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**Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms**

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Working papers are preliminary documents circulated  
to stimulate discussion and obtain comments

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## 1. Introduction

Export processing zones (EPZs) have been defined as “industrial zones with special incentives set up to attract foreign investment in which imported materials undergo some degree of processing before being re-exported”.<sup>1</sup> There are EPZs of various kinds, including those covering a single industry, single commodity, single factory or single company. In some countries, factories engaged in export-oriented production located anywhere in the country may apply for EPZ status.<sup>2</sup> Taking into consideration these variations, the ILO’s Special Action Programme on EPZs takes, as a working definition of an EPZ, “any situation in which an incentive is offered to investors and that investment is primarily for export”.<sup>3</sup> The last two decades have witnessed a rapid rise in the number of such zones variously called EPZs, free trade zones, special economic zones, *maquiladoras*, etc. It is estimated that there are presently about 3,000 EPZs in 116 countries employing approximately 43 million workers.<sup>4</sup>

The wide proliferation of EPZs has increased the competition among EPZ-operating countries to attract foreign investment in the zones. Under the assumption that union-free zones would attract greater investment, some EPZ-operating countries have, under their laws, either deprived EPZ workers of their right to organize themselves or placed severe limitations on the free exercise of this right. Even when there are no such limitations under the law, EPZ workers in many countries are unable to effectively exercise their freedom of association on account of the anti-union discriminatory practices adopted by employers against EPZ workers engaged in trade union activities. These include the unjust dismissal, suspension, transfer and blacklisting of trade union officials and members. Employers in EPZ enterprises sometimes even resort to physical violence to prevent workers from forming and joining trade unions of their choosing. The problem is accentuated when there is a lack of effective enforcement of laws in the zones, as is often the case.

Even when EPZ workers are able to form and join trade unions of their choosing, the unions may be unable to function effectively when the law imposes unreasonable requirements for their recognition as bargaining agents or restricts the issues that may be the subject of collective negotiations or when EPZ employers refuse to negotiate with them or when the law prohibits EPZ workers from resorting to industrial action in defence of their legitimate interests or restricts this right, as is the case in many countries.

EPZ workers thus face various obstacles both in forming and joining unions of their own choosing and in exercising their collective bargaining rights. When EPZ workers are either denied the right to form and join unions of their choosing, or are unable to effectively exercise this right, they are unable to collectively voice their concerns and protect their interests. Similarly, when EPZ workers are unable to effectively exercise their

<sup>1</sup> ILO: *Labour and social issues relating to export processing zones*, report for discussion at the tripartite meeting of EPZ-operating countries, Geneva, 1998, p. 3.

<sup>2</sup> *Export processing zones*, SECTOR, ILO: <http://www.ilo.org/public/english/sector/themes/epz.htm>.

<sup>3</sup> *What are EPZs?*, Labour Law and Labour Relations Branch (LEG/REL), ILO: <http://www.ilo.org/public/english/dialogue/govlab/legrel/tc/epz/epz.htm>.

<sup>4</sup> ILO: *Employment and social policy in respect of export processing zones*, Governing Body document GB.286/ESP/3, 286th Session, Geneva, Mar. 2003, table 1.

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collective bargaining rights, they can have little say in respect of their terms and conditions of employment.

The ILO has therefore taken various measures in order to ensure observance of the principles of freedom of association and collective bargaining in EPZs. Two of its supervisory mechanisms, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association have laid down several principles concerning the freedom of association and collective bargaining rights of EPZ workers on the basis of which recommendations have been made to the governments of various EPZ-operating countries. Through its advisory and technical services, the ILO has been assisting countries to comply with these principles. The ILO has also organized seminars and workshops regarding the promotion of freedom of association and social dialogue in EPZs. It has also brought out various publications on the subject.

This paper discusses the principles of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) concerning the freedom of association and collective bargaining rights of workers in EPZs, the recommendations made by them and the measures taken by the governments of EPZ-operating countries pursuant to such recommendations. The paper begins with an overview of the relevant international labour standards and supervisory mechanisms. It then discusses the relevant principles and recommendations of the ILO supervisory bodies by referring to particular examples. It also takes a look at the measures taken by governments to give effect to these recommendations. In conclusion, this paper takes the view that, while the recommendations of the supervisory bodies have had a significant impact, the ILO would need to step up efforts to achieve better compliance with the principles of freedom of association and collective bargaining in EPZs.

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## 2. International labour standards and ILO supervisory mechanisms

### 2.1. International labour standards

Freedom of association, including the right to form and join unions for the protection of one's rights and interests, has been recognized as one of the fundamental human rights deriving from the inherent dignity of the human person.<sup>5</sup> The Preamble to the Constitution of the ILO indicates that recognition of the principles of freedom of association is vital for the improvement of the conditions of labour and the achievement of universal and lasting peace. The Declaration concerning the aims and principles of the ILO, called the "Declaration of Philadelphia" that is appended to the Constitution of the ILO, reaffirms that freedom of association is essential to sustained progress.

The two main instruments of the ILO that promote and protect the freedom of association are the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (Convention No. 98). On account of the importance of the principles contained in the two Conventions, they have been categorized as "fundamental Conventions" requiring universal observance.<sup>6</sup> Convention No. 87 has been ratified by 145 member States of the ILO and Convention No. 98 by 154 member States.

#### 2.1.1. Convention No. 87

The Convention guarantees to all workers and employers, without distinction whatsoever, the right to establish and join organizations of their own choosing without previous authorization.<sup>7</sup> It makes an exception in the case of members of the armed forces and the police by providing that the extent to which the Convention shall apply to armed forces and the police shall be determined by national laws or regulations.<sup>8</sup> It guarantees to employers' and workers' organizations, the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.<sup>9</sup> It calls upon public authorities to refrain from any

<sup>5</sup> The freedom of association and the right to form and join unions have been recognized as human rights under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>6</sup> Conventions Nos. 87 and 98 are two among the eight Conventions identified as fundamental Conventions by the Governing Body of the ILO. The six other Conventions identified as fundamental Conventions are Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). The standards contained in these Conventions are commonly referred to as the "core labour standards".

<sup>7</sup> Article 2 of the Convention guarantees this right. Article 10 of the Convention defines the term "organization" under the Convention as any organization of workers or employers for furthering and defending the interests of workers or employers.

<sup>8</sup> Article 9, para. 1.

<sup>9</sup> Article 3, para. 1.

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interference that would restrict this right or impede the lawful exercise thereof.<sup>10</sup> It seeks to protect employers' and workers' organizations from dissolution or suspension by administrative authority.<sup>11</sup> It provides that the conditions for acquisition of legal personality by employers' and workers' organizations should not be of such a character as to restrict the rights guaranteed under Articles 2, 3 and 4.<sup>12</sup> It also guarantees to employers' and workers' organizations the right to establish and join federations and confederations and the right of such organizations, federations and confederations to affiliate with international organizations of workers.<sup>13</sup> It commits member States, for which the Convention is in force, to take all necessary and appropriate measures to ensure that workers may freely exercise the right to organize<sup>14</sup> and provides that the law of the land shall not be such as to impair nor should it be applied in a manner so as to impair the rights guaranteed under the Convention.<sup>15</sup>

## Right to strike

The right to strike has not been explicitly guaranteed under the Convention. However, the right to strike is considered to be an intrinsic corollary of the right to organize guaranteed by the Convention.<sup>16</sup> Articles 3, 8 and 10 of the Convention that guarantee to trade unions the right to organize their administration and activities and to formulate their programmes and further the interests of workers have been interpreted as being inclusive of the right to strike.<sup>17</sup>

### **2.1.2. Convention No. 98**

The Convention guarantees to workers adequate protection against acts of anti-union discrimination in respect of their employment.<sup>18</sup> It provides that 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; or (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.<sup>19</sup> The Convention seeks to protect employers' and workers' organizations against acts of interference by each other or each

<sup>10</sup> Article 3, para. 2.

<sup>11</sup> Article 4.

<sup>12</sup> Article 7.

<sup>13</sup> Article 5.

<sup>14</sup> Article 11.

<sup>15</sup> Article 8.

<sup>16</sup> General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), International Labour Conference, 81st Session, 1994, Report III (Part 4B), para. 151.

<sup>17</sup> *idem*, para. 147.

<sup>18</sup> Article 1, para. 1.

<sup>19</sup> Article 1, para. 2.



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other's agents or members in their establishment, functioning and administration.<sup>20</sup> It clarifies that acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations or to support workers' or other organizations by financial or other means, with the object of placing such organizations under the control of employers' or employers' organizations shall be deemed to constitute acts of interference. It calls for the establishment of machinery appropriate to national conditions, where necessary, to ensure respect for the right to organize guaranteed under the Convention.<sup>21</sup>

It seeks to promote collective bargaining by calling upon States to take measures appropriate to national conditions, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to regulation of the terms and conditions of employment by means of collective agreements.<sup>22</sup>

Like Convention No. 87, it provides that the extent to which the guarantees in the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.<sup>23</sup> Article 6 of the Convention clarifies that it does not deal with the position of public servants engaged in the administration of the state nor should it be construed as prejudicing their rights or status in any way.

## **2.2. ILO supervisory mechanisms**

The two main supervisory mechanisms of the ILO concerned with the application of the standards contained in Conventions Nos. 87 and 98 are the CEACR and the CFA.

### **2.2.1. Committee of Experts on the Application of Conventions and Recommendations (CEACR)**

The CEACR is a 20-member body consisting of eminent jurists drawn from member States who are appointed by the Governing Body of the ILO. The Committee monitors compliance with international labour standards on the basis of reports submitted by member States regarding the application of the Conventions ratified by them and also on the basis of observations by employers' and workers' organizations.

Article 22 of the ILO Constitution requires each member State to submit an annual report in respect of the Conventions it has ratified. This requirement has been modified and, since 1994, member States are required to submit reports once every two years in respect of each of the fundamental Conventions they have ratified, including Conventions Nos. 87 and 98, and the priority Conventions.<sup>24</sup> In respect of other Conventions, reports

<sup>20</sup> Article 2, para. 1.

<sup>21</sup> Article 3.

<sup>22</sup> Article 4.

<sup>23</sup> Article 5.

<sup>24</sup> The fundamental Conventions are listed in supra n. 6. The priority Conventions are: the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the Labour Inspection Convention, 1947 (No. 81); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Employment Policy Convention, 1964 (No. 122).

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are required to be submitted every five years. The reports contain details of the measures taken in law and in practice to apply the provisions of the Conventions ratified. Copies of the reports are required to be sent by the Government to representative employers' and workers' organizations for their observations. Employers' and workers' organizations may also send their observations on the application of the Conventions directly to the ILO. The CEACR examines the reports submitted by member States and the observations of employers' and workers' organizations and makes country-wise individual comments. Such comments may either be observations on the application of the Convention or direct requests seeking further information. The observations of the Committee are published in an annual report.

In order to address concerns relating to the growing trend of the establishment of EPZs, the CEACR has requested member States, since 1980, to provide in their reports, information concerning the effects of setting up EPZs on the rights of workers under Conventions Nos. 87 and 98. Since 1982, it has also invited observations from employers' and workers' organizations on the subject. Such observations have been examined by the CEACR under its comments on the application of the Conventions.

### **2.2.2. Conference Committee on the Application of Standards**

The Conference Committee on the Application of Standards is a tripartite body appointed by the Governing Body of the ILO and consists of representatives of the governments of member States, employers and workers. The Committee examines the annual report of the CEACR that is submitted to the International Labour Conference (ILC) through the Governing Body and chooses from it issues of concern for discussion. It invites representatives of the concerned governments to appear before it to respond to such issues. On the basis of such discussion, the Committee draws its conclusions. In its conclusions, the Committee may recommend that the government take certain measures to ensure conformity with the requirements of a Convention. The discussions and conclusions of the Committee are published in its report.

### **2.2.3. Committee on Freedom of Association (CFA)**

The CFA is a tripartite body consisting of nine members with three members each drawn from representatives of governments, workers and employers in the Governing Body. It is assisted by an independent chairperson. The CFA meets thrice a year and examines complaints concerning the violation of freedom of association. Ratification by the concerned country of the relevant Conventions on the protection of freedom of association is not necessary for the examination of complaints made by or on behalf of employers' or workers' organizations in that country. Thus, even trade unions from countries that have not ratified either Conventions Nos. 87 or 98 can prefer complaints to the CFA. ILO procedures stipulate that the complaint must be made either by a national organization directly interested in the matter or an international organization with ILO consultative status, or an international organization whose affiliates are directly affected by the matters raised in the complaint.

The CFA generally does not have any procedure of holding hearings to take evidence from the concerned parties. The CFA relies on the complaint, the observations made in reply by the concerned government and the documents submitted by the parties to arrive at its conclusions. In respect of countries that have ratified the core Conventions on the freedom of association, the legislative aspects of the case are often referred to the CEACR for examination. The CFA arrives at decisions unanimously. It may make such recommendations as it deems fit to the Governing Body. On approval by the Governing

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Body, the recommendations are transmitted to the concerned member State. The recommendations may require the concerned government to report on the action taken pursuant to the recommendations. The principles enunciated by the Committee are compiled in the *Digests of decisions and principles of the Freedom of Association Committee* published by the ILO and afford guidance for the decision of future cases of a similar nature.

A number of complaints about the denial of trade union rights to workers in EPZs have come up for the consideration of the CFA over the last two decades.

## **2.3. Relevant declarations**

Declarations adopted by the Governing Body of the ILO have been described as “informal normative instruments”<sup>25</sup> and are considered as “informal labour standards”.<sup>26</sup> The following two Declarations are relevant in the context of the freedom of association of EPZ workers.

### **2.3.1. ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up**

Several EPZ-operating countries with significant EPZ employment such as China, the Republic of Korea, India, Thailand and Viet Nam have not ratified either Conventions Nos. 87 or 98. Brazil, Kenya, Malaysia, Mexico and Singapore have ratified only one of the two Conventions. However, even these countries that have not ratified either or both of the Conventions are expected to give effect to the principles contained in the Conventions, by virtue of the abovementioned Declaration adopted in 1998.<sup>27</sup>

The Declaration requires all member States to respect, promote and realize the principles contained in the eight fundamental Conventions relating to freedom of association and the effective recognition of the right of collective bargaining, the elimination of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation,<sup>28</sup> even when they have not ratified the Conventions in question.<sup>29</sup> It proclaims that all member States have an obligation to do so, arising from the very fact of their membership of the Organization.<sup>30</sup>

Under the Follow-up to the Declaration, member States that have not ratified all or any of the eight Conventions in the aforesaid four categories, are required to submit annual

<sup>25</sup> Informal forms of international labour standards: <http://www.ilo.org/public/english/standards/norm/whatare/lessfrml/index.htm>.

<sup>26</sup> *supra* n. 25.

<sup>27</sup> The Declaration was adopted by the ILC of the ILO at its 86th Session held in June 1998.

<sup>28</sup> *supra* n. 6.

<sup>29</sup> Article 2.

<sup>30</sup> Article 2.

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reports to the ILO in respect of the Conventions they have not ratified.<sup>31</sup> Member States that have not ratified the core Conventions on freedom of association and collective bargaining are required to submit annual reports indicating the status of law and practice regarding these principles in their countries, the measures taken to realize the rights, the difficulties encountered in the realization of the rights and the kind of technical assistance needed from the ILO to realize these rights. They are also required to report specifically on the observance of these principles in EPZs. Copies of these reports are required to be furnished to the most representative employers' and workers' organizations in the respective member States for their observations.

The observations made by workers' organizations in respect of EPZs have drawn attention to low trade union membership in EPZs,<sup>32</sup> denial of access for trade union representatives to workers in EPZs,<sup>33</sup> anti-union practices by employers in EPZs,<sup>34</sup> and the poor enforcement of labour laws in EPZs.<sup>35</sup>

The International Labour Office compiles information on the basis of the annual reports submitted by the concerned member States and the observations made thereon by employers' and workers' organizations. This information is examined by a group of seven experts called the ILO Declaration Expert-Advisers. The Expert-Advisers present an introduction to the compilation bringing to the attention of the Governing Body aspects of these reports that, in its view, need to be discussed in depth by the Governing Body.

The Expert-Advisers have stressed the importance of the observance of the principles of freedom of association in EPZ enterprises<sup>36</sup> and observed that workers in EPZs should be covered by the law and the labour administration.<sup>37</sup> Noting that workers in certain sectors, including EPZ workers, face obstacles in some countries in respect of the exercise of their freedom of association, the Expert-Advisers have urged governments to reconsider

<sup>31</sup> Para. II of the Follow-up.

<sup>32</sup> Observations made by the International Confederation of Free Trade Unions (ICFTU) in relation to India. See *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*, GB.286/4, International Labour Office, Geneva, Mar. 2003, para. 62; and observations made by the ICFTU in relation to Fiji and Mauritius, compilation of annual reports under the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office, Geneva, 2002, pp. 52 and 120.

<sup>33</sup> Observations made by the All India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS) and the ICFTU in relation to India See *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*, GB.292/4, International Labour Office, Geneva, Mar. 2005, para. 117.

<sup>34</sup> Observations made by the ICFTU in relation to El Salvador, see compilation, 2002, supra n. 32, p. 49.

<sup>35</sup> Observations of the ICFTU in relation to Brazil and India. See GB.292/4, 2005, supra n. 33, paras 117–118; observations made by the ICFTU in relation to Mauritius, see compilation, 2002, supra n. 32, p. 120.

<sup>36</sup> 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, GB.280/1, International Labour Office, Geneva, Mar. 2001, para. 76.

<sup>37</sup> Review of annual reports, 2005, supra n. 33, para. 142.

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their policies and legislation in this regard, with a view to extending coverage by the relevant legislation and ensuring that, where such coverage already exists, it is effectively implemented.<sup>38</sup>

Another aspect of the Follow-up to the Declaration is the preparation by the Director-General of a report called the Global Report every year on any one of the four categories of fundamental principles and rights containing a global picture of the status of observance of the relevant principles by countries that have ratified the relevant fundamental Conventions, as well as by countries that have not. This report is submitted to the ILC for tripartite discussion. On the basis of such discussion, the Governing Body formulates priorities and plans of action for the technical cooperation required to be given to member States to realize the concerned fundamental principles and rights.

### **2.3.2. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**

Multinational enterprises (MNEs) are major players in EPZs and, therefore, it is important to take note of the principles contained in the aforesaid Declaration that was adopted by the Governing Body of the ILO in 1977. The principles mentioned in the Declaration are intended to guide MNEs, governments of host countries and employers' and workers' organizations.<sup>39</sup> Paragraph 2 of the Declaration states that its aim is to encourage the positive contribution which MNEs can make to economic and social progress and to minimize the difficulties their operations may give rise to.

The Declaration urges governments that have not yet ratified Conventions Nos. 87 and 98 to do so and, in any event, to apply, to the greatest extent possible, through their national policies, the principles embodied therein.<sup>40</sup> It stipulates that when governments of host countries offer special incentives to attract foreign investment, these should not include any limitation on the right of workers to join trade unions of their choice and to organize and bargain collectively.<sup>41</sup>

The Declaration provides that workers employed by MNEs should, without distinction whatsoever, have the right to establish and be subject only to the rules of the organization concerned and to join organizations of their own choosing without prior authorization.<sup>42</sup> It also provides that workers in MNEs should have the right, in accordance with national law and practice, to have representative organizations of their choice recognized for the purpose of collective bargaining.<sup>43</sup> Paragraphs 50 and 51 of the Declaration require MNEs to facilitate collective bargaining, and paragraph 52 stipulates that MNEs must not use the threat of transferring all or part of their operations in order to hinder the right to organize of the workers and the process of collective bargaining.

