



Annual Survey 2009

of violations of trade union rights in the Commonwealth Countries and Zimbabwe



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

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

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

For further information on ILO International Labour Standards and ratification of the ILO Conventions, please consult ILOLEX: <http://www.ilo.org/ilolex/english/iloquery.htm>

Introduction

This report sets out a record of violations of human rights around the Commonwealth, compared with the commitments given under the core conventions of the International Labour Organisation. Not every Commonwealth country is covered, but thirty-four are listed, along with Zimbabwe. The breaches relate either to conventions not ratified or, more commonly, ratified conventions that are not being implemented properly.

ILO conventions

34 of the 52 Commonwealth countries have ratified all 8 conventions, but there are a total of 55 ratifications needed for a 100% record.

- 2 countries have ratified none
- 2 countries have ratified one
- 1 country has ratified four
- 3 countries have ratified five
- 2 countries have ratified six
- 8 countries have ratified 7 ILO core conventions

There is a detailed table of ratifications at the end of the document, covering all Commonwealth countries plus Zimbabwe.

Commonwealth Trade Union Group

The Commonwealth Trade Union Group (CTUG) represents over 30 million workers in 51 of the 52 Commonwealth countries. The CTUG has submitted a memorandum to the Commonwealth calling for urgent steps to improve the human and trade union rights record of the Commonwealth – and in particular, the memorandum says:

Human rights are under severe attack in an unacceptably large number of Commonwealth countries. The CHOGM must decide upon effective measures to promote reform and change in Commonwealth member countries that violate human rights and undermine democracy. The CTUG will itself publish a biennial report on violations of trade union rights in the Commonwealth, ahead of each CHOGM.

Serious tensions, growing militancy and threats of war and terrorism are a commonplace on too many Commonwealth borders. The Commonwealth must take a much stronger stance, a more effective role in building and achieving peace between Commonwealth members.

Among the most essential human rights are the rights of workers. All members of the ILO should have ratified the eight fundamental Conventions of the ILO, yet such is far from the case in a range of Commonwealth countries. **The CTUG calls on Heads of Government to establish a target for all Commonwealth governments to ratify all eight core labour standards by 2015, to undertake biennial reviews of progress towards that objective and to publish the results of their reviews.**

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Australia

Population: 21,300,000 / **Capital:** Canberra

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 182

The newly-elected Labor Government amended the Workplace Relations Act 1996 in early 2008 so as to ban the making of new Australian Workplace Agreements, a type of individual statutory contract. Most of the former Government's workplace laws remained in effect in 2008, however. In November, the Australian Government introduced the Fair Work Bill into Parliament. This Bill represents a substantial rewrite of the industrial relations laws and provides stronger rights for workers to be represented by their union and to bargain collectively. There has been no significant progress made in respect to the punitive laws applying to the building and construction industry.

Trade union rights in law

Freedom of Association: Australia's principal federal industrial relations law – the Workplace Relations Act 1996 (the WRA) - establishes freedom of association for workers, including those in the public sector, and the right to bargain collectively, but increasing restrictions have been imposed on those rights. Australian law does not comply with internationally recognised standards in respect of freedom of association and the right to bargain collectively.

The WRA:

- Places union and non-union agreements on the same footing;
- Prohibits industrial action in support of multi-employer agreements;
- Does not require employers to negotiate with unions even when their employees are union members and wish to be represented in bargaining by their union;
- Restricts industrial action, including provision for court orders and financial penalties in cases such as where the action could damage the Australian economy or involved sympathy or protest action.

Collective bargaining: The WRA restricts the ability to bargain at a multi-employer or industry level. Pre-authorisation and subsequent approval is required from the Workplace Authority after private deliberations. Industrial action in support of multi-employer agreements is unlawful. There is also a prohibition on "pattern bargaining", that is, the pursuit of common claims against a number of employers although there is preparedness by the union to negotiate each agreement separately. The ban on pattern bargaining applies even to subsidiaries of the same parent company.

Individual agreements: Prior to March 2008, the law promoted individual statutory agreements (Australian Workplace Agreements or AWAs) over collective agreements. AWAs totally undermined the integrity of the collective bargaining process as they could be offered to employees as a condition of employment or when a collective agreement was in place.

