	–	R	Yes
Netherlands	R	R	n/a
New Zealand	–	R	Yes
Nicaragua	R	R	n/a
Niger	R	R	n/a
Nigeria	R	R	n/a
Norway	R	R	n/a
Oman	–	–	Yes
Pakistan	R	R	n/a
Panama	R	R	n/a
Papua New Guinea	R	R	n/a
Paraguay	R	R	n/a
Peru	R	R	n/a
Philippines	R	R	n/a
Poland	R	R	n/a
Portugal	R	R	n/a
Qatar	–	–	Yes
Romania	R	R	n/a
Russian Federation	R	R	n/a
Rwanda	R	R	n/a
Saint Kitts and Nevis	R	R	n/a
Saint Lucia	R	R	n/a
Saint Vincent and the Grenadines	R	R	n/a
San Marino	R	R	n/a
Sao Tome and Principe	R	R	n/a
Saudi Arabia	–	–	Yes
Senegal	R	R	n/a
Serbia and Montenegro	R	R	n/a
Seychelles	R	R	n/a
Sierra Leone	R	R	n/a
Singapore	–	R	Yes
Slovakia	R	R	n/a
Slovenia	R	R	n/a
Solomon Islands	–	–	No
Somalia	–	–	No

Member States	Ratifications		2004 annual report submitted ¹
	C.87	C.98	
South Africa	R	R	n/a
Spain	R	R	n/a
Sri Lanka	R	R	n/a
Sudan	–	R	Yes
Suriname	R	R	n/a
Swaziland	R	R	n/a
Sweden	R	R	n/a
Switzerland	R	R	n/a
Syrian Arab Republic	R	R	n/a
Tajikistan	R	R	n/a
Tanzania, United Republic of	R	R	n/a
Thailand	–	–	Yes
The former Yugoslav Republic of Macedonia	R	R	n/a
Timor-Leste, Democratic Republic of	–	–	New Member
Togo	R	R	n/a
Trinidad and Tobago	R	R	n/a
Tunisia	R	R	n/a
Turkey	R	R	n/a
Turkmenistan	R	R	n/a
Uganda	–	R	Yes
Ukraine	R	R	n/a
United Kingdom	R	R	n/a
United Arab Emirates	–	–	Yes
United States	–	–	Yes
Uruguay	R	R	n/a
Uzbekistan	–	R	No
Vanuatu	–	–	New Member
Venezuela	R	R	n/a
Viet Nam	–	–	No
Yemen	R	R	n/a
Zambia	R	R	n/a
Zimbabwe	R	R	n/a

¹ ILO: *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports*, Governing Body doc. GB.289/4, 289th Session, Geneva, Mar. 2004.

Annex 3

Text of Conventions Nos. 87 and 98

Convention No. 87

Convention concerning Freedom of Association and Protection of the Right to Organise¹

The General Conference of the International Labour Organisation,
Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948,

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session,

Considering that the Preamble to the Constitution of the International Labour Organisation declares “recognition of the principle of freedom of association” to be a means of improving conditions of labour and of establishing peace,

Considering that the Declaration of Philadelphia reaffirms that “freedom of expression and of association are essential to sustained progress”,

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation,

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

¹ This Convention came into force on 4 July 1950.

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification

of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term “organisation” means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

[Miscellaneous and final provisions omitted]

Convention No. 98

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively²

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to –

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

² This Convention came into force on 18 July 1951.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

[Final provisions omitted.]