<sup>38</sup> Review of annual reports, 2001, supra n. 36, para. 74.

<sup>39</sup> Para. 5 of the Declaration.

<sup>40</sup> Para. 9.

<sup>41</sup> Para. 45.

<sup>42</sup> Para. 41.

<sup>43</sup> Para. 48.

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The operation of the Declaration is monitored by periodic surveys. The seventh survey on the effect given to the Declaration between 1996 and 2000 examined the status of observance of the principles of freedom of association and collective bargaining in MNEs in EPZs. The survey indicated that workers in MNEs in EPZs in several countries face difficulties in organizing themselves into unions.<sup>44</sup>

<sup>44</sup> *Follow-up and promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy: 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' and workers' organizations (Part II)*, GB.280/MNE/1/2: <http://www.ilo.org/public/english/standards/reln/gb/docs/gb280/pdf/mne-1-2.pdf>.

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### 3. EPZs and ILO supervisory mechanisms

Over the last two decades, both the CEACR and the CFA have had occasion to deal with a wide range of issues relating to the freedom of association and collective bargaining rights of workers in EPZs. This section discusses the principles and recommendations of the supervisory bodies aimed at promoting these rights in EPZs.

#### 3.1. Legal restrictions on unionization

While most EPZ-operating countries have recognized the right of EPZ workers to form and join organizations of their own choosing under their laws, a few countries have curtailed this right under the law. For instance, Pakistan has, under the special legislation applicable to its EPZs, exempted the zones from the application of national labour legislation recognizing the right of workers to organize themselves. Bangladesh and Namibia had also formerly adopted such a measure. In the case of Nigeria, while the special legislation applicable to its EPZs does not expressly restrict unionization, two of its provisions imply a restriction on union activities in the zones. Even when special legislation applicable to EPZ workers apparently recognizes the right of EPZ workers to organize themselves, it may have the effect of restricting the right when its provisions are not in conformity with the international labour standards on freedom of association. For instance, the recently enacted EPZ Workers' Associations and Industrial Relations Act, 2004, of Bangladesh, has various provisions that have the effect of severely restricting the right of EPZ workers to organize themselves. Apart from such restrictions that are specific to EPZ workers, legal restrictions under laws having a more general application could also affect the freedom of association of workers in the zones. For instance, the legal requirement in China that all trade unions in the country be affiliated to the All China Federation of Trade Unions would restrict the freedom of association of workers in the country's EPZs as well. Legal restrictions on unionization of workers in EPZs thus assume various forms.

The supervisory bodies have emphasized that any kind of legal restriction that would effectively nullify the right of EPZ workers to establish and join unions of their own choosing is not consistent with the requirements of Convention No. 87, in particular, with Article 2 of Convention No. 87, which guarantees to all workers, without distinction whatsoever, the right to form and join organizations of their own choosing. The observations of the supervisory bodies also indicate that such restrictions are not permissible, for either economic or other reasons, even as a temporary measure.

##### 3.1.1. *Exemption of EPZs from the application of labour laws*

###### Bangladesh

Bangladesh has six EPZs where around 138,341 workers are employed.<sup>45</sup> In addition, 2 million workers are employed in export-oriented garment manufacturing units in the country.<sup>46</sup> Korean investment accounts for the maximum investment in its EPZs followed

<sup>45</sup> Jean-Pierre Singha Boyenge, ILO database on export processing zones, ILO, Geneva, 2003: <http://www.ilo.org/public/english/dialogue/sector/themes/epz/epz-db.pdf>.

<sup>46</sup> supra n. 45.

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by investment from Japan and Hong Kong; United States investment accounts for about 4.67 per cent of the total investment in its EPZs.<sup>47</sup> EPZs in Bangladesh are governed by the Bangladesh Export Processing Zones Authority Act, 1980 (BEPZA Act). Section 11A of the BEPZA Act empowers the Government to exempt EPZs by notification in the *Official Gazette* from the operation of all or any of the following enactments: The Boilers Act, 1923; the Employment of Labour Act, 1965; the Factories Act, 1965; and the Industrial Relations Ordinance, 1969. On 6 March 1986, the Government of Bangladesh issued a notification under section 11A of the BEPZA Act exempting the EPZs created under the Act from the application of the Industrial Relations Ordinance, 1969, and the Employment of Labour (Standing Orders) Act, 1965. On 9 January 1989, the Government issued another notification exempting EPZs from the application of the Factories Act, 1965. As a consequence, EPZ workers in Bangladesh had been deprived of the right to form and join trade unions and to bargain collectively with their employers.

### **CEACR observations**

Bangladesh has ratified both Conventions Nos. 87 and 98. In its reports in respect of the application of the Conventions, the Government of Bangladesh attempted to justify the exemption of EPZs from the application of labour laws on the following grounds:

- (i) The restriction on the formation of trade unions in EPZs is a temporary measure necessitated by the national situation, the level of development and the specific circumstances of Bangladesh.<sup>48</sup>
- (ii) Union-free EPZs are an economic necessity to attract foreign investment.<sup>49</sup>
- (iii) Section 11A of the BEPZA Act was intended to promote investment, generate employment opportunities and improve the balance of payment position with added foreign exchange earnings needed for the growth of the economy.<sup>50</sup>
- (iv) Workers in the zones enjoy better facilities and service conditions than workers in other industrial sectors. Their wages are above the national average and therefore the Government did not consider it expedient to allow formation of trade unions.<sup>51</sup>

The CEACR pointed out that section 11A of the BEPZA Act was not compatible with Articles 2 and 3 of Convention No. 87.<sup>52</sup> It emphasized that workers in EPZs should be guaranteed the same rights under the Convention as all other workers.<sup>53</sup> It pointed out that such a fundamental right as the right to organize cannot be denied to workers, even

<sup>47</sup> A.S. Oberoi, A. Sivanathiran and C.S. Venkataratnam (eds), *Labour issues in EPZs in South Asia: Role of social dialogue*, ILO, New Delhi, 2001, p. 48.

<sup>48</sup> See CEACR, 1998, 69th Session, Convention No. 87, observation, Bangladesh.

<sup>49</sup> See CEACR, 2000, 71st Session, Convention No. 87, observation, Bangladesh.

<sup>50</sup> See CEACR, 1995, 66th Session, Convention No. 98, observation, Bangladesh.

<sup>51</sup> See CEACR, 2000, 71st Session, Convention No. 87, observation, Bangladesh; and CEACR, 1991, 61st Session, Convention No. 98, observation, Bangladesh.

<sup>52</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Bangladesh.

<sup>53</sup> CEACR, 2000, 71st Session, Convention No. 87, observation, Bangladesh; and CEACR, 2001, 72nd Session, Convention No. 87, observation, Bangladesh.



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temporarily, as it would amount to a violation of Article 2 of Convention No. 87.<sup>54</sup> It therefore urged the Government to take steps to amend section 11A of the BEPZA Act so as to bring it into conformity with Convention No. 87<sup>55</sup> and to ensure that workers in EPZs are entitled to exercise all their rights under the Convention.<sup>56</sup>

In the context of the application of Convention No. 98, the CEACR observed that section 11A appears to deny workers in the zones the rights guaranteed by Articles 1, 2 and 4 of the Convention.<sup>57</sup> Noting the explanation of the Government that the provision was intended to promote investment and generate employment opportunities and improve the balance of payment position with added foreign exchange earnings needed for the growth of the economy, it recalled that, if for imperative reasons of national economic interest a government considers that wage rates cannot be fixed freely by means of collective negotiations, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned, in particular, those who are likely to be the most affected. It observed, however, that the denial to a category of workers of the protections and rights defined in the Convention is not compatible with the requirements of the Convention.<sup>58</sup> It also drew the attention of the Government to paragraph 45 of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which states that “where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers’ freedom of association or the right to organize and bargain collectively.”<sup>59</sup>

#### *Observations of the Conference Committee on the Application of Standards*

The issue of the denial of the rights guaranteed under Conventions Nos. 87 and 98 to workers in EPZs in Bangladesh was also taken up for discussion before the Conference Committee on the Application of Standards on several occasions. The Government had repeatedly indicated to the Committee that a National Labour Law Commission, that had been established to review and revise the country’s labour legislation, had made recommendations in respect of the issues which were being studied by the Government.<sup>60</sup> The Committee emphasized the need to apply the Conventions in EPZs and ensure that EPZ workers enjoy the rights set out in the Conventions.<sup>61</sup> It also expressed the hope that

<sup>54</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Bangladesh.

<sup>55</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Bangladesh.

<sup>56</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Bangladesh.

<sup>57</sup> CEACR, 1991, 61st Session, Convention No. 98, Bangladesh.

<sup>58</sup> CEACR, 1994, 64th Session, Convention No. 98, Bangladesh.

<sup>59</sup> CEACR, 1995, 66th Session, Convention No. 98, Bangladesh.

<sup>60</sup> See ILC, 1994, 81st Session, Convention No. 98, Bangladesh; ILC, 1995, 82nd Session, Convention No. 87, Bangladesh; ILC, 1997, 85th Session, Convention No. 87, Bangladesh; and ILC, 1999, 87th Session, Convention No. 87, Bangladesh.

<sup>61</sup> ILC, 1994, 81st Session, Convention No. 98, Bangladesh; ILC, 1995, 82nd Session, Convention No. 87, Bangladesh; ILC, 1997, 85th Session, Convention No. 87, Bangladesh; and ILC, 1999, 87th Session, Convention No. 87, Bangladesh.

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the National Labour Law Commission would rapidly conclude its work on revising the legislation, taking into account both the observations of the CEACR and the observations of the Conference Committee.<sup>62</sup> During the discussions held by the Committee in the year 2004, a workers' representative from the United States indicated that the American Federation of Labour Congress of Industrial Organizations (AFL–CIO) had petitioned the Government of the United States in 1991 for withdrawal of the Generalised System of Preferences (GSP) benefits to Bangladesh on account of the denial of the rights under the Conventions to workers in EPZs. In order to avoid the loss of the GSP benefits, an understanding had been negotiated with the United States Government in January 2001 to recognize the rights under the Conventions in EPZs, with effect from 1 January 2004. In the meantime, workers' welfare committees would be established in EPZs. However, the Government had reneged on its commitment and the AFL–CIO would therefore renew its petition for withdrawal of GSP benefits. The Government indicated that the BEPZA had recently undertaken a number of reform measures, including representation for EPZ workers in workers' welfare committees.

The Committee regretted to note that the Government had not provided any information in respect of its statement that workers in the zones would enjoy the freedom of association from 1 January 2004. Recalling with concern that, for more than 20 years, workers in EPZs had not enjoyed the rights set out in Convention No. 87, the Committee urged the Government, in consultation with the social partners, to take the necessary measures to ensure that workers in EPZs benefited in full from the rights laid down in the Convention.<sup>63</sup>

#### *EPZ Workers' Associations and Industrial Relations Act, 2004*

In the circumstances, the Government of Bangladesh proposed to restore the application of the aforesaid industrial laws in its EPZs and indicated to the CEACR that these laws would be implemented in EPZs in 2004.<sup>64</sup> This move was opposed by the major investors in the EPZs. Finally, in a bid to balance both workers' interests and that of retaining foreign investment in its EPZs, the Government, in 2004, enacted and adopted the EPZ Workers' Associations and Industrial Relations Act, 2004 (Act No. 23 of 2004).

Under the Act, EPZ workers are allowed to form workers' representation and welfare committees (WRWCs) consisting of five to 15 workers, depending upon the number of workers in an industrial unit.<sup>65</sup> The members of the WRWC are to be elected by the workers in the unit by secret ballot.<sup>66</sup> The WRWCs would be in existence until 31 October 2006.<sup>67</sup> From 1 November 2006, EPZ workers would have the right to form workers' associations.<sup>68</sup> If such an association is formed in an industrial unit, a WRWC shall cease

<sup>62</sup> ILC, 1997, 85th Session, Convention No. 87, Bangladesh; and ILC, 1999, 87th Session, Convention No. 87, Bangladesh.

<sup>63</sup> ILC, 2004, 92nd Session, Convention No. 98, Bangladesh.

<sup>64</sup> CEACR, 2001, 72nd Session, Convention No. 87, observation, Bangladesh.

<sup>65</sup> Section 5.

<sup>66</sup> Section 5.

<sup>67</sup> Section 11.

<sup>68</sup> Section 13(1).

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to exist.<sup>69</sup> If there is no workers' association in the industrial unit, the WRWC may continue to function at the option of the employer.<sup>70</sup> The formation of a workers' association requires the support of 30 per cent of the eligible workers in an industrial unit and this needs to be verified in a referendum conducted by the zone authorities. More than 50 per cent of the workers in the unit are required to participate in the referendum and more than 50 per cent of the workers participating in the referendum are required to be in favour of its formation.<sup>71</sup> When the results of the referendum are in favour of the formation of an association, the executive chairman of the authority would ask the workers to form a constitution drafting committee and the executive chairman would also have to approve of the Committee.<sup>72</sup> The convener of the constitution drafting committee may then apply to the executive chairman of the authority for registration of the workers' association.<sup>73</sup> However, when such a referendum does not result in a mandate being obtained for the formation of a workers' association, no further referendum shall be held for the same industrial unit until the expiry of one year thereafter.<sup>74</sup> The Act provides that an association may be deregistered at the request of 30 per cent of the workers in a unit.<sup>75</sup> Moreover, once an association is deregistered under the section, no further association shall be allowed in that industrial unit until the expiry of one year from the date of notification of deregistration.<sup>76</sup> The Act also provides that workers in industrial units, established after the commencement of the Act, will not be allowed to form workers' associations until the expiry of a period of three months following the commencement of commercial production in the concerned unit.<sup>77</sup> Further, no more than one workers' association may be formed in an industrial unit in the zone. The Act stipulates that the duration of a workers' association shall be until 31 October 2008.<sup>78</sup> The Act allows workers' associations in a zone to form federations only when more than 50 per cent of the workers' associations in a zone agree to its formation.<sup>79</sup> It prohibits a federation from affiliating or associating in any manner with federations in other EPZs and also with other federations beyond the zones.<sup>80</sup> The Act thus places substantial restrictions on the freedom of association.

<sup>69</sup> Section 11(3).

<sup>70</sup> Section 11(2).

<sup>71</sup> Sections 13 and 14.

<sup>72</sup> Section 17.

<sup>73</sup> Section 20.

<sup>74</sup> Section 16.

<sup>75</sup> Section 35.

<sup>76</sup> Section 35(7).

<sup>77</sup> Section 24.

<sup>78</sup> Section 13(3).

<sup>79</sup> Section 32(1).

<sup>80</sup> Section 32(3).

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*Observations of the CFA in  
Case No. 2327*

The provisions of the Act have been examined by the CFA in Case No. 2327, where the denial of freedom of association to workers in EPZs in Bangladesh was highlighted by the complainant. The CFA expressed serious concern that various provisions of the Act may prevent the right to organize in EPZs from being truly and effectively exercised and urged the Government to review the Act without delay so as to ensure meaningful respect for the freedom of association of workers in the zones.<sup>81</sup>

The CFA observed that the Act has the effect of postponing the effective recognition of the right to organize in EPZs until November 2006 and that it was not certain of the long-lasting impact of this right, even pursuant to its introduction, as section 13(3) provides that the duration of a workers' association shall be through 31 October, 2008 from 1 November, 2006. Recalling that workers in EPZs – despite the economic arguments often put forward – should, like other workers, without distinction whatsoever, enjoy the trade union rights provided for by the freedom of association Conventions, the CFA observed that it considered the blanket denial of the right to organize to workers in the zones until 31 October 2006 as amounting to a serious violation of freedom of association principles and, in particular, Article 2 of Convention No. 87, which guarantees to all workers, the right to establish and join organizations of their own choosing. The CFA therefore requested the Government to take all possible measures to amend section 13(1) of the Act so as to expedite the recognition of the right to organize to EPZ workers. Recalling further that the right to organize should not be limited in time, the CFA requested the Government to clarify the impact of section 13(3) on newly formed organizations after October 2008 and, if this provision would result in the limitation of workers' associations to a trial period, to ensure its immediate repeal.<sup>82</sup>

Noting that section 11(3) stipulates that a WRWC shall cease to exist as soon as a workers' association is formed in an industrial unit, while section 11(2) allows a WRWC to continue to function even after 31 October, 2006 at the option of the employer, the CFA observed that, in respect of industrial units where a workers' association has not been formed, it may indeed be in the interest of the concerned workers that the WRWCs continue to exist and function even after 31 October, 2006, and that the continuance of the WRWC in such circumstances should not be contingent upon the employer's will. It therefore requested the Government to take the necessary measures to amend section 11(2) accordingly.<sup>83</sup>

In respect of section 24, which provides that workers in industrial units established after the commencement of the Act will not be allowed to form workers' associations until the expiry of a period of three months following the commencement of commercial production in the concerned unit, the CFA observed that the provision is contrary to Article 2 of Convention No. 87 and requested the Government to take all necessary measures to amend section 24 so as to ensure that workers in industrial units established

<sup>81</sup> CFA, 337th Report, Case No. 2327 (Bangladesh), para. 211.

<sup>82</sup> 337th Report, *supra* n. 81, paras 194–195.

<sup>83</sup> 337th Report, *supra* n. 81, para. 196.

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after the commencement of the Act may form workers' associations from the beginning of their contractual relationship.<sup>84</sup>

In respect of section 25(1) which allows only one workers' association to be established in an industrial unit, recalling that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create – if the workers so choose – more than one workers' organization per enterprise, the CFA observed that a provision of the law which does not authorize the establishment of a second union in an enterprise fails to comply with Article 2 of Convention No. 87. It therefore requested the Government to take necessary measures to repeal the provision.<sup>85</sup>

With respect to the minimum membership and referendum requirements for the establishment of an association, recalling that, although the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organizations, the CFA requested the Government, in consultation with the employers' and workers' organizations concerned, to amend the Act so as to avoid the obstacles to the formation of workers' organizations that can be created by these requirements. The CFA also considered the requirement of discretionary approval of the Constitution Drafting Committee of the association by the Executive Chairman of the BEPZA as granting excessive powers to the BEPZA that could give rise to undue interference in the formation of workers' associations. It therefore requested the Government to take all necessary measures to amend section 17(2) so as to eliminate the need for such approval.<sup>86</sup>

It considered section 16 as per which no referendum can be held until one year after a referendum which does not result in the requisite mandate as unreasonably restricting the right of workers in EPZs to establish and join organizations of their own choosing and as being contrary to Article 2 of Convention No. 87 and therefore requested the Government to take necessary measures to repeal the provision.<sup>87</sup>

In respect of section 35(7), which provides that once an association is deregistered under the section, no further association shall be allowed in that industrial unit until the expiry of one year from the date of notification of deregistration, the CFA observed that the effect of the provision is to deny workers in EPZs the freedom of association for a substantial period of time upon deregistration of an association and this is contrary to Article 2 of Convention No. 87.<sup>88</sup>

Noting that section 35 permits deregistration of a workers' association at the request of 30 per cent of the eligible workers, apparently, even if they are not members of the association, the CFA observed that the provision thus has the potential to seriously limit the right to organize of EPZ workers. It emphasized that deregistration of an association is an issue that should be solely governed by the constitutions of workers' associations and therefore requested the Government to take necessary measures to repeal the whole of section 35, so as to ensure that the issue of deregistration of workers' associations is governed solely by the constitutions of the associations and so that workers in industrial

<sup>84</sup> 337th Report, supra n. 81, para. 197.