The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 amended the WRA so as to prevent the making of new AWAs. However, it allows for the creation of new Individual Transitional Employment Agreements (ITEAs) to be available for limited use during the transitional period until 31 December 2009. It also put in place a new no-disadvantage test for future workplace agreements to provide better protection for employees.

Employer greenfields agreements (EGA): The Workplace Relations Amendment Act 2005 (or "Work Choices Act") introduced a new type of agreement which allows an employer to unilaterally set the terms of

an agreement covering the first 12 months of operation of a new project or undertaking, which can include an extension of an existing business, or in some circumstances, when a business is sold.

Restrictions on bargaining subject matter: The WRA identifies a number of matters which are prohibited from being the subject of bargaining, to the extent that financial penalties apply to individuals or organisations which seek to include these matters in their agreements. "Prohibited content" includes: leave to attend trade union meetings or training; right of entry for union officials; general representative rights for unions; restrictions on contractors; encouragement of trade union membership; remedies for unfair dismissal; restrictions on AWAs.

The right to strike: The law imposes significant restrictions on the right to strike:

- Lawful action cannot be taken in support of common claims or of "prohibited content";
- The Australian Industrial Relations Commission's discretion to make orders stopping industrial action has been changed, so that such orders are close to mandatory; for example, in cases of sympathy action or where the action could damage the Australian economy or an important part of it;
- Third parties have been given an expanded right to seek orders against workers taking industrial action;
- All industrial action must be authorised through a cumbersome and legalistic secret ballots procedure;
- Employers may apply for a cooling off period to stop industrial action;
- Penalties for taking unlawful industrial action have been sharply increased.

Restricting union access to workplaces: Australian law severely curtails the right of union representatives to visit workplaces, thereby restricting their ability to ensure that workplaces are safe, to advise employees of their rights and to recruit members. The WRA includes a rigid set of requirements for unions seeking to enter workplaces.

Unfair dismissal: Employees of employers with fewer than 100 employees do not have unfair dismissal protection, meaning that around two thirds of private sector workers have no right to challenge an unfair dismissal. Even in workplaces with 101 or more employees, a dismissal which is even partly for 'operational reasons' cannot be challenged for unfairness.

Building industry Act restricts union rights: The Building and Construction Industry Improvement Act 2005 imposes severe limitations on the right to strike, imposing a blanket prohibition on unprotected action (i.e. strike action not specifically protected by the WR Act) and introduces the notion of "unlawful industrial action", accompanied by severe penalties and sanctions (of up to A\$110,000 for bodies corporate and A\$22,000 for individuals). The Act also interferes in collective bargaining through a list of provisions that render project agreements (i.e. those negotiated at a multi-employer level) unenforceable, and by restricting the issues that can be the subject of collective bargaining. Furthermore, the Act gives considerable powers to the Australian Building and Construction Commission (ABCC) to investigate compliance with the law, including the power to enter premises and confiscate documents. There are insufficient safeguards against interference in trade union activities. The ILO's Committee of Experts on the Application of Conventions and Recommendations has requested that the Australian Government amend the Act.

The Australian Government has indicated that the ABCC will remain in place until January 2010, after which time it will be rolled into the new industrial relations umpire, Fair Work Australia.

Fair Work Bill 2008: In November 2008, the Australian Government introduced the Fair Work Bill into Parliament. This Bill is intended to deliver on the Rudd Government's pre-election commitment to abolish Australia's unfair workplace laws. The Bill provides a new industrial relations system for Australia. The Bill recognises the right of workers to be represented by their union and to bargain collectively, imposes good faith bargaining obligations on employers, and restores unfair dismissal rights for most Australian workers.

The Fair Work Bill does not seek to amend or repeal the special laws that apply to the building and construction industry.

Trade union rights in practice and violations in 2008

Australian unions continued their campaign to ensure that the new Government delivers on its promises to abolish Australia's unfair workplace laws and the ABCC, and to implement laws that recognise and protect the rights of workers and trade unions.