<sup>85</sup> 337th Report, supra n. 81, para. 198.

<sup>86</sup> 337th Report, supra n. 81, para. 200.

<sup>87</sup> 337th Report, supra n. 81, para. 201.

<sup>88</sup> 337th Report, supra n. 81, para. 202.

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units in EPZs are not deprived of their right to organize for any period of time following the deregistration of a workers' association.<sup>89</sup>

The CFA noted that, under section 36, the registration of a workers' association may be cancelled on a variety of grounds that in many cases would appear to be either excessive as compared to the type of breach committed or simply in violation of principles of freedom of association. For instance, the registration of a workers' association may be cancelled even for persuading a worker to join or refrain from joining an association during working hours. The CFA observed that attempts at recruiting new members are part of the lawful activities of a workers' association and the serious consequence of cancellation of registration on the basis of such an attempt being characterized as an unfair practice under section 42(1)(a) is contrary to the principles of freedom of association. The CFA therefore requested the Government to take the necessary measures to repeal sections 36(1)(c), (e)–(h) and 42(1)(a) so as to ensure that the extremely serious consequence of cancellation of a workers' association is restricted to the seriousness of the violation committed.<sup>90</sup>

In respect of the requirement of agreement by more than 50 per cent of the workers' associations in an EPZ for the formation of a federation, recalling that the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of Convention No. 87 and with the principles of freedom of association, the CFA considered the requirement to be excessively high and requested the Government to take the necessary measures to amend section 32(1) so as to ensure that the formation of federations is not conditional on such an excessively high requirement concerning member associations.<sup>91</sup>

In respect of the restriction on federations in the zones from associating with each other or with other federations beyond the zones, recalling that, in order to defend the interests of their members more effectively, employers' and workers' organizations should have the right to form federations and confederations of their own choosing, which should themselves enjoy the various rights accorded to first-level organizations, in particular, as regards their freedom of operation, activities and programmes, the CFA observed that federations formed in EPZs should have the right to form and join confederations at a regional or national level and requested the Government to take the necessary measures to amend section 32(3) accordingly.<sup>92</sup>

The CFA also drew the attention of the CEACR to the legislative aspects of the case.<sup>93</sup>

The Government thereafter, in its communication dated 5 September 2005, indicated that between December 2004 and August 2005, elections had been held in 174 out of 176 WRWCs and that 164 WRWCs had been given registration. While noting this information with interest, the CFA regretted that no revision of the Act appears to have even been contemplated as requested in its previous recommendations. The CFA therefore once again requested the Government to take the necessary steps to review the Act so as to ensure full

<sup>89</sup> 337th Report, *supra* n. 81, para. 203.

<sup>90</sup> 337th Report, *supra* n. 81, para. 204.

<sup>91</sup> 337th Report, *supra* n. 81, para. 208.

<sup>92</sup> 337th Report, *supra* n. 81, para. 209.

<sup>93</sup> 337th Report, *supra* n. 81, para. 212.

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and meaningful respect for the freedom of association of EPZ workers in the very near future.<sup>94</sup>

*Observations of the CEACR and the Conference  
Committee on the Application of Standards*

Taking note of the conclusions and recommendations of the CFA in Case No. 2327 (337th Report, paragraphs 183–213), the CEACR observed that numerous provisions of the EPZ Workers' Associations and Industrial Relations Act, 2004, are incompatible with the provisions of Convention No. 87 and requested the Government to take the necessary measures to amend the Act so as to bring it into conformity with the Convention.<sup>95</sup> In the context of the application of Convention No. 98, while taking note of the aforesaid conclusions and recommendations of the CFA, the CEACR requested the Government to take all necessary measures to eliminate the obstacles to the exercise of trade union rights in law and in practice in EPZs.<sup>96</sup>

The issue of the freedom of association and collective bargaining rights of EPZ workers in Bangladesh, following the enactment of the EPZ Workers' Associations and Industrial Relations Act, 2004, was also taken up for discussion by the Conference Committee on the Application of Standards in June 2006. During the discussions, the worker members and an observer representing the International Textile, Garment and Leather Workers' Federation (ITGLWF) spoke about the inability of EPZ workers to effectively exercise their freedom of association and right to collective bargaining. The ITGLWF representative also pointed out that both WRWCs and the workers' associations that are permitted to be established under the Act from 1 November 2006 were forbidden to have contact with trade unions or raise workers' issues and called upon the Government to abolish separate legislation concerning EPZs and to adopt and implement a new Labour Code providing for full protection of freedom of association and the right to bargain collectively. Noting the serious difficulties that prevailed as regards the exercise of workers' rights in EPZs, the Committee urged the Government to take necessary measures to eliminate the remaining obstacles in law and in practice.<sup>97</sup>

**Namibia**

Section 8(1) of the Export Processing Zones Act, 1995 (Act No. 9 of 1995) of Namibia, stipulated that the provisions of the Labour Act (Act No. 6 of 1992) that recognizes the right of workers to form trade unions, shall not apply to EPZs. Section 8(2), however, empowered the Ministry of Trade and Industry, in consultation with the Ministry of Labour and Human Resources Development, to make regulations regarding the basic conditions of employment, termination of a contract of employment, disciplinary action and the health, safety and welfare of workers in EPZs. Namibia had ratified Convention No. 87 in 1995.

Taking note of section 8(1), the CEACR emphasized the importance of the need for all workers, without distinction whatsoever, including those employed in EPZs, to fully enjoy the rights provided for by Convention No. 87. It drew the attention of the

<sup>94</sup> CFA, 340th Report, Case No. 2327 (Bangladesh), paras 30–33.

<sup>95</sup> CEACR, 2005, 76th Session, Convention No. 87, observation, Bangladesh.

<sup>96</sup> CEACR, 2005, 76th Session, Convention No. 98, observation, Bangladesh.

<sup>97</sup> ILC, 2006, 95th Session, Convention No. 98, Bangladesh.

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Government to paragraph 45 of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which provides that where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively. The CEACR therefore requested the Government to take appropriate steps to amend the Export Processing Zones Act, 1995, so as to allow the application of the Labour Act in EPZs in the country.<sup>98</sup>

The Government thereafter indicated that it had adopted the Export Processing Zones Amendment Act, 1996, which provides that the Labour Act shall be applicable in EPZs subject to certain modifications and exceptions.<sup>99</sup> Noting that section 8(10) of the Amendment Act provided that the provisions of that section which concern the application of the Labour Act to EPZs shall be deemed to have been repealed if not re-enacted by the Parliament within a period of five years after the commencement of the Amendment Act and that this would appear to affect the application of the Labour Act after 2001, the CEACR requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs will continue to be afforded the full protection of the Convention, including the full exercise of the right to organize, beyond this period.<sup>100</sup>

The Government subsequently indicated that the Labour Act is applicable in its entirety to EPZs<sup>101</sup> and that the restriction on the application of the Act contained in section 8(10) had automatically lapsed and was no longer valid.<sup>102</sup>

## Pakistan

Section 25 of the Export Processing Zones Authority Ordinance, 1980, of Pakistan, permits the federal Government to exempt by notification any EPZ from the operation of all or any of the provisions of any law. On the basis of this provision, the Government of Pakistan, in 1982, issued a notification exempting EPZs in the country from the application of the Industrial Relations Ordinance that protects the rights of workers to organize and bargain collectively. As a result, about 410,540 workers in the country's EPZs<sup>103</sup> are deprived of their freedom of association and collective bargaining rights.

### *CEACR observations*

Pakistan has ratified both Conventions Nos. 87 and 98. In its reports to the ILO in respect of the application of the Convention, the Government sought to justify the exemption of EPZs from the application of the Industrial Relations Ordinance on the following grounds:

- (i) The zones were set up to boost industrialization and to enable workers and employers to work together in an environment of industrial peace. Since work in the zones is

<sup>98</sup> CEACR, 1996, 67th Session, Convention No. 87, direct request, Namibia.

<sup>99</sup> CEACR, 1997, 68th Session, Convention No. 87, observation, Namibia.

<sup>100</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Namibia; and CEACR, 1999, 70th Session, Convention No. 87, observation, Namibia.

<sup>101</sup> See CEACR, 2002, 73rd Session, Convention No. 87, observation, Namibia.

<sup>102</sup> See CEACR, 2004, 75th Session, Convention No. 87, observation, Namibia.

<sup>103</sup> See ILO database on EPZs, *supra* n. 45.



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progressing satisfactorily, and since there has been no complaint from either party, the Government does not consider it desirable to disturb the status quo.<sup>104</sup>

- (ii) Most of the workers in the zones are female workers and the cultural climate in Pakistan is not in favour of the unionization of female workers due to social taboos. They have therefore not demanded that trade union rights be restored to them. There is, however, no ban on their forming any association.<sup>105</sup>
- (iii) The Export Processing Zones (Control of Employment) Rules, 1982, which regulate conditions of employment in EPZs, provide benefits which are better than those provided to other workers in the country.<sup>106</sup>
- (iv) The exemption is not a permanent feature and would be withdrawn subsequently.<sup>107</sup>

The CEACR has observed that the restriction under section 25 of the Export Processing Zones Authority Ordinance, 1980, is inconsistent with the requirements of Convention No. 87 which should apply, without distinction whatsoever, to all workers, including workers in EPZs.<sup>108</sup> It pointed out that, even if there was no complaint from either party, the parties must have the possibility of exercising their rights under the Convention if they so wish, without being unduly hampered by legal restrictions.<sup>109</sup> It has also observed that the provision was not consistent with the requirements of Articles 2 and 3 of Convention No. 98.<sup>110</sup> The CEACR therefore expressed the hope that trade union rights under the Industrial Relations Ordinance will be restored to workers in EPZs<sup>111</sup> and requested the Government to ensure that the rights guaranteed by the Conventions are granted to workers in EPZs.<sup>112</sup>

Based on the observations of the CEACR, the issue had also come up for discussion before the Conference Committee on the Application of Standards on several occasions. The Committee has expressed its concern at the denial of trade union rights to workers in

<sup>104</sup> See CEACR, 1992, 62nd Session, Convention No. 87, observation, Pakistan; and CEACR, 1993, 63rd Session, Convention No. 87, observation, Pakistan.

<sup>105</sup> CEACR, 1995, 65th Session, Convention No. 87, observation, Pakistan; and CEACR, 1996, 67th Session, Convention No. 87, observation, Pakistan.

<sup>106</sup> CEACR, 1995, 65th Session, Convention No. 87, observation, Pakistan; and CEACR, 1996, 67th Session, Convention No. 87, observation, Pakistan.

<sup>107</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Pakistan.

<sup>108</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Pakistan; and CEACR, 1993, 63rd Session, Convention No. 87, observation, Pakistan.

<sup>109</sup> CEACR, 1993, 63rd Session, Convention No. 87, observation, Pakistan.

<sup>110</sup> CEACR, 1991, 61st Session, Convention No. 98, observation, Pakistan.

<sup>111</sup> CEACR, 1996, 67th Session, Convention No. 87, observation, Pakistan

<sup>112</sup> CEACR, 1997, 68th Session, Convention No. 87, observation, Pakistan; CEACR, 1998, 69th Session, Convention No. 87, observation, Pakistan; CEACR, 1999, 70th Session, Convention No. 87, observation, Pakistan; CEACR, 2002, 73rd Session, Convention No. 98, observation, Pakistan; and CEACR, 2003, 74th Session, Convention No. 98, observation, Pakistan.

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EPZs<sup>113</sup> and hoped that the Government would take concrete measures in the very near future in consultation with employers' and workers' organizations to bring its legislation and practice into full conformity with the Convention.<sup>114</sup>

### *Observations of the CFA in Case No. 1726*

The CFA also had occasion to deal with the issue in Case No. 1726 where the legislative suppression of trade union rights in Pakistan's EPZs was highlighted. In addition to section 25 of the Export Processing Zones Authority Ordinance, 1980, the complainants referred to section 14 of the 1992 Finance Act which provides that the Industrial Relations Ordinance and such other laws as the federal Government may specify by notification shall not apply to a foreign company investing in an industrial undertaking within an industrial zone. The complainants contended that these provisions violate the letter and spirit of Conventions Nos. 87 and 98 and are also contrary to paragraph 45 of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The complainants also alleged that, despite repeated criticism by the CEACR and the Conference Committee on the Application of Standards, there has been no improvement in the situation. The Government did not furnish observations in respect of the complaint and the CFA was therefore constrained to examine the complaint in the absence of its observations.

The CFA pointed out that the standards contained in Convention No. 87 apply to all workers "without distinction whatsoever". It noted that the CEACR had considered that section 25 of the Export Processing Zones Authority Ordinance was not in conformity with Conventions Nos. 87 and 98 and had called upon the Government to remove this restriction. It also recalled that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association and the right to organize and bargain collectively. The CFA therefore considered that these provisions are contrary to the basic principles of freedom of association and requested the Government to amend the Export Processing Zones Authority Ordinance, 1980 and the 1992 Finance Act in order to ensure the rights to organize and bargain collectively for workers in EPZs in accordance with Conventions Nos. 87 and 98.<sup>115</sup>

### *Measures taken by the Government*

Over the last 15 years, the Government has been indicating to the CEACR and the Conference Committee on the Application of Standards that it has been making efforts towards applying the provisions of the Conventions in the country's EPZs. The Government had first indicated that a Tripartite Task Force had been constituted to consider the issue and that it had, in its preliminary report, recommended that labour laws apply in the entire country without discrimination. It also indicated that the recommendations of the Task Force were being considered by a Cabinet Committee.<sup>116</sup>

<sup>113</sup> ILC, 1991, 78th Session, Convention No. 87, Pakistan; ILC, 2001, 89th Session, Convention No. 87, Pakistan.

<sup>114</sup> ILC, 1998, 86th Session, Convention No. 87, Pakistan; ILC, 2001, 89th Session, Convention No. 87, Pakistan.

<sup>115</sup> CFA, 294th Report, Case No. 1726 (Pakistan), paras 408–409.

<sup>116</sup> See CEACR, 1995, 66th Session, Convention No. 98, observation, Pakistan; CEACR, 1996, 67th Session, Convention No. 98, observation, Pakistan; ILC, 1995, 82nd Session, Pakistan.

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The Government thereafter indicated that it had decided to withdraw all the restrictions imposed in EPZs by the year 2000.<sup>117</sup> Following this, the Government indicated that it has authorized the Export Processing Zones Authority to frame draft labour legislation in respect of its EPZs and that rules<sup>118</sup> that had been framed in respect of EPZs were under consideration by the Ministry of Industries and Production for submission to the Law and Justice Division.<sup>119</sup> Subsequently, the Government indicated that the matter was under the jurisdiction of the Ministry of Industries and that the Ministry of Labour has taken up the matter with the Ministry of Industries with a view to withdrawing the exemption and that an extensive dialogue was under way.<sup>120</sup> More recently, the Government has indicated that the Export Processing Zone Employment Relations Rules have been prepared which have been sent to the Ministry of Law, Justice and Human Rights for review and would be furnished to the CEACR once the process was completed.<sup>121</sup>

### **3.1.2. Implied legislative restriction on unionization**

#### **Nigeria**

Section 4(e) of the Export Processing Zones Decree, 1992 of Nigeria, which sets forth the functions and responsibilities of the EPZ Authority, includes the resolution of disputes between “employers and employees” in the zone.

In light of the fact that the provision does not refer to workers’ organizations or trade unions, the CEACR has requested the Government to indicate the measures taken to ensure that zone workers may form and join organizations of their own choosing in the furtherance and defence of their occupational interests.<sup>122</sup>

The Government subsequently indicated that the legally imposed restriction on union activities in EPZs lapsed in 2003 and that the Federal Ministry of Labour and Productivity was in discussion with EPZ employers on issues of unionization and entry for inspection. Taking note of this information, the CEACR requested the Government to take the necessary measures in the near future to ensure that EPZ workers are guaranteed the right to form and join organizations of their own choosing as provided by Convention No. 87.<sup>123</sup>

<sup>117</sup> See ILC, 1998, 82nd Session, Convention No. 87, Pakistan.

<sup>118</sup> See CEACR, 2001, 72nd Session, Convention No. 87, observation, Pakistan; and CEACR, 2002, 73rd Session, Convention No. 87, observation, Pakistan.

<sup>119</sup> See ILC, 2001, 89th Session, Convention No. 87, Pakistan.

<sup>120</sup> See CEACR, 2003, 74th Session, Convention No. 98, observation, Pakistan; and ILC, 2003, 91st Session, Convention No. 98, Pakistan.

<sup>121</sup> ILC, 2006, 95th Session, Convention No. 98, Pakistan.

<sup>122</sup> CEACR, 2000, 71st Session, Convention No. 87, observation, Nigeria.

<sup>123</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Nigeria.

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### **3.1.3. Ambiguity regarding the application of labour legislation**

Togo

In Togo, an agreement had been entered into in June 1996 concerning relations between employers and workers in the Togolese processing zone. Chapter V of the agreement contained the procedure for election of staff representatives but made no reference to trade unions. In the light of this fact, and the restricted access to the zone under section 30 of Act No. 89-14 establishing the EPZ, the CEACR asked the Government to specify whether trade unions have the right and possibility of presenting candidates as trade union delegates with a view to representing workers from EPZs.<sup>124</sup>

The Government indicated that the 1996 agreement contained no provisions barring trade unions from EPZs and that no complaint had been made by any trade union in respect of the impossibility of presenting candidates as trade union delegates in order to represent workers of the zones.<sup>125</sup> Recalling, however, that Article 1 of Convention No. 87 provides that the Government must undertake to give full effect to the provisions of the Convention, the CEACR requested the Government to envisage the adoption of specific provisions in order to guarantee workers in the EPZs the right to establish trade unions and present candidates as delegates to represent them in the zones.<sup>126</sup> It also asked the Government to confirm that the provisions of the Labour Code of 1974 on freedom of association have the force of law in the zones.<sup>127</sup>

The Government thereafter indicated that no provision of Act No. 89-14, and its implementing Decree No. 90/40 of 4 April 1990, excludes the application of the Labour Code in respect of freedom of association to enterprises in EPZs.<sup>128</sup> The CEACR, then taking note of section 5 of the Act concerning the procedure for associations to obtain legal capacity, requested the Government to provide information in future on any trade union which requests the legal capacity to defend workers in EPZs.<sup>129</sup>

### **3.1.4. Legislative restriction on union membership**

Colombia

The issue of legislative restriction on the membership of a union of EPZ workers came up for the consideration of the CFA in two cases relating to Colombia.<sup>130</sup> According to the complainants, the workers of the Industrial and Commercial Free Zone of Cartagena established a first level trade union and the Ministry of Labour granted the organization

<sup>124</sup> CEACR, 1999, 70th Session, Convention No. 87, observation, Togo.

<sup>125</sup> See CEACR, 2000, 71st Session, Convention No. 87, observation, Togo.

<sup>126</sup> *supra* n. 125.

<sup>127</sup> CEACR, 2002, 73rd Session, Convention No. 87, observation, Togo.

<sup>128</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Togo.

<sup>129</sup> *supra* n. 128.

<sup>130</sup> Cases Nos. 1434 and 1477.

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legal personality by passing a resolution. However, this ministerial resolution was challenged in the Council of State which cancelled the resolution. The CFA found that the ground for cancellation was that mixed unions i.e. unions having both official workers (whose employment relationship is contractual) and public employees (whose employment relationship is of a legal and regulatory or statutory nature) are not covered by the law. The CFA observed that Article 2 of Convention No. 87, which guarantees in general to workers without any distinction the right to set up organizations of their own choosing, excludes legislation from preventing a trade union covering workers employed in the same geographical area of economic activity, as in the case of the Free Trade Zone of Cartagena. The CFA therefore requested the Government to take measures with a view to amending the concerned legislation so as to ensure that a union has the possibility of grouping all workers from the area.<sup>131</sup>

### **3.2. Access to EPZs**

Access for trade union representatives to workers in EPZs is essential in order to ensure that EPZ workers enjoy the freedom of association, in practice. Such access is particularly necessary in light of the fact that workers in many EPZs are physically isolated from other industrial workers and the fact that many EPZ workers have barely any prior experience in union activity. Access of trade union representatives to such workers is necessary for informing them about the potential advantages of unionization. It is also necessary for the performance of other union functions.

However, trade union representatives often face difficulties in gaining access to workers in the zones either by reason of laws restricting the entry of persons into the zones or because of other measures taken by EPZ enterprises, such as the deployment of armed security guards to prevent trade union representatives from meeting EPZ workers. An example of the former is the Export Processing Zones Decree of Nigeria, which provides that no person shall enter into a zone without the prior permission of the concerned authority.

The supervisory bodies have stressed the need for trade union representatives to have reasonable access to the zones in order to inform workers of their interest in forming unions.

#### **Dominican Republic**

In a case relating to the Dominican Republic before the CFA,<sup>132</sup> the complainant alleged that three trade union activists were arrested and detained while distributing information on their trade union in a free trade zone. The Government admitted that one activist had been detained as he had not requested permission from the management of the zone to enter it.

The CFA, in its conclusions in the case, drew the attention of the Government to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.<sup>133</sup>

<sup>131</sup> CFA, 275th Report, Cases Nos. 1434 and 1477 (Colombia), para. 200.

<sup>132</sup> Case No. 1221.

<sup>133</sup> CFA, 234th Report, Case No. 1221 (Dominican Republic), para. 114.

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## Nigeria

Section 13(1) of the Export Processing Zone Decree, 1992, of Nigeria, provides that no person shall enter, remain in or reside in a zone without the prior permission of the authority.

Taking note of this provision, the CEACR requested the Government to indicate the measures taken to ensure that representatives of workers' organizations have reasonable access to the zones so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.<sup>134</sup> The Government of Nigeria thereafter stated that the Federal Ministry of Labour and Productivity is holding dialogues with EPZ employers on issues of unionization and entry for inspection.<sup>135</sup> Noting the Government's statement, the CEACR requested the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations have reasonable access to EPZs to apprise the workers in the zones of the potential advantages of unionization.<sup>136</sup>

## Sri Lanka

The Board of Investment (BOI), the overseeing authority for Sri Lanka's free trade zones, had issued Guidelines for the Formation and Operation of Employees' Councils and a Labour Standards and Employment Relations Manual to regulate labour relations in the zones. A complaint that has been discussed at greater length subsequently in this paper, was preferred to the CFA alleging that the guidelines hamper the creation of free and independent unions in the zones as they favour employees' councils over trade unions.<sup>137</sup> On an examination of the complaint, the CFA requested the Government to take the necessary steps to amend the guidelines so as to ensure that representative trade unions enjoy the same facilities as employees' councils without any discrimination.<sup>138</sup>

The Government thereafter indicated that a draft amendment to the Labour Standards and Employment Relations Manual envisaged facilities for trade union representatives. Under the draft section 9A(ii), a duly nominated representative of a trade union who is not employed in a BOI enterprise, but whose trade union has members employed therein, whether within or outside the EPZ, shall be granted access to the enterprise/EPZ, provided the union:

- (a) is a representative union;
- (b) seeks access to the enterprise for purposes of representation functions;
- (c) has obtained the consent of the employer for such access; and
- (d) having satisfied the above requirements, obtained an entry permit from the BOI authorities for the entry sought, in the case of an enterprise located within an EPZ.

<sup>134</sup> CEACR, 1999, 70th Session, Convention No. 87, observation, Nigeria; CEACR, 2000, 71st Session, Convention No. 87, observation, Nigeria; and CEACR, 2002, 73rd Session, Convention No. 87, observation, Nigeria.

<sup>135</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Nigeria.

<sup>136</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Nigeria.

<sup>137</sup> Case No. 2255.

<sup>138</sup> CFA, 332nd Report, Case No. 2255 (Sri Lanka), para. 952.

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The draft section 9A(iii) explained that a “representative union”, for the purposes of the section, means a union which represents not less than 40 per cent of the employees in an enterprise on whose behalf it seeks to represent.

The CFA considered that these requirements do not allow access to EPZ enterprises for trade unions which do not have representative status in the particular enterprise, in order to inform the workers of the advantages of trade unionism. Recalling that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization, it requested the Government to ensure that trade union representatives are granted access to the workplace even when their organization does not have representative status in a particular free trade zone and that permission for such access may not be unreasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned.<sup>139</sup>

The Government thereafter indicated that section 9A was suitably modified so that access for trade union representatives may not be unreasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned. Noting, however, that access to trade union representatives is envisaged only for the purpose of performing “representation functions”, the CFA requested the Government to specify the exact scope and meaning of this phrase.<sup>140</sup> The Government explained that the phrase embraced all activities and functions a trade union may undertake to protect and further the interests of its members. The CFA noted that the explanation of the Government does not indicate that trade union representatives may have access for the purpose of communicating to workers the potential advantages of unionization. Recalling again that Governments should guarantee access to trade union representatives to workplaces with due respect for the rights of property and management so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization, the CFA requested the Government to take the necessary measures to ensure that trade union representatives can also seek access to free trade zone enterprises for the purpose of apprising the workers in the enterprises of the potential advantages of unionization.<sup>141</sup>

### **3.3. Legal restrictions on industrial action**

The right to strike has been recognized as “one of the essential means available to workers and their organizations for the promotion of their economic and social interests”.<sup>142</sup>

Several EPZ-operating countries have, however, by law sought to curtail this right of EPZ workers. In Bangladesh, Nigeria and Pakistan, strikes in EPZs are specifically prohibited under the law. In the case of Bangladesh and Nigeria, the prohibition is time bound. Namibia and Turkey had formerly also imposed a time-bound prohibition on strikes in the zones under law. Formerly, in Sri Lanka, the garment export trade was notified as an

<sup>139</sup> CFA, 333rd Report, Case No. 2255 (Sri Lanka), para. 131.

<sup>140</sup> CFA, 335th Report, Case No. 2255 (Sri Lanka), para. 180.

<sup>141</sup> CFA, 336th Report, Case No. 2255, Sri Lanka, para. 112.

<sup>142</sup> General Survey of 1994, supra n. 16, para. 147.

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“essential service” and the workers in garment export industries were thus deprived of the right to strike. In the Philippines, while there is no prohibition as such on the right to strike of EPZ workers, the Government has the discretionary power to submit labour disputes to compulsory arbitration at any time in industries that, in its opinion, are indispensable to the national interest. This power could be used to curtail strikes in EPZ industries as well.

The observations of the supervisory bodies indicate that any such measures are incompatible with the provisions of Conventions Nos. 87 and 98. The observations of the supervisory bodies also clearly indicate that it is not permissible to even place time-bound restrictions on the right of EPZ workers to resort to industrial action.

### **3.3.1. Specific prohibition of industrial action in EPZs**

#### **Bangladesh**

The EPZ Workers’ Associations and Industrial Relations Act, 2004, that has been referred to earlier in the context of legislative limitations on the right of EPZ workers to organize themselves, also places limitations on the right of workers’ organizations to participate in industrial action.

Under section 88(1) of the Act, no strike or lockout is permissible in any industrial unit in an EPZ until 31 October 2008 and as per section 88(2), in the meantime, all labour disputes will be subject to mandatory and binding arbitration. From 1 November 2008, while strikes and lockouts in the zones are permitted in certain circumstances, under section 54 of the Act, section 54(3) permits the executive chairman of the authority to prohibit a strike or lockout if it continues for more than 15 days and, under section 54(4), the executive chairman may prohibit it even before the expiry of 15 days if he or she is satisfied that the continuance of the strike or lockout is causing serious harm to productivity in the zone or is prejudicial to the public interest or the national economy.

Recalling that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests and that the right can only be restricted or prohibited in essential services in the strict sense of the term, that is, those services whose interruption would endanger the life, personal safety or health of the whole or part of the population, the CFA requested the Government to take the necessary measures to amend section 88(1) and (2) so as to expedite the recognition of industrial action in EPZs before 31 October 2008.<sup>143</sup>

With respect to section 54 of the Act, the CFA considered that it places a substantial limitation on the workers’ right to strike as a legitimate means of defending their occupational and economic interests. It observed that the Government may, however, consider the possibility of providing for a negotiated minimum service so as to effectively ensure the safe functioning of machinery within the EPZs. It therefore requested the Government to take the necessary measures to amend section 54(3) and (4) so as to ensure that industrial action in EPZs may only be restricted in accordance with the abovementioned principle.

#### **Namibia**

In Namibia, section 8(2)(a) and (b) of the Export Processing Zones Amendment Act, 1996, prohibited EPZ employees from taking strike action and also penalized participation

<sup>143</sup> CFA, 337th Report, Case No. 2327 (Bangladesh), para. 206.



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in strikes with dismissal and other penalties. Section 8(10) provides that the provisions of that section concerning the prohibition of strikes and lockouts shall be deemed to have been repealed if not re-enacted by Parliament within a period of five years after the commencement of the Amendment Act.

The CEACR pointed out that the prohibition is incompatible with Articles 2 and 3 of Convention No. 87, which provide that all workers, without distinction whatsoever, shall have the right to organize their activities and formulate their programmes without interference by the public authorities.<sup>144</sup> It also observed that workers engaged in strikes in the zones should be fully protected from dismissal or other prejudice in employment for taking such action.<sup>145</sup> It therefore requested the Government to take appropriate steps to further amend the Amendment Act so as to ensure that workers in EPZs are not denied the right to strike and, like other workers in the country, are not penalized for strike action taken in defence of their interests.<sup>146</sup>

The Government then explained that due to the high rate of unemployment, it had reached a compromise with the labour movement to prohibit strikes and lockouts for a period of five years. It also stated that in Namibia, the right to employment is more fundamental than the right to strike. While taking note of this information, the CEACR reiterated that the prohibition on strikes and lockouts is not compatible with Articles 2 and 3 of Convention No. 87 and urged the Government to review and amend the Act so as to bring it into conformity with the requirements of the Convention.<sup>147</sup>

The Government thereafter indicated that the Labour Advisory Council, after studying the issue, was expected to put forth recommendations to either amend the law or await the statutory lapse of the prohibition of industrial action under the Export Processing Zones Amendment Act, 1996, in June 2001. While noting this information, the CEACR urged the Government to ensure that the Act was amended as soon as possible to bring it into conformity with the requirements of Convention No. 98, rather than awaiting the statutory lapse on the prohibition of industrial action.<sup>148</sup>

The Government subsequently indicated that the provision concerning the prohibition on strikes and lockouts had automatically lapsed and was no longer valid.<sup>149</sup>

## Nigeria

Section 18(5) of the Export Processing Zones Act of Nigeria provides that there shall be no strikes or lockouts for a period of ten years following the commencement of operations within a zone.

Recalling that such a prohibition is incompatible with the provisions of Convention No. 87, the CEACR requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to establish organizations in EPZs and that

<sup>144</sup> CEACR, 1997, 68th Session, Convention No. 87, observation, Namibia.

<sup>145</sup> CEACR, 1997, 68th Session, Convention No. 98, direct request, Namibia.

<sup>146</sup> CEACR, 1997, 68th Session, Convention No. 87, observation, Namibia.

<sup>147</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Namibia.

<sup>148</sup> CEACR, 1999, 70th Session, Convention No. 98, direct request, Namibia.

<sup>149</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Namibia.

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such organizations have the right to organize their activities and formulate their programmes without interference from the public authorities.<sup>150</sup>

The Government then indicated that the legally imposed restriction on union activities in EPZs lapsed in 2003 and that the Federal Ministry of Labour and Productivity is having discussions with EPZ employers regarding issues of unionization in EPZs. Taking note of this information, the CEACR reiterated its request mentioned above.<sup>151</sup>

## Pakistan

In Pakistan, in addition to legislative restrictions on the right of EPZ workers to form trade unions, there is an express prohibition on the right of EPZ workers to resort to industrial action. Section 4 of the Export Processing Zones (Control of Employment) Rules, 1982, deprives workers in the zones of the right to strike and to take other forms of industrial action.

The CEACR observed that this provision is not consistent with the requirements of Article 3 of Convention No. 87<sup>152</sup> and Convention No. 98.<sup>153</sup> It therefore called upon the Government to remove this restriction on trade union activity.<sup>154</sup>

This provision was also drawn to the attention of the CFA in two cases. In Case No. 1383, the complainant alleged that the Government had openly violated Conventions Nos. 87 and 98, since the imposition of martial law in July 1977, by denying the right to organize to various categories of workers and by prohibiting strikes in various sectors, including EPZs. Taking note of section 4 of the Export Processing Zones (Control of Employment) Rules, 1982, the CFA observed that the prohibition on strikes in the zones under the provision has been criticized by the CEACR for years and that it endorses the experts' insistence on the importance of workers in EPZs – despite the economic arguments often put forward – like other workers, without distinction whatsoever, enjoying the trade union rights provided for by the freedom of association Conventions. It therefore called upon the Government to amend the rules.<sup>155</sup>

In Case No. 1726, which has been referred to earlier, the complainants had also referred to the restriction under section 4 of the Export Processing Zones (Control of Employment) Rules, 1982. Noting that the CEACR had considered that the provision was not in conformity with Conventions Nos. 87 and 98 and had called upon the Government to remove this restriction on trade union activity, the CFA reiterated that the provision is

<sup>150</sup> CEACR, 1999, 70th Session, Convention No. 87, observation, Nigeria; and CEACR, 2000, 71st Session, Convention No. 87, observation, Nigeria.

<sup>151</sup> CEACR, 2004, 75th Session, Convention No. 87, observation, Nigeria.

<sup>152</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Pakistan; CEACR, 1992, 62nd Session, Convention No. 87, observation, Pakistan; and 1993, 63rd Session, Convention No. 87, observation, Pakistan.

<sup>153</sup> CEACR, 1991, 61st Session, Convention No. 98, observation, Pakistan.

<sup>154</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Pakistan; and CEACR, 1991, 61st Session, Convention No. 98, observation, Pakistan.

<sup>155</sup> CFA, 253rd Report, Case No. 1383 (Pakistan), para. 98.

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contrary to basic principles of freedom of association and requested the Government to amend the rules so as to bring them into conformity with Conventions Nos. 87 and 98.<sup>156</sup>

### **3.3.2. Prohibition of industrial action by the classification of EPZ industries as “essential services”**

Sri Lanka

The Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1989, issued by the President under the Public Security Ordinance, enabled the notification by Presidential Order of a wide range of services as “essential services”, thereby preventing the workers engaged in these services from exercising the right to strike. The garment export trade was notified as an “essential service” under the Regulations by an order dated 6 July 1989.

The order was drawn to the attention of the CFA by the complainants in Case No. 1621 concerning the en masse dismissal of 236 workers of a garment company on the ground that their engaging in a strike in violation of the order had resulted in the termination of their contracts. The Government, in its observations in the case, indicated that the order of 6 July 1989 may be reviewed to delete export industries from the order.

Taking note of this information, the CFA requested the Government to take into consideration the principle that “essential services”, as defined by the ILO supervisory bodies, include only services the interruption of which would endanger the life, personal safety and health of the whole or a part of the population while amending the order and to remove from the order, services which are not essential in the strict sense of the term.<sup>157</sup> Further, drawing the Government’s attention to the principle that the use of extremely serious measures such as the dismissal of workers for having participated in a strike and refusal to re-employ them implies a serious risk of abuse and constitutes a violation of freedom of association, the CFA requested the Government to ensure the immediate reinstatement of the dismissed strikers in their jobs.<sup>158</sup>

The Government of Sri Lanka thereafter indicated that services connected with export of commodities and other export products have ceased to be essential services with effect from 17 June 1993.<sup>159</sup>

### **3.3.3. Referral of disputes to compulsory arbitration**

Philippines

Section 263(g) of the Labour Code of the Philippines empowers the Secretary of Labour and Employment to submit a labour dispute to compulsory arbitration when he or she is of the opinion that the dispute is likely to, or has caused a strike or lockout, in an

<sup>156</sup> CFA, 294th Report, Case No. 1726 (Pakistan), para. 409.

<sup>157</sup> CFA, 286th Report, Case No. 1621 (Sri Lanka), para. 190.

<sup>158</sup> 286th Report, supra n. 157, para. 192.

<sup>159</sup> CFA, 292nd Report, Case No. 1621 (Sri Lanka), para. 19.

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industry indispensable to the national interest. The wide powers granted under the provision have implications for EPZ industries in the Philippines.

The CEACR has pointed out that the provision is drafted in such general terms that it could be applied in situations extending well beyond those in which strikes may be limited or prohibited in conformity with Convention No. 87. It recalled that it is permissible to limit strikes only in the following cases: (i) in essential services, i.e. those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in acute national crises to the extent necessary to meet the requirements of the situation and only for a limited period; and (iii) in the case of public servants exercising authority in the name of the State. In light of the fact that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests, and the fact that the criteria for restricting strikes in section 263(g) goes beyond the aforesaid three situations, it urged the Government to take measures to amend the legislation to bring it into conformity with the requirements of the Convention.<sup>160</sup>

The CFA took note of the provision in two cases and drew the attention of the Government to the following principles: to determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population. Whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back to work requirement outside such cases is contrary to the principles of freedom of association. It therefore urged the Government to take measures to amend section 263(g) of the Labour Code in order to bring it into full conformity with the principles of freedom of association.<sup>161</sup>

The Government subsequently indicated that the Department of Labor has submitted an amendment proposal to the Labor Committees of the House of Representatives and the Senate that envisages the intervention of the Secretary of Labor and Employment only in disputes involving essential services. The CEACR expressed the hope that this initiative would result in the amendment of section 263(g) so as to ensure that workers can exercise their right to strike without interference by the Government and that, in the meantime, the Government would effectively limit the exercise of the power to the considerations made above.<sup>162</sup>

## Turkey

In Turkey, provisional section 1 of Act No. 3218 of 1995, imposed compulsory arbitration for a ten-year period in EPZs for the settlement of collective labour disputes. The Government of Turkey explained that the ten-year period expired in two zones in 1997 and would come to an end in two other zones in the year 2000. Nevertheless, recalling that the imposition of compulsory arbitration places a severe limitation on the right of workers'

<sup>160</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Philippines.