Workers on individual contracts worse off: Workers who were moved by employers onto individual contracts continue to lose out. Many employers used AWAs to remove entitlements without adequate compensation and the median pay of non-managerial employees on AWAs is less than for those on collective agreements. AWAs have impacted particularly harshly on women and those in casual or part time employment.

Employers sought to take advantage of the transitional arrangements to impose AWA-like conditions on their workforce for years to come. Under the current law, employees on AWAs or ITEAs are not eligible to vote on collective agreements in their workplace. This is despite the fact that these employees will move onto these agreements when their individual statutory arrangements expire.

At their iron ore operation in West Australia, BHP used this loophole to push through a non-union collective agreement which it concedes is "identical to existing AWAs." This agreement was voted on by 46 new employees with no consultation with the rest of the workforce. The agreement will run for 5 years and will potentially apply to the remaining 12,000 employees when their AWAs expire. In June 2008, Austral Shipping held a ballot of employees for a proposed non-union collective agreement. The agreement was drafted by the company and circulated on a "take it or leave it" basis. Only those employees whose AWAs had expired were eligible to vote and this represented a small percentage (an estimated 20%) of the workforce. Existing employees who were still subject to AWAs were not entitled to vote, even though many of them could find themselves subject to the agreement in the future.

Freedom of association in construction industry restricted: The ABCC continues its campaign against workers and unions in the construction industry. The ABCC has the power to fine workers for taking action to defend their wages and conditions and to gaol workers who take part in union meetings and refuse to cooperate with secret government interrogations. More than 100 construction workers have been interrogated by the ABCC. In 2008, Noel Washington, a Victorian branch senior vice president of the Construction, Forestry, Mining and Energy Union (CFMEU), was threatened with six months gaol for refusing to attend an ABCC examination. The charges against Mr Washington were dropped just six days before he was scheduled to appear before the Federal Court.

Employers refuse to negotiate with unions: Some employers refused to bargain with unions, even where a majority of workers have expressed a preference for a union collective agreement. Train drivers employed by Pilbara Iron Company, a rail services subsidiary of mining giant Rio Tinto, wanted the CFMEU to negotiate a new enterprise agreement following the expiry of their AWAs but the company has refused to negotiate with the union. For months, employees at Maxitrans Australia in Ballarat sought to be represented by the Australian Manufacturing Workers Union in negotiations with the company. The union had been issued with certification as a bargaining agent on behalf of its members, but the company has still refused to negotiate. Instead, Maxitrans put a non-negotiated deal on the table which sought to strip away many employment conditions.

Australia's largest telecommunications provider Telstra continued to ignore the wishes of its employees by refusing to negotiate with unions concerning a new enterprise agreement. Instead, it insisted on offering very small groups of its workers non-union agreements designed to undermine wages and conditions and deny workers their right to representation.

Bahamas

Population: 320,000 / **Capital:** Nassau

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Although the law recognises freedom of association, trade union rights, especially the right to strike, remain limited. There were massive layoffs in the hotel sector including eight trade union executive members.

Trade union rights in law

Freedom of Association: Private sector and most public sector workers may form or join unions. Members of the prison service, the police, the armed forces and the fire brigade are not covered by the Labour Relations Act and therefore do not have the right to organise. The Registrar has discretionary powers to reject a union's request for registration, which the ILO considers equivalent to prior authorisation and therefore against the principles of freedom of association. The ILO has furthermore asked the government to remove the stipulation that the Registrar or designated officer must supervise the secret ballot to elect or remove trade union officers or amend a union constitution.

Right to collective bargaining - recognised in law: To be recognised as a bargaining agent, a union must represent 50% plus one of employees. If an employer fails to reach agreement with a union after 12 months, the employer can apply to have the union's recognition revoked.

Right to strike – strong limitations: The Industrial Relations Act requires a simple majority of a union's membership to vote in favour of a strike motion. The Ministry of Labour must approve a strike ballot, which in the case of the public sector is contrary to the principles of freedom of association, given the government's role as employer. Furthermore, section 75 of the Act restricts the objective of a strike and appears to prohibit protest and sympathy strikes. If strikes are organised in violation of section 75, excessive sanctions, including imprisonment for up to two years, are foreseen. The government has the right to intervene in strikes to ensure the delivery of basic services and so uphold the "national interest".