<sup>161</sup> CFA, 329th Report, Case No. 2195 (Philippines), para. 737; and CFA, 332nd Report, Case No. 2252 (Philippines), para. 883.

<sup>162</sup> CEACR, 2003, 74th Session, Convention No. 87, observation, Philippines; and CEACR, 2004, 75th Session, Convention No. 87, observation, Philippines.

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organizations to organize their activities and formulate their programmes free from interference by the public authorities, in accordance with Article 3 of Convention No. 87, the CEACR requested the Government to indicate the measures taken or envisaged to amend Act No. 3218 of 1995 so that all workers in EPZs have the possibility of taking industrial action in defence of their interests.<sup>163</sup>

The CEACR subsequently noted with satisfaction the indication of the Government that, by virtue of Act No. 4771 adopted by Parliament on 3 August 2002, provisional section 1 of Act No. 3218 of 1995, imposing compulsory arbitration, had been repealed.<sup>164</sup>

### **3.3.4. Suppression of strikes in EPZs**

#### **India**

In a case relating to Worldwide Diamonds Manufacturers Limited in the Visakhapatnam Export Processing Zone (VEPZ) in India, the complainant alleged that a strike by the workers of the company to protest against their conditions of work and the abusive practices of the management had been brutally suppressed by the VEPZ administration and the police and that hundreds of striking workers and a trade union official had been illegally detained by the police. The complainant indicated that the strike ended on assurances provided by the Minister for Heavy Industries, the District Collector and the Commissioner for Police that they would ensure respect for workers' rights and that there would be no victimization of the workers for participating in the strike. However, contrary to the assurance given, seven workers were dismissed after the strike. Earlier, eight workers had been dismissed during the strike. According to the Government, the VEPZ had been granted public utility status and the strike was illegal as the notice required under the law was not given prior to the strike. The zone authorities denied that there was any suppression of the strike and alleged that the workers had staged a protest blockade and the local police was called in after repeated requests to allow free passage for senior officials in order to attend a board meeting in the zone failed. The Government also indicated that all the striking workers resumed their duties voluntarily and unconditionally and not on any assurance.

Noting that the information provided by the Government in respect of the suppression of the protest blockade was very general and did not address the specific allegations of the complainant, the CFA requested the Government to take all necessary steps in order to ensure that an independent and thorough investigation with the cooperation of the complainant organization was carried out in respect of the allegations concerning the suppression of the strike, the detention of the striking workers and excessive police violence and, if the allegations of the complainant were confirmed, to determine responsibility, punish those responsible and prevent the repetition of such acts.<sup>165</sup> The CFA also requested the Government to undertake consultations urgently with the Minister for Heavy Industries, the District Collector and the Commissioner of Police, with a view to ensuring that any assurances which might have been given to the workers to the effect that

<sup>163</sup> CEACR, 2000, 71st Session, Convention No. 87, observation, Turkey

<sup>164</sup> CEACR, 2002, 73rd Session, Convention No. 87, observation, Turkey; and CEACR, 2004, 75th Session, Convention No. 87, observation, Turkey.

<sup>165</sup> CFA, 332nd Report, Case No. 2228 (India), para. 746.

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they would not be victimized by reason of their participation in a strike are fully observed in practice.<sup>166</sup>

The Government subsequently furnished reports prepared by the Development Commissioner and the State Police Commissioner that concluded that the police had intervened in a timely manner, taken prompt and appropriate action to maintain law and order and that the allegations of the complainant were baseless. The CFA considered that neither of these reports could be said to amount to an independent investigation, in particular, because the officials were, according to the complainant, involved in the events in question. Recalling that police intervention should be in proportion to the threat to public order and that governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence, the CFA again requested the Government to establish an independent and thorough investigation, by bodies or persons having the confidence of the parties, into the alleged police violence during the strike and to be kept informed of the investigation's conclusions and, if the allegations are established to be well founded, the measures proposed to be taken in response.<sup>167</sup>

The Government thereafter indicated that an independent and thorough investigation, with the cooperation of the complainant organization, would be initiated and, if the allegations were found to be true, appropriate action would be taken against those responsible. The CFA requested the Government to keep it informed of the outcome of the investigation.<sup>168</sup>

### **3.4. Interference in the affairs of workers' organizations**

Article 3 of Convention No. 87, and Article 2 of Convention No. 98, seek to protect workers' organizations against acts of interference by the public authorities and employers/employers' organizations respectively in their establishment, functioning or administration.

Elections to workers' organizations, the funding of workers' organizations and the dissolution of workers' organizations are three issues that had come up for the consideration of the CFA in the cases discussed below. The CFA has emphasized that the right of workers' organizations to elect their own representatives freely without any interference from the public authorities is an indispensable condition for them to be able to effectively promote the interests of their members. It has pointed out that the requirement of prior authorization for workers' organizations to receive international financial assistance for their trade union activities amounts to interference by the public authorities in the right of workers' organizations to freely organize their administration and activities. It has also pointed out that permitting representatives of the employer to seek the dissolution of trade unions may give rise to acts of interference by the employer.

<sup>166</sup> 332nd Report, supra n. 165, para. 743.

<sup>167</sup> CFA, 335th Report, Case No. 2228, para. 901.

<sup>168</sup> CFA, 338th Report, Case No. 2228 (India), para. 196.

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### **3.4.1. Interference in elections and the functioning of workers' organizations**

#### Bangladesh

Another aspect of Case No. 2327, referred to earlier, relates to the provisions of the EPZ Workers' Associations and Industrial Relations Act, 2004 concerning elections to the WRWCs and workers' associations.

The CFA noted that several provisions of the Act interfere with the right of workers to elect their representatives in full freedom. For instance, section 5(7) provides that the procedure of election to the WRWC shall be determined by the Bangladesh Export Processing Zones Authority; section 5(6) provides that the manner of selection of the convener from amongst the elected members of the WRWC shall be determined by the Executive Chairman of the Authority; section 28(1) empowers the Authority to organize and conduct the elections to the executive council of the workers' association; section 29 requires the executive council to be approved by the Executive Chairman of the Authority within five days of the results of the election; and section 32(4) provides that the procedure of election and other details in respect of federations shall be determined by the Authority. The CFA recalled that the right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. It also recalled that for this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves. In the light of these principles, the CFA requested the Government to take the necessary measures to ensure that the elections to be held under the provisions of the Act are conducted without any interference from the public authorities, including the Bangladesh Export Processing Zone Authority and its Executive Chairman.<sup>169</sup>

#### Sri Lanka

As mentioned earlier, the BOI, the overseeing authority for Sri Lanka's free trade zones had issued guidelines providing for the establishment and operation of employees' councils in the zones. The councils were intended to represent workers in collective bargaining, promote industrial peace, contribute to the improvement of efficiency and productivity of the enterprise and resolve industrial disputes. As per the guidelines, the councils were to consist of elected representatives of the workers representing different departments of the enterprise. The members of the council were to be elected through secret ballot. Elections for the establishment of the first council were to be conducted by representatives of BOI's Industrial Relations Department (IRD). Subsequent elections were to be conducted by a three member electoral board to be constituted by the council. IRD representatives were to be present at the elections as observers to ensure that elections are conducted fairly and properly. When the electoral board of a council failed to hold elections within one month of the date of expiry of the term of office of the council, the IRD was to take steps to hold the election.

The guidelines also contained provisions to regulate the meetings of the council. The council was required to meet at least once a month. The employer and the council were required to meet at least once every three months to discuss matters of mutual concern to both parties and to review the employment relations situation in the enterprise. The

<sup>169</sup> CFA, 337th Report, Case No. 2327 (Bangladesh), para. 210.

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meetings were required to be convened by the employer and the procedure for the conduct of the meetings was to be determined by the employer in consultation with the council.

A complaint was referred to the CFA <sup>170</sup> alleging that the guidelines undermine the independence of elected councils and their ability to effectively promote the interests of workers, organize their activities and formulate their own programmes. Moreover, the councils, not being statutorily provided bodies, lacked the minimum safeguards to which trade unions are entitled under the Trade Unions Ordinance. The complainant alleged that employers commonly resort to the creation of employees' councils as a means of hampering the creation of free and independent trade unions and that it was virtually impossible for the complainant's affiliate in Sri Lanka, and other unions, to organize and secure recognition in the country's free trade zones. The complainant also alleged that the guidelines clearly favour employees' councils over trade unions and this is illustrated by the fact that the employer must allow a period of up to two hours for council meetings at least once a month and must provide the necessary premises and facilities for the conduct of affairs of the council. The complainant alleged that such favouritism could influence the choice of the workers as to whether they intend to join an employees' council or a union.

The Government of Sri Lanka denied that there was any interference either in the elections or in the conduct of business of the council. According to the Government, the BOI only played the role of a facilitator in establishing employees' councils. In respect of elections to the council, the Government stated that nominations were made voluntarily by workers and elections held through secret ballot without any interference from the employers or the BOI. The presence of BOI representatives during elections was only as observers to ensure that the elections are conducted fairly and properly. The Government also stated that meetings of the council were conducted by the council members according to their own programmes. Further, meetings between the council and the employer could be initiated by either party depending upon the issue involved. The Government stated that the facilities provided for the affairs of the council are those which the employer is required to provide to elected representatives under Convention No. 135 <sup>171</sup> and that therefore it does not amount to any favouritism.

The CFA considered the calling of the first election by BOI representatives as not being contrary to freedom of association principles but emphasized that when the BOI calls for the first election, the organization of elections should take place in close consultation with the parties concerned. It however considered the presence of a member of the BOI during elections, even as an observer, as being contrary to the principle of free election of worker representatives enshrined in Article 3 of Convention No. 135, ratified by Sri Lanka. It emphasized that all official positions in such councils should, without exception, be occupied by persons who are freely elected by the workers concerned. The CFA therefore requested the Government to take all necessary steps to amend the guidelines so as to ensure that elections to the councils take place in the presence of independent persons and only when requested by both parties and that the first elections are organized in close consultation with all parties concerned. <sup>172</sup>

In respect of meetings between the council and the employer, the CFA expressed the view that the procedure applicable to meetings between the employer and the council should be determined by common agreement between the parties and found that the

<sup>170</sup> Case No. 2255.

<sup>171</sup> Workers' Representatives Convention, 1971.

<sup>172</sup> CFA, 332nd Report, Case No. 2255 (Sri Lanka), para. 947.



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employer is vested with a disproportionate amount of discretion in this respect under the guidelines. It therefore requested the Government to take appropriate measures to amend the guidelines so as to ensure that the procedure for the conduct of the meetings is determined by common agreement between the parties.<sup>173</sup>

The CFA found the facilities required to be afforded to the councils under the guidelines to be in accordance with Article 2, paragraphs 1 and 3, of Convention No. 135. It however considered that when such facilities are provided only to councils and not to trade unions, it would be discriminatory and provide an unfair advantage to employees' councils over trade unions thus influencing the choice of the workers. The CFA therefore requested the Government to take all necessary steps to amend the guidelines so as to ensure that representative trade unions enjoy the same facilities as employees' councils without discrimination.<sup>174</sup>

The Government thereafter indicated that it was taking steps to amend the guidelines in accordance with the CFA's recommendations. Under the draft amendment, the first election for the creation of an employees' council was to be organized by the representatives of the IRD of the BOI in close consultation with the parties concerned and conducted by a three member electoral board constituted by the council. A representative of the Commissioner General of Labour may be present at the election as an observer when both parties request him to be present. When the electoral board fails to carry out the election within one month from the date of expiry of the term of office of the council, the IRD of the BOI may, in close consultation with the council, facilitate the carrying out of the election by the electoral board of the council. The Government also indicated that, under the draft amendments, the procedure for the conduct of meetings between the employees' council and the employer would be determined by mutual agreement between the parties. The CFA expressed the hope that these draft amendments would be approved and adopted as soon as possible.<sup>175</sup> The Government subsequently indicated the BOI had effected these amendments.<sup>176</sup>

### **3.4.2. Registration and dissolution**

#### **Nicaragua**

In a case relating to an EPZ enterprise in Nicaragua,<sup>177</sup> one of the allegations of the complainant was that, shortly after the establishment of a new union, the enterprise and subsequently four workers and an adviser paid by the enterprise had requested the dissolution of the union. Proceedings in this regard were accordingly initiated. The Ministry of Labour then refused to register the reorganization of the union's executive committee.

In respect of the issue of registration, the reply of the Government indicated that, when the union had requested the registration of the reorganization of the executive committee, the Directorate for Trade Union Associations had rejected the request on

<sup>173</sup> 332nd Report, supra n. 172, para. 948.

<sup>174</sup> 332nd Report, supra n. 172, para. 952.

<sup>175</sup> CFA, 333rd Report, Case No. 2255 (Sri Lanka), paras 127–130.

<sup>176</sup> CFA, 338th Report, Case No. 2255 (Sri Lanka), para. 104.

<sup>177</sup> Case No. 2275.

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account of the legal proceedings under way relating to the cancellation of the union's registration but that, in the course of the second round of an appeal preferred in this regard, the union was notified that the registration of the reorganization of the executive committee had been processed. On the issue of dissolution, the reply referred to the statement of the concerned company that section 219 of the Labour Code specifies the possible reasons for requesting the dissolution of a trade union and the authorities that may make such a request; the judicial authority would give its ruling on the matter and the company does not interfere in any way in the administration of justice.

While noting this information, the CFA disapproved of the initial refusal of the Government to register the reorganization of the committee and also the delay of several months in the registration of the committee and requested the Government to refrain from interfering in trade union affairs in the future.<sup>178</sup>

In respect of the dissolution of the union, the CFA requested the Government to keep it informed of the outcome of the judicial proceedings initiated in this respect. It however emphasized that allowing representatives of the company to request the dissolution of a union may give rise to acts of interference by the employer.<sup>179</sup>

### **3.4.3. Funding of workers' organizations**

#### **Bangladesh**

Yet another aspect of Case No. 2327 relates to restrictions on the funding of workers' organizations. Section 18(2) of the EPZ Workers' Associations and Industrial Relations Act, 2004, provides that no workers' association shall obtain or receive any fund from any outside source without the prior approval of the Executive Chairman of the Authority.

Recalling that trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities, the CFA observed that the provision interferes with the right of workers' organizations to organize their administration and activities without interference from the public authorities. It therefore requested the Government to take the necessary measures to amend section 18(2) so as to ensure that workers' associations in EPZs are not required to obtain prior authorization to receive financial assistance in respect of their trade union activities.<sup>180</sup>

## **3.5. Anti-union discrimination**

While most EPZ-operating countries recognize the right of EPZ workers to organize themselves under the law, in practice, the right of EPZ workers to freely organize themselves and engage in trade union activities is curtailed in many EPZs on account of the anti-union discriminatory practices adopted by employers. These include the dismissal, suspension, transfer, blacklisting, harassment, intimidation and physical assaults of trade union officials and members and the coercion of workers to join employer-sponsored unions or associations. Such practices are particularly pronounced at the stage of formation of trade unions. The problem is accentuated when EPZ workers lack security of

<sup>178</sup> CFA, 333rd Report, Case No. 2275 (Nicaragua), para. 801.

<sup>179</sup> CFA, 336th Report, Case No. 2275 (Nicaragua), para. 1110.

<sup>180</sup> CFA, 337th Report, Case No. 2327 (Bangladesh), para. 205.

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employment as it enables employers to easily get rid of workers involved in union activities. Poor enforcement of the law in EPZs also contributes to the problem.

The supervisory bodies have repeatedly emphasized that no one should be dismissed or subjected to anti-union discrimination by reason of his or her legitimate trade union activities and that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association. They have pointed out that trade union rights can be freely exercised only in a climate that is free from violence, pressure or threats of any kind against trade union officials and members and when they are not subjected to reprisals for their legitimate trade union activities. They have emphasized that the Government is responsible for preventing all acts of anti-union discrimination and has to ensure that complaints of anti-union discrimination are examined in the framework of national procedures, which should be prompt and impartial and considered as such by the parties concerned. In cases involving dismissal of trade union officials or members for their legitimate trade union activities, the CFA has taken the view that the remedy should be reinstatement or, when reinstatement in one form or other is not possible, compensation so as to constitute sufficiently dissuasive sanctions for anti-trade union activities.

### **3.5.1. Legislative protection against anti-union discrimination**

#### **Dominican Republic**

In the Dominican Republic, formerly, the Labour Code permitted an employer to dismiss any worker subject to the condition that the prescribed statutory compensation be paid in cases of unjustified dismissal. The CFA had therefore considered that the law does not provide sufficient protection against acts of anti-union discrimination within the meaning of Convention No. 98.<sup>181</sup> In addition, the CEACR had noted that the penalties prescribed under the Code for anti-union acts were inadequate. It had therefore urged the Government to adopt appropriate measures to provide effective protection against acts of anti-union discrimination, in particular, preventive measures, stronger penalties and reinstatement of workers in their jobs.<sup>182</sup>

The aforementioned shortcomings in the law had the effect of curbing the trade union rights of workers in the country's free trade zones. Workers' organizations had pointed out that workers in enterprises in free trade zones in the country had been unjustly dismissed in order to prevent them from exercising their trade union rights.<sup>183</sup> The CEACR therefore asked the Government to provide detailed information on the situation of zone workers as regards the exercise of their trade union rights.<sup>184</sup> It then noted, on the basis of documents provided by the Government for the period from 1987 to 1989, that only five trade unions were registered during that period in all the free trade zones in the country where there were around 200 companies and that this was in contrast to the registration of 84 trade unions, ten federations and one confederation for the rest of the country during the same

<sup>181</sup> CFA, 254th Report, Case No. 1393 (Dominican Republic), para. 186.

<sup>182</sup> CEACR, 1990, 60th Session, Convention No. 98, observation, Dominican Republic.

<sup>183</sup> See CEACR, 1991, 61st Session, Convention No. 98, observation, Dominican Republic and CEACR, 1990, 60th Session, Convention No. 87, direct request, Dominican Republic; CEACR, 1991, 61st Session, Convention No. 87, observation, Dominican Republic.

<sup>184</sup> CEACR, 1990, 60th Session, Convention No. 87, direct request, Dominican Republic.

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period. It also noted that during the said period, three applications to register trade unions in the free trade zones were made to the authorities but were refused on the ground of nonconformity with legal procedures. In the circumstances, the CEACR requested the Government to furnish information on the reasons underlying the low rate of unionization in the free trade zones.<sup>185</sup>

The issue of trade union rights in the country's free trade zones was also taken up for discussion before the Conference Committee on the Application of Standards and the Government had indicated to the Committee that a draft Labour Code had been prepared containing provisions aimed at affording adequate protection for workers against anti-union discrimination and also overcoming any reluctance on the part of the authorities to register unions in the zones. The Government also indicated that the draft Code had been discussed with social partners at a seminar held under the auspices of the ILO in order to satisfy the comments of the CEACR and ensure the full implementation of the provisions of Conventions Nos. 87 and 98. The Committee expressed the hope that the new Code would come into force shortly.<sup>186</sup>

The Government thereafter explained to the CEACR that one of the main reasons for the low rate of unionization was the lack of adequate protection and guarantees for trade union activity under the former Labour Code. It stated that this lacuna was however remedied in the new Labour Code of May 1992, which establishes protection of trade union privileges for trade union leaders and officials and for workers who participate in collective bargaining. The Government also indicated that between 1990 and 1993, 54 enterprise-level trade unions had been registered in the free trade zones and that, since March 1991, no application for registration of free trade zone unions had been refused. The CEACR expressed its satisfaction at the cooperation between the International Labour Office and the Government in the preparation of the new Labour Code and its provisions concerning the freedom of association.<sup>187</sup> It also noted with satisfaction that the new Labour Code sets out trade union rights, increases the level of fines and sanctions as punishment to the authors of anti-union discriminatory practices and that these provisions are applicable to workers in EPZs.<sup>188</sup>

The Government subsequently indicated that it had also set up a specialized unit in the labour inspectorate to protect freedom of association in EPZ enterprises<sup>189</sup> and that the General Directorate of Labour conducts training workshops to ensure respect for trade union rights.<sup>190</sup>

<sup>185</sup> CEACR, 1991, 61st Session, Convention No. 87, observation, Dominican Republic.

<sup>186</sup> ILC, 1991, 78th Session, Conventions Nos. 87 and 98, Dominican Republic.

<sup>187</sup> CEACR, 1993, 63rd Session, Convention No. 87, observation, Dominican Republic.

<sup>188</sup> CEACR, 1994, 64th Session, Convention No. 98, observation, Dominican Republic.

<sup>189</sup> CEACR, 1998, 69th Session, Convention No. 87, observation, Dominican Republic.

<sup>190</sup> CEACR, 2003, 74th Session, Convention No. 87, observation, Dominican Republic.

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### **3.5.2. Reprisals against trade unionists**

#### Costa Rica

In a case concerning Costa Rica,<sup>191</sup> the complainant alleged that, barely a few days after a union was set up in the SARET group of Costa Rica S.A enterprises in the free trade zone of Alajuela and while its registration was pending, 18 workers, including the members of the executive board of the trade union, were dismissed on grounds of serious misconduct. The Ministry of Labour was informed immediately but the workers were not reinstated. The Government indicated that the labour inspector of Alajuela province was instructed to carry out an inquiry in this regard. The inquiry was closed at the request of the labour inspector as the parties did not produce the necessary evidence.

The CFA deplored the long period of nearly a year taken for conducting the inquiry. It observed that the fact that there was an en masse dismissal of trade union officials and trade unionists just two to five days after the setting-up of the trade union and while its registration was being processed, was a clear indication of the anti-union nature of the dismissals. The CFA therefore requested the Government to take rapidly the necessary measures to enable the workers dismissed, as a result of the exercise of their legitimate trade union activities, to be reinstated in their jobs.<sup>192</sup> Drawing the attention of the Government to the principles that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association and that an excessive delay in processing cases of anti-union discrimination is tantamount to a denial of due process, the CFA also requested the Government to take measures to ensure that, whenever complaints are made of violations of trade union rights, workers in enterprises in free trade zones, as well as elsewhere, benefit from speedy inquiry procedures with a view to providing effective protection.<sup>193</sup>

Noting the aforesaid conclusion of the CFA, the CEACR made a similar recommendation and requested the Government to keep it informed of any measures taken in this regard.<sup>194</sup> The Government thereafter provided information on a Bill to amend various sections of the Labour Code that provided for a rapid investigation procedure in cases of anti-union discrimination. The CEACR expressed the hope that the Bill would be adopted in the very near future.<sup>195</sup>

#### Dominican Republic

In a case concerning the Dominican Republic,<sup>196</sup> one of the allegations of the complainant was that 21 trade union leaders had been dismissed by the enterprise Importación y Exportación C. Vor. A in the Santiago EPZ and that their names figured in a blacklist drawn up by the personnel department of the enterprise which was circulated to other enterprises in the zone. The Government stated in this regard that the Ministry of Labour had brought a complaint before the criminal courts which was being heard.

<sup>191</sup> Case No. 1780.

<sup>192</sup> CFA, 300th Report, Case No. 1780 (Costa Rica), para. 141.

<sup>193</sup> 300th Report, supra n. 192, para. 142.

<sup>194</sup> CEACR, 1995, 66th Session, Convention No. 98, observation, Costa Rica.

<sup>195</sup> CEACR, 2001, 72nd Session, Convention No. 98, observation, Costa Rica.

<sup>196</sup> Case No. 1658.

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The CFA found that the text of the blacklist expressly reproached the dismissed trade union leaders for having established trade unions. It therefore called upon the Government to take all necessary measures to ensure that the enterprise reinstates in their jobs those trade union leaders who were unjustly dismissed for carrying out their legitimate trade union activities.<sup>197</sup>

In another case concerning the Dominican Republic,<sup>198</sup> the complainant alleged that, with the increase in trade union activity in the industrial free zone areas and the establishment of a federation of the unions of free zone workers, there was an upsurge in anti-union activities by employers. This included the dismissals of the members of the executive boards of the unions and other members of the unions. The complainant alleged such anti-trade union action in the following enterprises: Woo-Chang and Bonaham Apparel (Bonaó city), Big Bond Apparel (Bonaó city), Westinghouse (Itabo industrial estate), Hotel Hamaca Beach Resort and Empresa Attwoods Dominicana S.A. The Government stated that the administrative authorities had investigated all enterprises where such acts had occurred and brought criminal charges against the managers. Regarding the alleged dismissal of the members of the Westinghouse union, the Government observed that only some members were dismissed and this was with the authorization of the San Cristobal labour court on the grounds that they had engaged in an illegal strike and committed acts of violence against the enterprise's assets.

The CFA took note of the Government's observations. However, in the light of the many instances of anti-union discrimination, it emphasized the importance it attaches to the principle that no one should be dismissed or subjected to anti-union discrimination by reason of his or her legitimate trade union activities. Further, in view of the fact that the labour authorities had recognized the anti-union character of the dismissals by taking the cases to court, the CFA urged the Government immediately to take the necessary steps to ensure the reinstatement in their jobs of all the union leaders and members who had been dismissed by reason of their membership of a trade union or their union activities. In respect of the Westinghouse case, in light of the fact that the documents submitted by the judicial authority indicated that 12 workers had been dismissed for dereliction of duty and that, in the report of the labour inspectorate, the parties concerned denied having engaged in sabotage, the CFA urged the Government to re-examine the situation of the dismissed union leaders.<sup>199</sup>

The Government thereafter indicated that the judicial authority had revoked the dismissal of the union leaders of the Hotel Hamaca Beach Resort and that the cases involving Woo-Chang and Bonaham Apparel and Big Bond Apparel had been satisfactorily resolved, in the two latter cases with the signing of collective agreements. In the Westinghouse case, the Government stated that the dismissal of the union leaders were authorized by the judicial authority.<sup>200</sup>

<sup>197</sup> CFA, 286th Report, Case No. 1658 (Dominican Republic), para. 735.

<sup>198</sup> Case No. 1732.

<sup>199</sup> CFA, 295th Report, Case No. 1732 (Dominican Republic), paras 353–355.

<sup>200</sup> CFA, 302nd Report, Case No. 1732 (Dominican Republic), para. 42.

Another aspect of the VEPZ case before the CFA <sup>201</sup> concerned various allegations of anti-union discrimination. The complainant alleged that the Development Commissioner who is the authority responsible for the development of the zone had personally warned the workers that they might lose their jobs if they joined any trade union. Pursuant to the formation of a union by the workers of the company, the management engaged in various acts of anti-union discrimination including the termination of the services of two workers, suspension of one worker and the imposition of arbitrary fines on 22 others for their trade union activities. It had also dismissed fifteen workers in connection with a strike organized by the union to protest against abusive management practices. The Government denied as untrue the allegations regarding restrictions on union activities in the zone. In respect of the allegations of anti-union discrimination, the Government stated that the workers concerned had been suspended, fined or dismissed for reasons of indiscipline, irregularity and failure to learn.

The CFA considered that it did not have sufficiently detailed information to undertake an objective examination of the allegations and requested the Government to provide more specific information in respect of the complainant's allegations of anti-union discrimination. It however recalled generally that the Government was responsible for preventing all acts of anti-union discrimination and had to ensure that complaints of anti-union discrimination were examined in the framework of national procedures, which should be prompt and impartial and considered as such by the parties concerned. <sup>202</sup>

The Government thereafter furnished a report of the Development Commissioner stating that specific allegations of discrimination against individual workers had been thoroughly examined and it had been ascertained that the action taken against the concerned individuals was based on the merits of each case and that there has been no discrimination. The Development Commissioner also reported that the management was questioned on the issue of unfair dismissals and stated that they had never resorted to illegal termination or forced any worker to resign.

Noting that the Development Commissioner's conclusions regarding the alleged acts of anti-union discrimination were very general and totally contradicted the complainant's allegations without providing any indication of the concrete facts which led to the dismissals, suspensions and fines thereby preventing the Committee from determining whether these measures had an anti-union purpose or not, the CFA observed that the response to allegations of anti-union discrimination should not be confined to reproducing the reply of the accused party without any concrete supporting evidence or official investigation. The CFA therefore requested the Government to take all necessary steps urgently in order to ensure that an independent and thorough investigation with the cooperation of the complainant organization is carried out in respect of the facts which motivated the alleged workers' dismissals, suspensions and fines and if it is found that these measures were by reason of the workers' trade union activities, to take all necessary steps to reinstate the dismissed workers without loss of pay and compensate those who were suspended or fined. <sup>203</sup>

<sup>201</sup> Case No. 2228.

<sup>202</sup> CFA, 331st Report, Case No. 2228 (India), para. 468.

<sup>203</sup> CFA, 332nd Report, Case No. 2228 (India), paras 740 and 742.

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The Government thereafter indicated that the cases of dismissal were at different stages of hearing before the Industrial Tribunal. Noting that the cases had not been resolved even three years after the complaint was filed, the CFA once again requested the Government to take all necessary measures so as to ensure that the cases are examined promptly and if it is confirmed that the imposition of the dismissals, suspensions and fines were linked with the legitimate trade union activities of the workers, to take necessary measures to ensure that the dismissed workers are reinstated in their jobs without loss of pay, and if reinstatement is not possible and in the case of suspensions and fines, to ensure that adequate compensation so as to constitute sufficiently dissuasive sanctions is paid to the workers.<sup>204</sup>

### *Grievance redressal procedures*

One of the allegations of the complainant in this case was that there was no grievance redressal mechanism for the workers in the VEPZ. In reply to this allegation, the Government had stated that the Office of the Development Commissioner of the zone had constituted a Grievance Redressal Committee with the Deputy Development Commissioner of the zone designated as the Grievance Redressal Officer.

Noting that the Committee was headed by the Deputy Development Commissioner, one of the authorities responsible for the development of the zone, the CFA considered that there could be incompatibility between the functions of Deputy Development Commissioner and Grievance Redressal Officer when performed by the same person. The CFA also noted that this mechanism may not always have the confidence of all parties concerned especially when allegations of anti-union discrimination are directed against the zone administration itself.<sup>205</sup> It therefore requested the Government to take necessary steps so as to ensure that the functions of Grievance Redressal Officer are not performed by the Deputy Development Commissioner in the VEPZ but by an independent person or body, having the confidence of all parties and to keep it informed in this respect.<sup>206</sup> In order to ensure that the concerned workers and trade union could also approach the courts for redress, the CFA also requested the Government to indicate whether workers and trade unions could approach the courts directly.<sup>207</sup>

The Government thereafter indicated that an individual person or body, in coordination with the State government would be entrusted to look into the grievances of workers. In respect of access to courts, the Government indicated that in the state of Andhra Pradesh where the EPZ is located, under the Industrial Disputes Act, 1947, individual workers who are dismissed, discharged, retrenched or otherwise terminated from service could apply directly to the court for the adjudication of their disputes. However, in respect of collective disputes, a reference was required from the Government for the adjudication of the dispute.

Noting that the right to approach the court directly without being referred by the Government is not conferred on either suspended workers or on trade unions, the CFA requested the Government to take all necessary measures including the amendment of the Industrial Disputes Act, 1947 so as to ensure that suspended workers as well as trade

<sup>204</sup> CFA, 338th Report, Case No. 2228 (India), para. 195.

<sup>205</sup> 331st Report, supra n. 202, para. 470.

<sup>206</sup> 332nd Report, supra n. 203, para. 748.

<sup>207</sup> CFA, 335th Report, Case No. 2228 (India), para. 907.



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unions could approach the courts directly.<sup>208</sup> It also requested the Government to keep it informed of the measures taken and the progress made in ensuring that the roles of Grievance Redressal Officer and Deputy Development Commissioner are carried out by different persons or bodies.<sup>209</sup>

## Nicaragua

In two related cases concerning Chentex Garments S.A of the “Les Mercedes” export processing zone corporation in Nicaragua,<sup>210</sup> the complainants alleged that soon after the workers of the company held a general meeting with a view to establishing a company trade union and appointing its executive committee, the management engaged in a series of anti-union acts including dismissal of the trade union officials and threats of dismissal of the members of the union. The management also caused criminal proceedings to be initiated against the officials and members of the complainant union. The union had held strikes to protest against the dismissals and also against the refusal of the management of negotiate with the union. The management subsequently asked the labour tribunal to dissolve the union and also initiated criminal proceedings against ten of the union officials. The Government indicated that the dismissals of the trade union officials were occasioned by their participation in strikes that were declared illegal by the Labour Inspectorate.

The CFA observed that the dismissals took place before the union had obtained legal personality, a situation in which the exercise of trade union rights was denied and therefore, the trade union leaders cannot be reproached for not having fulfilled the legal conditions for the strike. Noting that the dismissals had been challenged in the main Constitutional Division of the Supreme Court of Justice, the CFA asked to be kept informed of the ruling and also about the rulings in the criminal proceedings initiated by the company against ten trade union officials. It also requested the Government to ensure that trade union rights can be freely exercised at the enterprise without the workers being subjected to reprisals for their legitimate trade union activities.<sup>211</sup>

The Government subsequently informed the CFA of the following: The Ministry of Labour maintains a labour inspectorate in the EPZ to ensure that workers including those at Chentex Garments S.A are not subject to reprisals for carrying out legitimate trade union activities. The ruling of the main Constitutional Division of the Supreme Court of Justice ordered the reinstatement of nine trade unionists to their previous positions under the same terms and conditions that had been previously applied. A collective agreement had been entered into between enterprise and the complainant organization whereby all the labour and criminal proceedings pending were withdrawn, four trade union leaders were reinstated in their jobs and the phased in reinstatement of seventeen other workers was planned.<sup>212</sup>

In another case relating to Roo Sing Garment Company in a free trade zone in Nicaragua,<sup>213</sup> the complainant alleged that the employer had engaged in various anti-union

<sup>208</sup> 338th Report, supra n. 204, para. 198.

<sup>209</sup> 338th Report, supra n. 204, para. 199.

<sup>210</sup> Cases Nos. 2092 and 2101.

<sup>211</sup> CFA, 324th Report, Cases Nos. 2092 and 2101 (Nicaragua), para. 731.

<sup>212</sup> CFA, 325th Report, Cases Nos. 2092 and 2101 (Nicaragua), paras 51–52.

<sup>213</sup> Case No. 2274.

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acts including the dismissal of the general secretary and three other officials of the union and the suspension of the new general secretary of the union. The Government indicated that reinstatement proceedings in respect of the dismissed union officials were pending before the Labour Courts. The Government also indicated that the departmental inspectorate for the industry sector had decided not to allow the cancellation of the contract of the new general secretary of the union that was requested by the company.

While noting this information, the CFA emphasized that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate if not accompanied by procedures to ensure that effective protection against such acts is guaranteed. It recalled that the Government is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt and impartial and considered as such by the parties concerned. It deplored the delay in the judicial proceedings relating to the dismissal of the general secretary and the minutes and agreement secretary and expressed the hope that both the officials would be reinstated without delay and without loss of pay, if the judicial authority confirmed the anti-union nature of the dismissals. If however the judicial authority found that reinstatement was not possible, it requested the Government to ensure that both the officials would be fully compensated.<sup>214</sup>

## Sri Lanka

In a case concerning Sri Lanka,<sup>215</sup> the complainant alleged that the management of Workwear Lanka Pvt. Ltd. located in the Biyagama FTZ had indulged in various acts of anti-union discrimination soon after the workers of the company held a founding meeting to set up a branch union and participated in a work stoppage organized to protest against the company's failure to pay wages and benefits. These included the dismissal of over a hundred trade union leaders and members and the demotion and suspension of other members of the union. The Government indicated that action was being taken by the Department of Labour to prosecute the management for resorting to unfair labour practices.

Taking into account the sequence of events detailed in the complaint, the CFA considered that the dismissals, suspensions and demotions of the office bearers and the members of the union appear to be linked to the trade union activities and membership of the workers concerned. Recalling that no person shall be prejudiced in his or her employment by reason of his or her trade union membership or legitimate trade union activities whether past or present and that necessary measures should be taken so that trade unionists who have been dismissed for their trade union activities related to their establishment of a union are reinstated in their functions, if they so wish, the CFA urged the Government to take without delay the necessary steps to ensure that a procedure on the allegations of anti-union discrimination be opened and brought to a speedy conclusion in a fully impartial manner and to keep it informed in this regard. Further, if the allegations are found to be justified, it requested the Government to ensure in cooperation with the employer concerned that: (a) the workers dismissed as a result of their legitimate trade union activities are reinstated without loss of wages and without delay or if reinstatement in one form or another is not possible, that they are paid adequate compensation which would represent sufficient dissuasive sanctions for such anti-trade union actions; (b) the workers demoted as a result of their legitimate trade union activities are restored to their

<sup>214</sup> CFA, 335th Report, Case No. 2274 (Nicaragua), para. 1118.

<sup>215</sup> Case No. 2380.

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former posts without delay and (c) the workers under suspension because of their legitimate trade union activities are allowed to resume work without delay and are paid wages for the period when they were unjustly denied work.<sup>216</sup>

### **3.5.2. Blacklisting of trade union officials**

#### **Dominican Republic**

In the case concerning the *Importación y Exportación C. Vor. A* in the Santiago EPZ referred to earlier,<sup>217</sup> the complainant had alleged that the personnel department of the enterprise had drawn up a blacklist with the names of 21 leaders of the trade union in the enterprise who were dismissed for their union activities and the numbers of their identity papers, warning other enterprises against hiring them. The list was allegedly circulated to other enterprises in the EPZ. The Government confirmed that the blacklist was drawn up and also indicated that the Ministry of Labour had brought a case in this regard against the enterprise in the penal courts.

The CFA expressed its disapproval of this anti-union practice and requested the Government to ensure that it did not recur.<sup>218</sup>

In Case No. 1732 that has been referred to earlier, the complainant had also alleged that blacklists of dismissed trade union leaders had been drawn up by several free trade zone employers so that they would not be recruited by other enterprises. The Government did not make any specific observation in respect of this allegation.

The CFA pointed out that all practices involving the blacklisting of trade union officials constitute a serious threat to the free exercise of trade union rights and that governments should take stringent measures to combat such practices. It therefore called upon the Government to investigate the matter and should the existence of such lists be confirmed, to take the necessary steps to punish those responsible and prevent the repetition of such practices.<sup>219</sup>

#### **Nicaragua**

In the case relating to the *Roo Sing Garment Co.* in Nicaragua referred to earlier,<sup>220</sup> the complainant had also generally alleged that employers in the free zones draw up blacklists of trade unionists who are dismissed to prevent them from being hired by other companies. The Government indicated that no evidence had been found of such blacklists. It added that under no circumstances do the administrative and judicial authorities in the country allow such practices which constitute a serious violation of workers' rights.

Recalling that all practices involving the blacklisting of trade union officials constitute a serious threat to the free exercise of trade union rights and that Governments should take stringent measures to combat such practices, the CFA requested the

<sup>216</sup> CFA, 336th Report, Case No. 2380 (Sri Lanka), paras 793–795.

<sup>217</sup> Case No. 1658.

<sup>218</sup> CFA, 286th Report, Case No. 1658 (Dominican Republic), para. 735.

<sup>219</sup> CFA, 295th Report, Case No. 1732 (Dominican Republic), para. 357.

<sup>220</sup> Case No. 2274.

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Government to conduct a thorough and independent investigation into the alleged existence of blacklists and to keep it informed in this regard.<sup>221</sup>

### **3.5.3. Harassment and violence**

#### **Dominican Republic**

In Case No. 1732 concerning the Dominican Republic referred to earlier, the complainant had also alleged that the secretary-general of the union in Empresa Attwoods Dominicana S.A was arrested by the police secret service, detained for seven days and beaten during his detention. The Government did not make any observations in this regard.

The CFA deplored the union leader's arrest and ill treatment. It drew the Government's attention to the principle that the arrest and detention of trade unionists without any charges being laid or court warrants being issued constitutes a serious violation of trade union rights. It also recalled that governments should give precise instructions and apply effective sanctions where cases of ill treatment are found, so as to ensure that no detainee is subjected to such treatment and emphasized the importance that should be attached to the principle laid down in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.<sup>222</sup>

#### **Guatemala**

In a case concerning Guatemala,<sup>223</sup> the complainant alleged that after the workers of Choi Shin and Climatextiles in the Villanueva free trade zone filed applications for the recognition of their respective trade unions, the companies engaged in various anti-union acts against the officials and members of the unions. These included coercion of the workers to leave their union and join a *solidarista* association supported by the management, coercion of trade union officials to sign letters of resignation, physical assaults of trade union officials, threats with firearms to trade union officials and reduction of the wages of the workers. The Government indicated that complaints had been made in this regard to the General Labour Inspectorate and that some issues in connection with the acts of violence had been referred to the courts.

Noting the seriousness of the allegations, the CFA urged the Government to ensure that the investigation conducted covered all the allegations made in the case with a view to clarifying the facts, determining responsibility and punishing those responsible.<sup>224</sup> The Government subsequently indicated that sanctions had been imposed against the concerned companies pursuant to administrative proceedings undertaken by the Ministry of Labour and Social Welfare and that the trade unions involved had given a written assurance that they would drop all legal actions brought by themselves and their members against both companies as well as all complaints made to the General Labour Inspectorate. While noting this information, the CFA again expressed its concern at the seriousness of the allegations relating to the death threats and physical assaults on the trade unionists and recalling that trade union rights can only be exercised in a climate free of violence and

<sup>221</sup> CFA, 335th Report, Case No. 2274 (Nicaragua), paras 1120 and 1121.

<sup>222</sup> CFA, 295th Report, Case No. 1732 (Dominican Republic), para. 356.

<sup>223</sup> Case No. 2179.

<sup>224</sup> CFA, 330th Report, Case No. 2179 (Guatemala), para. 780.

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threats, called upon the Government to ensure that acts of violence will not recur in the companies in question in the future.<sup>225</sup>

In its observations in respect of Guatemala for the year 2002 under Convention No. 98, taking note of the comments of the ICFTU regarding physical aggression by groups organized by enterprises on workers in the country's EPZs who attempt to establish trade unions and threats of dismissal against them and the Government's lack of response to these comments, the CEACR emphasized that the freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of trade unions and requested the Government to endeavour to ensure compliance with this principle in enterprises in EPZs.<sup>226</sup>

## Philippines

In a case concerning the Philippines,<sup>227</sup> the complainant alleged that two of its affiliates had organized the workers of Cebu Mitsumi, an electronics firm in the special trade zone in Danao city resulting in the formation of a union. The union filed a petition for a certification election signed by almost all the rank and file workers of the company. The management then called the workers for meetings attended by Danao city government officials and during the meetings, management representatives and government officials tried to dissuade the workers of the company from joining the union. According to the complainant, the government of Danao city did not want any independent trade union to operate within its jurisdiction and the Danao city council had passed a resolution making Danao city union free and strike free when the national government assigned an area in the city as a special trade zone. The complainant alleged that the city government officials collaborated with the management of the company in suppressing the trade union rights of the workers of the company by harassing and threatening the union members, particularly, the union officials. It also alleged that as part of the anti-union campaign, the President of the union and his wife were arrested and detained on trumped up charges of possession of a prohibited drug in order to stop their union activities and to discourage other workers from pursuing union activities. The concerned security guards who had inspected the workers and their belongings on the relevant day had testified that the couple did not possess any prohibited drug. The complainant indicated that two separate investigations into the matter were being undertaken by the Philippines National Police and the Commission on Human Rights. The Government denied the allegations that the city government officials had discouraged the workers from joining the union and that the city council had passed a resolution to make the city union free. The Government also denied that there was any harassment or intimidation of the workers. The Government stated that the arrest and detention of the President of the union and his wife was a police matter.

Recalling the principle that workers in EPZs should enjoy all the rights provided for by the freedom of association Conventions, the CFA emphasized that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities while not necessarily prejudicing workers in employment may discourage them from joining organizations of their own choosing thereby violating their right to organize. The CFA therefore requested the Government of Philippines to ensure that in future, recourse is not had to acts of harassment and intimidation of trade

<sup>225</sup> CFA, 332nd Report, Case No. 2179 (Guatemala), paras 685, 687 and 689.

<sup>226</sup> CEACR, 2003, 74th Session, Convention No. 98, observation, Guatemala.

<sup>227</sup> Case No. 1826.

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union activists and officials so that they could carry on their legitimate trade union activities freely.<sup>228</sup>

The CFA expressed its concern at the arrest and detention of the President of the union and his wife and stressed that the arrest and detention of trade union leaders or members for reasons connected with their trade union activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular. The CFA expressed the hope that the investigations being undertaken would determine responsibility for the action and lead to punishing those guilty.<sup>229</sup>

## Nicaragua

In a case relating to Hansae de Nicaragua S.A, an EPZ enterprise in Nicaragua,<sup>230</sup> the complainant alleged that shortly after the establishment of a new trade union in the enterprise, two trade unionists complained of death threats issued to them by persons linked to the enterprise administration who attempted to make them leave the union. The Government indicated that the trade unionists had filed a complaint in this regard with the national police. It also furnished a mediation agreement between the two trade unionists and the two persons accused of issuing the threats wherein the accused persons had agreed that they would not cause any problems in the future for the two trade unionists thereby bringing the case to a close.

The CFA condemned the death threats against the trade unionists and requested the Government to take the necessary measures to institute an independent investigation in this regard and if the allegations were found to be true, to punish the guilty parties and immediately provide adequate protection to the trade unionists in question. It also requested the Government to ensure that all workplaces, especially EPZs remain free from violent activities against trade unionists.<sup>231</sup>

### 3.6. Collective bargaining

In most EPZ operating countries, the right of workers to collectively bargain with the employer to negotiate their terms and conditions of employment is recognized. However, in countries where the right of EPZ workers to organize themselves is not recognized under the law, their right to collectively bargain with the employer is likewise not recognized. For instance, in Pakistan, the right of EPZ workers to collectively bargain with the employer is not recognized under the law. The CEACR has emphasized that the denial to EPZ workers of this right is not compatible with the requirements of Convention No. 98.

Even in countries where this right is recognized in principle under the law, the right could be restricted when the legal requirements relating to the recognition of a union as a bargaining agent are unreasonably high. For instance, in the Dominican Republic, in order to be recognized as a bargaining agent, a trade union must represent the absolute majority of the concerned workers. The supervisory bodies have emphasized that such a requirement is excessively high and could constitute an obstacle to collective bargaining.

<sup>228</sup> CFA, 302nd Report, Case No. 1826 (Philippines), para. 411.

<sup>229</sup> *supra* n. 228, para. 413.

<sup>230</sup> Case No. 2275.

<sup>231</sup> CFA, 333rd Report, Case No. 2275 (Nicaragua), para. 802.

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Apart from this, collective bargaining rights are also restricted when the law places restrictions on the matters that may be the subject of collective bargaining. For instance, in Malaysia, section 15 of the Industrial Relations Act restricts the right of EPZ workers in industries categorized as “pioneer industries” to negotiate for terms of employment more favourable than certain specified terms. The supervisory bodies have pointed out that such restrictions on the right are contrary to the principles of free and voluntary collective bargaining.

Even when the law as such does not place any limitations on the right, EPZ workers may effectively be deprived of this right when EPZ employers refuse to negotiate with representative organizations of workers or do not negotiate in good faith with them. In such cases, the CFA has called upon the Government to take measures to ensure that the representative union is allowed to take part in negotiations with the company and that parties negotiate in good faith for the development of harmonious industrial relations

The supervisory bodies have also stressed the need for measures to be taken by the State in accordance with Article 4 of Convention No. 98 to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations with a view to the regulation of the terms and conditions of employment by means of collective agreements.

### **3.6.1. Recognition of the bargaining agent**

#### **Dominican Republic**

Noting on the basis of information provided by the Government that in the EPZs in the country, there are only agreements negotiated on an ad hoc basis or agreements negotiated directly between workers and employers, the CEACR in 1991 requested the Government to provide information on the measures contemplated to give effect to the requirement of Article 4 of Convention No. 98.<sup>232</sup>

The Government indicated that no collective agreements had been entered into between employers and workers in EPZs. This was because as per the Labour Code, trade unions were authorized to negotiate collective agreements only when their membership included an absolute majority of the workers in the enterprise or the workers employed in the branch in question. Recalling that if under a system of nominating an exclusive bargaining agent, there is no union covering more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members, the CEACR considered the requirement under the Labour Code as being too high and liable to render collective bargaining difficult for trade unions both at the level of the enterprise and the branch of activity. It therefore requested the Government in consultation with the social partners to take steps to amend the law so that organizations of employers and workers are not impeded in their exercise of collective bargaining.<sup>233</sup>

The Government thereafter indicated that it has asked employers’ and workers’ organizations for their opinions on the subject and that in the meantime, the tripartite committee for harmonization of labour relations in the zones obtained signatures on eight labour agreements between enterprises and unions in the zones.<sup>234</sup> It subsequently

<sup>232</sup> CEACR, 1991, 61st Session, Convention No. 98, direct request, Dominican Republic.

<sup>233</sup> CEACR, 1994, 64th Session, Convention No. 98, observation, Dominican Republic.

<sup>234</sup> See CEACR, 1996, 67th Session, Convention No. 98, observation, Dominican Republic.

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indicated that the matter would be looked into by the Advisory Labour Council.<sup>235</sup> In the circumstances, the CEACR emphasized that the requirement of an absolute majority of the workers employed in an enterprise or in a branch of activity, to be able to bargain collectively, is excessive and could constitute an obstacle to collective bargaining and its promotion in any general and that in any event, minority trade unions should be able to negotiate on behalf of their own members. It therefore expressed the hope that in the near future, the Government would take the necessary measures to make the necessary amendments to the Labour Code.<sup>236</sup>

The Government subsequently indicated to the CEACR that it intends to deal with the matter in the Consultative Committee on Labour and hopes to have the support of the social partners for amending the relevant provisions of the Labour Code. The CEACR once again expressed the hope that the necessary amendments would be made in the near future.<sup>237</sup>

## Philippines

In the Danao city case referred to earlier,<sup>238</sup> the complainant had also alleged that soon after a union was formed in Cebu Mitsumi and a petition to hold a certification election was submitted by the union, the management and the city government officials embarked on an campaign of anti-union acts against the members and officials of the union and the certification election was not held. The Government indicated that the Department of Labor and Employment had made efforts to conduct the elections on several occasions but it had not been possible as the company had filed a motion to postpone the election which was denied by the Med-Arbitrer but was allowed on appeal to the Office of the Secretary of Labor and Employment.

The CFA recalled that it was not necessarily incompatible with Convention No. 98 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This was the case however, only if the following safeguards are provided: (a) the certification is to be made by an independent body; (b) the representative organizations are to be chosen by a majority vote of the employees in the unit concerned;(c) the right of an organization which fails to have a sufficiently large number of votes to ask for a new election after a stipulated period; and (d) the right of an organization other than the certified organization to demand a new election after a fixed period, often 12 months has elapsed since the previous election. It considered that the decision to postpone the certification election should not have been made by the Office of the Secretary of Labor and Employment which does not in its view constitute an independent body in the sense mentioned above. Noting that the election was not held for more than two years after a petition in this regard was signed by almost all the rank and file workers of the company, the CFA urged the Government to take appropriate steps immediately to ensure that a certification election is conducted in the company in the very near future.<sup>239</sup>

<sup>235</sup> See CEACR, 2001, 72nd Session, Convention No. 98, observation, Dominican Republic and CEACR, 2003, 74th Session, Convention No. 98, observation, Dominican Republic.

<sup>236</sup> CEACR, 2003, 74th Session, Convention No. 98, observation, Dominican Republic.

<sup>237</sup> CEACR, 2005, 76th Session, Convention No. 98, observation, Dominican Republic.

<sup>238</sup> Case No. 1826.

<sup>239</sup> CFA, 302nd Report, Case No. 1826 (Philippines), paras 407–408.



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Subsequently, noting the delays in holding a fair and impartial certification election, the CFA urged the Government to consider examining the legal framework for certification elections with a view to modifications that will allow for a fair and speedy certification process and provide adequate protection against acts of interference by employers in such matters.<sup>240</sup> The CFA had also requested the Government on various occasions, most recently in its 332nd report to ensure that the certification election takes place with all assurances of impartiality and non-interference.<sup>241</sup>

## Sri Lanka

The complaint to the CFA concerning the BOI guidelines and manual that has referred to earlier also brought up the issue of the representativity requirement under the guidelines for collective bargaining purposes. Referring to clause 10 of the guidelines as per which either a union or a council representing 40 per cent of the workforce could represent the workers in collective bargaining, the complainant alleged that the guidelines put unions and the councils in a position where they must compete for bargaining rights. As a result, a union representing 39 per cent of the workforce would lose the right to bargain collectively to an employees' council representing 40 per cent of the workers. Bargaining rights would only be granted to a union if both the union and the employees' council were to represent 40 per cent of the workforce. Drawing attention to provisions of Convention Nos. 135 and 154<sup>242</sup> according to which, when there exist in the workplace both trade union representatives and elected representatives, appropriate measures must be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned, the complainant alleged that these safeguards did not exist under the guidelines. The complainant contended that the provisions of the guidelines relating to collective bargaining rights were contrary to the principles of freedom of association and that by allowing such guidelines to exist, the Government was failing in its duty to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations.

In response to these allegations, the Government stated that employees' councils consisted of elected representatives within the meaning of Convention No. 135. The recognition of the right of non-unionized workers to bargain collectively and to enter into collective agreements is in accordance with the provisions of the Industrial Disputes Act which in turn is in conformity with Convention No. 154. The Industrial Disputes Act requires 40 per cent representativity for trade unions to bargain collectively. The BOI Manual makes the requirement of 40 per cent representativity applicable to both trade unions and employees' councils. Both Convention No. 154 and the Industrial Disputes Act enable a trade union and non-unionized workers in a workplace to bargain collectively and compete with each other. The BOI Manual favours trade unions over employees' councils by recognizing the right of representative trade unions to bargain collectively and denying such right to employees' councils where both are representative. There is therefore no breach of freedom of association principles involved in requiring 40 per cent representativity for collective bargaining purposes for both trade unions and non-unionized workers. The existence of employees' councils does not in any way hinder or undermine the role of unions in collective bargaining. The councils only provide an alternative forum

<sup>240</sup> CFA, 325th Report, Case No. 1826 (Philippines), para. 80.

<sup>241</sup> CFA, 332nd Report, Case No. 1826 (Philippines), para. 130.

<sup>242</sup> Workers' Representatives Convention, 1971 (No. 135) and Collective Bargaining Convention, 1981 (No. 154).

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to workers, in the absence of a representative trade union, for purposes of improving their terms and conditions of employment.

Noting that as per the provisions of the Industrial Disputes Act as well as the BOI guidelines, both unions and employees' councils are entitled to bargaining rights and recalling that as per the provisions of Conventions Nos. 135 and 154, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned, the CFA considered that there is no breach of principles concerning collective bargaining in enabling both trade unions and elected representatives to engage in collective bargaining as long as adequate safeguards are in place so that the existence of elected representatives is not used to undermine the position of trade unions.<sup>243</sup> It however considered the 40 per cent rule to be too restrictive and requested the Government to amend this requirement taking into consideration the views of the parties.<sup>244</sup>

The Government thereafter indicated that the matter had been referred to a tripartite committee, the Committee on Labour Reforms appointed by the National Labour Advisory Council (NLAC) and that all the members of the Committee except one trade union member were not in favour of reducing the threshold of 40 per cent. The issue would however be presented to the NLAC for its deliberations and final decision which would be communicated to the CFA.<sup>245</sup>

### **3.6.2. Restrictions on the scope of collective bargaining**

#### Malaysia

In Malaysia, certain EPZ industries are included in the category of "pioneer industries". As per section 15 of the Industrial Relations Act, workers in pioneer industries may not bargain for terms of employment more favourable than the terms specified in Part XII of the Employment Ordinance, 1955.

The Government of Malaysia explained that the granting of pioneer status to certain industries was part of its strategy to promote investment, stimulate industrial growth and generate greater employment opportunities. Furthermore, section 15 does not limit negotiations on monetary terms i.e. on wages and allowances but only on the hours of work, holidays, annual leave and sick leave for a period of five years. It also pointed out that there is no complete ban even in respect of these issues as the parties can negotiate more favourable terms and seek the approval of the Minister for the agreement and that the Minister has never rejected any such request.

While noting the explanation of the Government, the CEACR pointed out that the provision is contrary to the principles set forth in Article 4 of Convention No. 98 which aims at voluntary collective bargaining free of the obligation of submitted concluded

<sup>243</sup> CFA, 332nd Report, Case No. 2255 (Sri Lanka), paras 943–944.

<sup>244</sup> CFA, 332nd Report, Case No. 2255 (Sri Lanka), para. 945.

<sup>245</sup> CFA, 340th Report, Case No. 2255 (Sri Lanka), paras 207–208.

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agreements to administrative authorities for approval. It therefore called upon the Government to amend the provision's limitation on collective bargaining.<sup>246</sup>

Thereafter, since 1994, the Government of Malaysia has indicated that the provision is in the process of being repealed. Noting the delay in repealing the provision, the CEACR has urged the Government that section 15 of the Industrial Relations Act be repealed in the near future.<sup>247</sup>

## Sri Lanka

In Case No. 2255 relating to Sri Lanka that has been referred to earlier, drawing attention to section 13 of the BOI Guidelines that imposed an obligation on the councils to refrain from doing anything that might impair the efficiency and productivity of the enterprise, the complainant alleged that the provision obstructs the development of a genuine negotiations framework in free trade zone enterprises.

In this regard, the CFA recalled that if in the context of a stabilization policy, a Government may consider for compelling reasons that wage rates cannot be fixed freely by collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and it should be accompanied by adequate safeguards to protect workers' living standards. The CFA observed that it may be appropriate during voluntary negotiations for the parties to take into account productivity criteria among other elements but a prohibition of any action that might affect productivity in the future is contrary to the principles of free and voluntary collective bargaining. It therefore requested the Government to take all necessary measures to amend section 13 of the BOI Guidelines so as to ensure that the right of employees' councils to engage in collective bargaining is not subject to a prohibition of any action that might affect productivity.<sup>248</sup>

The Government thereafter indicated that in accordance with the CFA's recommendations, section 13(ii) was amended by providing that the employer and the council shall work together to improve the efficiency and productivity of the enterprise and the well-being of the employees.<sup>249</sup>

### **3.6.3. Refusal to negotiate**

## India

In the case relating to the Worldwide Diamonds Manufacturers Limited in the VEPZ, referred to earlier,<sup>250</sup> the complainant had also alleged that the management of the company had refused to negotiate with the union of the workers of the company. According to the complainant, a strike organized by the union had ended on an assurance from the Minister for Heavy Industries, the District Collector and the Commissioner of Police that they would ensure respect for workers' rights, including the right to collective

<sup>246</sup> CEACR, 1992, 62nd Session, Convention No. 98, observation, Malaysia.

<sup>247</sup> CEACR, 2004, 75th Session, Convention No. 98, observation, Malaysia

<sup>248</sup> CFA, 332nd Report, Case No. 2255 (Sri Lanka), paras 949–950.

<sup>249</sup> CFA, 333rd Report, Case No. 2255 (Sri Lanka), paras 127–128.

<sup>250</sup> Case No. 2228.

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bargaining. However, the management had since refused to talk to the union. In reply, the Government generally stated that workers in EPZs have the right to join trade unions and bargain collectively but did not specifically respond to the allegations of the complainant.

Recalling that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, the CFA called upon the Government to take all necessary measures, as soon as possible, with a view to encouraging a settlement of the dispute between the parties through collective bargaining and to keep it informed in this respect.<sup>251</sup>

The Government subsequently furnished a report of the Deputy Commissioner of Labour which indicated that, according to the management, there was no specific registered union in their company and the existing union was a general union for the entire zone. The report also indicated that there had been no bilateral negotiations. In the circumstances, the CFA requested the Government to take steps to ensure that the union, if it is a representative union, is allowed to take part in negotiations with the company.<sup>252</sup> The Government thereafter indicated that the management of the company had been instructed to allow the complainant union to participate in the negotiation process and that a meeting leading to resolving the disputes and lifting the lock-out had been held. In view of the contradictory information received from the complainant, the CFA requested the Government to provide the minutes of the meeting.<sup>253</sup>

## Nicaragua

Yet another aspect of the complaint in respect of the Roo Sing Garment Co., referred to earlier,<sup>254</sup> relates to allegations of the management's refusal to negotiate with the concerned unions. According to the complainant, in the course of negotiations relating to a list of demands between two unions in the company and the management before the labour authorities, the company requested suspension of the negotiations because the leadership of one of the unions had been contested. In the meantime, the other negotiating union restructured its executive board and made a request to the concerned authorities for certification of the restructured board. The Trade Unions' Directorate however issued a resolution in which it decided not to accept the union's request. The management then again requested suspension of the negotiations. At that time, about 60 per cent of the clauses had been negotiated. Pursuant to the management's request, the Directorate for Collective Bargaining and Individual Conciliation, issued an order directing the proceedings to be archived. These facts were confirmed by the Government's observations in reply. The Government also stated that the Directorate was later informed of the conclusion of a collective agreement between the company and another union with the request that it be registered. The agreement covered all the company's workers, irrespective of the trade union to which they belonged.

The CFA noted from the documentation attached to the complaint that, after the rejection of the request for the certification of the restructured board, the union held a

<sup>251</sup> CFA, 331st Report, Case No. 2228 (India), para. 469.

<sup>252</sup> CFA, 335th Report, Case No. 2228 (India), para. 905.

<sup>253</sup> CFA, 338th Report, Case No. 2228 (India), paras 192 and 198.

<sup>254</sup> Case No. 2274.

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further extraordinary general meeting to change its executive board and sent the decision to obtain the relevant certification. Despite this, and the fact that the restructured board was the one whose validity was not disputed, the administrative authorities had ordered the collective bargaining proceedings to be archived. In the circumstances, recalling the importance of the obligation to encourage and promote collective bargaining as provided in Article 4 of Convention No. 98, and the obligation to negotiate in good faith for the development of harmonious industrial relations, the CFA requested the Government to adopt the necessary measures to ensure observance of this principle in the future.<sup>255</sup>

In two related cases referred to earlier concerning Chentex Garments S.A in the Les Mercedes Export Processing Zones Corporation,<sup>256</sup> the complainants had alleged that the management of the company had concluded a collective agreement with the two unions in the company under which the company was committed to review wages and other issues within a period of less than one year. The company subsequently, however, refused to enter into talks with one of the unions. The union had presented a list of demands to the Ministry of Labour which forwarded it to the company and called the parties for talks on a number of occasions. The management, however, did not attend the talks. In the meantime, it allegedly signed an agreement with the other union under which it agreed to review the wages of all workers. The Conciliation Department in the Ministry of Labour rejected an application from the union to declare the company in default. The Government did not make any observations in respect of these allegations.

In the circumstances, the CFA emphasized the importance of the principle that both employers and trade unions bargain in good faith and make every effort to reach an agreement and reminded the Government of its obligation to take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of the terms and conditions of employment by means of collective agreements.<sup>257</sup>

#### **3.6.4. Promotion of collective bargaining in EPZs**

Taking note of information indicating the low incidence of collective agreements in EPZs in Guatemala, Indonesia, Mauritius, Nicaragua and Sri Lanka, the CEACR had asked the Governments of these countries to take measures to promote collective bargaining in EPZs, in accordance with Article 4 of the Convention,<sup>258</sup> and to provide information on the number of collective agreements in force in the country's EPZs<sup>259</sup> with an indication of the percentage of workers covered.<sup>260</sup>

<sup>255</sup> CFA, 335th Report, Case No. 2274 (Nicaragua), paras 1120 and 1121.

<sup>256</sup> Cases Nos. 2092 and 2101.

<sup>257</sup> CFA, 324th Report, Cases Nos. 2092 and 2101 (Nicaragua), para. 732.

<sup>258</sup> CEACR, 2002, 73rd Session, Convention No. 98, observation, Mauritius; CEACR, 2004, 75th Session, Convention No. 98, observation, Nicaragua.

<sup>259</sup> CEACR, 2002, 73rd Session, Convention No. 98, observation, Guatemala; CEACR, 2003, 74th Session, Convention No. 98, observation, Guatemala; CEACR, 1998, 69th Session, Convention No. 98, observation, Sri Lanka.

<sup>260</sup> CEACR, 2003, 74th Session, Convention No. 98, observation, Indonesia; CEACR, 2004, 75th Session, Convention No. 98, observation, Indonesia.

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The Government of Mauritius has indicated that emphasis will be laid on collective bargaining at the enterprise level in the new legislation to replace the Industrial Relations Act and a draft bill in this regard would be presented to Parliament shortly. The CEACR has requested the Government to indicate the steps taken for the adoption and enactment of the bill, as well as particular measures taken to promote collective bargaining in EPZs.<sup>261</sup>

The Government of Sri Lanka indicated that, under the Future Directions Programme of the Ministry of Labour Relations and Employment, a Social Dialogue and Collective Bargaining Unit had been set up in order to promote and facilitate an environment conducive to collective bargaining, especially at the enterprise level, and that the unit would be responsible for creating appropriate national conditions to encourage and promote voluntary negotiations.<sup>262</sup> Apart from this, the Government indicated to the CFA that measures have been initiated to promote collective bargaining in the country's free trade zones through the mediation officers of the Department of Labour assigned to the free trade zones and the Assistant Commissioner of Labour in charge of the zonal areas, and that further intensive measures will be taken by the Department of Labour after providing suitable training to the officers who are identified for the purpose.<sup>263</sup> The Government further indicated that, in 2004, four collective agreements were concluded in the free trade zones and two memoranda of settlement signed and, in 2005, two agreements had been signed while six were being negotiated.<sup>264</sup>

<sup>261</sup> See CEACR, 2004, 75th Session, Convention No. 98, observation, Mauritius.

<sup>262</sup> See CEACR, 2004, 75th Session, Convention No. 98, observation, Sri Lanka.

<sup>263</sup> CFA, 336th Report, Case No. 2255 (Sri Lanka), para. 106.

<sup>264</sup> CFA, 340th Report, Case No. 2255 (Sri Lanka), para. 209.

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## 4. Conclusion

The discussion in the previous section of this paper indicates that several EPZ-operating countries have taken significant measures in pursuance of the recommendations of the supervisory bodies.

Namibia adopted the Export Processing Zones Amendment Act, 1996, providing for the application in EPZs of the Labour Act that recognizes the right of workers to form and join trade unions. The Dominican Republic adopted a new Labour Code in 1992, strengthening the protection of workers against acts of anti-union discrimination, thus paving the way for EPZ workers to effectively exercise their freedom of association. Turkey repealed the provision in Act No. 3218 of 1995, imposing compulsory arbitration in EPZs for a period of ten years for the settlement of collective labour disputes. Sri Lanka amended the BOI guidelines so as to ensure that employees' councils could function independently.

Several EPZ-operating countries have indicated that they are in the process of taking legislative measures to give effect to the recommendations of the supervisory bodies. Pakistan and Nigeria have indicated that they are in the process of taking legislative measures to grant the freedom of association to EPZ workers. Costa Rica has indicated that it is in the process of amending its Labour Code, so as to provide for a speedy investigation procedure into complaints of anti-union discrimination. Philippines has indicated that it is in the process of amending section 263(g) of its Labour Code, relating to the referral of disputes to compulsory arbitration. Malaysia has indicated that the legal provision imposing restrictions on the scope of collective bargaining in pioneer industries is in the process of being repealed. Mauritius has indicated that measures to strengthen collective bargaining processes at the enterprise level would be taken under the law that is proposed to replace the Industrial Relations Act.

In addition to measures under the law, significant measures have also been taken in practice to strengthen the freedom of association and collective bargaining rights of EPZ workers. The Dominican Republic has indicated that it has set up a specialized unit in the labour inspectorate to protect freedom of association in EPZ enterprises and that the General Directorate of Labour conducts training workshops to ensure respect for trade union rights in EPZs. Nicaragua has indicated that the Ministry of Labour maintains a labour inspectorate in one of its EPZs to ensure that workers in the EPZ are not subject to reprisals for carrying out legitimate trade union activities. Sri Lanka has indicated that a Social Dialogue and Collective Bargaining Unit has been set up in order to facilitate an environment conducive to collective bargaining and that measures have been initiated to promote collective bargaining in the country's free trade zones through the mediation officers of the Department of Labour assigned to the free trade zones and the Assistant Commissioner of Labour in charge of the zonal areas. Apart from this, the recommendations of the CFA have resulted in the reinstatement of dismissed trade union officials in some cases.

These facts indicate that the supervisory bodies play a very important role in ensuring compliance with freedom of association principles in EPZs, both under the law and in practice. These facts also indicate that, by and large, the recommendations of the supervisory bodies have been given effect to. At the same time, both the fact that, in some cases, concrete measures are yet to be taken in pursuance of the recommendations and the fact that considerable time had been taken in some cases to give effect to the recommendations, indicate the need for appropriate measures to be taken by the ILO to ensure better compliance with the recommendations of the supervisory bodies. More generally, the discussion in the previous section of the paper also indicates the need for

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appropriate measures to be taken by the ILO to ensure better compliance with international labour standards on freedom of association and collective bargaining in EPZs.

In this context, it would be relevant to refer to the conclusions of the Tripartite Meeting of EPZ-operating countries held in the International Labour Office at Geneva in 1998.<sup>265</sup> The conclusions of the meeting indicate that sound labour–management relations are essential to the success of EPZs and that free, strong and representative workers’ organizations have a major role to play in building workplace relations conducive to improvements in working conditions and increases in productivity and competitiveness. The conclusions also indicate that for EPZs to fully achieve their economic and social potential, governments should have a clear, comprehensive industrial and investment strategy consistent with the need to promote economic development and respect for employers’ and workers’ rights as defined in ILO standards. The conclusions point out that the practice of social dialogue and respect for national and international labour standards is a major factor in attracting investment that promotes long-term, high quality growth. Importantly, the conclusions point out that legal restrictions on trade union rights, the lack of enforcement of labour legislation, the absence of workers’ organization representation and of effective structures of labour management relations, undermine the ability of zones to upgrade skills, improve working conditions and productivity and thereby become dynamic and internationally competitive platforms.<sup>266</sup>

Among the strategies proposed in the conclusions of the meeting for achieving better compliance with national and international labour standards are information, education and awareness-raising programmes aimed at investors, managers of enterprises, workers, employers and organizations. The conclusions also recommend that governments promote tripartite consultations as a means of developing sound labour relations’ policies and practices in EPZs and further recommend the participation of representatives from employers’ and workers’ organizations on the boards of investment promotion and zone management bodies. In addition, the conclusions point to the need for strengthening labour inspectorates.<sup>267</sup>

In accordance with these conclusions, it would be necessary for the ILO to increase its efforts in respect of creating awareness among EPZ workers, employers and zone management bodies of the international labour standards on freedom of association and collective bargaining, the ILO supervisory mechanisms and the relevant principles and recommendations of the ILO supervisory bodies. In addition, the ILO needs to create greater awareness among governments, zone management bodies and employers of studies which indicate that granting freedom of association and collective bargaining rights to EPZ

<sup>265</sup> The ILO had from 28 September to 10 October 1988 organized a Tripartite Meeting of EPZ-operating countries at Geneva with the following agenda: (a) evaluation of the performance of EPZs from a social, labour and economic perspective; (b) identification of priorities for improving social and labour relations in EPZs; and (c) guidelines for improved social and labour relations in EPZs (see [http://www.ilo.org/public/english/dialogue/govlab/legrel/tc/epz/report/epzreport\\_wr1/intro.htm](http://www.ilo.org/public/english/dialogue/govlab/legrel/tc/epz/report/epzreport_wr1/intro.htm)). Delegations representing workers, employers and governments of ten countries participated in the meeting.

<sup>266</sup> Conclusions: Priorities and guidelines for improving social and labour conditions in EPZs, paras 4–6 and 10: [http://www.ilo.org/public/english/dialogue/govlab/legrel/tc/epz/reports/10213-01/2\\_1.htm](http://www.ilo.org/public/english/dialogue/govlab/legrel/tc/epz/reports/10213-01/2_1.htm).

<sup>267</sup> Conclusions, *supra* n. 266, paras 13–15.



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workers would enhance, and not undermine, trade competitiveness<sup>268</sup> and the conclusions of the tripartite meeting of EPZ-operating countries mentioned above, which again indicate that respect for trade union rights enhances the ability of zones to become dynamic and internationally competitive platforms. It also needs to create greater awareness of achievements, success stories and good practices in the field.<sup>269</sup>

In order to ensure that labour relations' policies and the laws applicable to EPZs respect the trade union rights of EPZ workers, it would be necessary to encourage governments to promote tripartite consultations in the development of such laws and policies. Encouraging governments to provide for workers' participation in boards of investment promotion and zone management bodies would ensure that these rights are also respected in practice.

Considering the importance of effective enforcement measures in EPZs to check acts of anti-union discrimination, it would be necessary for the ILO to place a greater thrust on its efforts aimed at encouraging governments to strengthen their labour inspectorates. In addition, to strengthen union rights and afford effective protection against acts of anti-union discrimination, it would be necessary to encourage governments to take the necessary measures to ensure that workers engaged for jobs of a regular nature in EPZ enterprises have security of employment.

In accordance with the aforesaid conclusions,<sup>270</sup> it would also be necessary to ensure that structures and procedures of collective bargaining are developed in all EPZ-operating countries.

Apart from these measures, it would also be necessary for the ILO to encourage the governments of EPZ-operating countries that have not ratified either or both Conventions Nos. 87 and 98 to do so at the earliest, in order to ensure that they are subject to the regular supervisory mechanisms of the ILO.

Considering the magnitude of employment in EPZs and the importance of protecting the freedom of association and collective bargaining rights of EPZ workers, it would be necessary for the ILO to accord high priority to all these measures.

<sup>268</sup> For example, David Kucera and Ritash Sarna: *How do trade union rights affect trade competitiveness?*, Working Paper No. 39, Policy Integration Department, Statistical Development and Analysis Group, ILO, Geneva, Mar. 2004.

<sup>269</sup> Report of the Director-General, Organizing for Social Justice, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 92nd Session, 2004, Report I(B), ILO, Geneva, p. 113.

<sup>270</sup> Conclusions, supra n. 266, para. 18.

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## Appendix

Country-wise details of the main EPZ-related issues that are under consideration by the supervisory bodies.

*Bangladesh.* The provisions of the EPZ Workers' Associations and Industrial Relations Act, 2004, that are in violation of Convention No. 87.

*Costa Rica.* Amendment of the Labour Code, so as to provide for a speedy investigation procedure into complaints of anti-union discrimination.

*Dominican Republic.* Amendment of the Labour Code, so as to ensure that its provisions regarding the recognition of the bargaining agent do not impede collective bargaining in EPZs.

*Guatemala.* The need for measures to be taken in accordance with Article 4 of Convention No. 98, to promote collective bargaining in EPZs.

*India.* The need for appropriate grievance redressal mechanisms for EPZ workers who complain of acts of anti-union discrimination: (i) measures to be taken to ensure that the roles of the Grievance Redressal Officer of the VEPZ and the Deputy Development Commissioner of the zone, are performed by different persons; (ii) amendment of the Industrial Disputes Act, 1947, so as to ensure that suspended workers, as well as trade unions, can approach the courts directly without the need for any reference from the Government.

*Indonesia.* The need for measures to be taken in accordance with Article 4 of Convention No. 98, to promote collective bargaining in EPZs.

*Malaysia.* Repeal of section 15 of the Industrial Relations Act that restricts the scope of collective bargaining in pioneer industries.

*Mauritius.* The need to promote collective bargaining in EPZs and legislative measures to strengthen collective bargaining processes at the enterprise level.

*Nicaragua.* (i) The need for measures to encourage negotiation of collective agreements in EPZs; and (ii) the dissolution of trade unions at the request of the employer.

*Nigeria.* Legislative guarantees for the exercise of freedom of association in EPZs and reasonable access for representatives of workers' organizations to the zones.

*Pakistan.* Denial of freedom of association and collective bargaining rights to workers in EPZs.

*Philippines.* Amendment of section 263(g) of the Labour Code that provides for the referral of labour disputes to compulsory arbitration.

*Sri Lanka.* Amendment of the provision of the BOI guidelines requiring 40 per cent representativity for recognition for collective bargaining purposes; access for trade union representatives to the zones for the purpose of apprising the workers of the potential advantages of unionization.

*Togo.* Procedure under section 5 of Act No. 89-14 for workers' organizations to obtain legal capacity.