Export processing zone: There is one free trade zone in the Bahamas, Freeport, which is governed by the same laws as the rest of the country.

Trade union rights in practice and violations in 2008

Background: No major political changes arose in the Bahamas since Hubert Ingraham's opposition Free National Movement (FNM) won parliamentary elections in May 2007. As a consequence of the downturn in the global economy, there have been massive layoffs in the hotel sector with more than 1,000 jobs being cut. The trade union organisations asked for the set up of redundancy funds for workers.

No progress on union organising: In recent years, there have been cases of the government or employers refusing to recognise trade unions.

Dismissal, harassment and threats are common anti-union practices: Harassment and threatening of trade union leaders are commonly used as a ploy for toppling the unions.

Collective bargaining deliberately delayed: In some workplaces employers deliberately delay collective bargaining with the union for over one year before making use of available legislation to request that the union's recognition be revoked.

Government intervenes and ends strikes: The right to strike is not exercised freely, since the government sometimes intervenes to stop a strike and has a legal right to do so.

Trade union executive members laid off in the hotel sector: At the end of the year, 150 workers including eight trade union executive members were laid off at Sandals Royal Bahamian Resort. The laid-off workers include the president, vice president, secretary general, assistant secretary general, treasurer and trustees of the Bahamas Hotel Maintenance and Allied Workers Union (BHMAWU). Two unions, the Bahamas Hotel Catering and Allied Workers Union and BHMAWU, are recognised as the bargaining agent for Sandals workers. A case involving the unions was before the Court of Appeal at the end of the year. Until then, the BHMAWU has been prevented from representing its members. Following a two-year-long legal battle, hundreds of resort employees were scheduled to take part in a poll in mid-October to determine whether they wanted the BHMAWU or the Bahamas Hotel Catering and Allied Workers Union to represent them. The poll was delayed.

Bangladesh

Population: 143,910,000 / **Capital:** Dhaka

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 182

On 17 December, Bangladesh lifted its two-year-old state of emergency, less than two weeks ahead of parliamentary elections. Trade unions have been prevented from organising, meeting members and holding statutory meetings for the renewal of the mandates of their leaders. As a direct result, worker exploitation has intensified and near anarchy has prevailed – especially in the garment sector.

Trade union rights in law

Proclamation of State of Emergency - all trade union activities banned: While severely restricting "trade union activities", the State of Emergency did not impose similar restrictions of any kind on employers or their federations. The Emergency Powers Ordinance 2007 (EPO) supplemented by Emergency Power Rules 2007 (EPR), used to implement the State of Emergency, has granted security forces the ability to disregard arrest warrants and provides them with the right to conduct arbitrary arrests and detention. Section 3 of the EPR explicitly forbids any forms of assembly, demonstration or rallies without prior permission from the authorities, with punishment set at two to five years' imprisonment for violators.

New Labour Law still contains many restrictions: The Bangladesh Labour Act of 2006 (BLA) is considered a step forward for clarity because it effectively consolidated laws from 25 separate acts into one comprehensive law. However the operation of the State of Emergency, EPO and EPR effectively prevented the implementation of many of the provisions of the BLA.

Many of the previous restrictions on trade union rights existing in previous laws were carried over into the BLA.

For example, before a union can be registered, 30 per cent of workers in an enterprise have to be members, and the union can be dissolved if its membership falls below this level.

Unions must have government approval to be registered, and no trade union action can be taken prior to registration. Unions can only be formed at the factory/establishment level, with some exceptions (such as private road transport, private inland river transport, tea, jute bailing, bidi production) where union formation can take place based on geographic area. There can be no more than three registered trade unions in any establishment.

Membership in a union is restricted only to workers currently working at an establishment, meaning that severance from employment also results in the end of a worker's membership in the union. The law further provides that even if the worker contests the termination, union membership is only returned when the worker is actually reinstated, which can take years given the slowness of Bangladesh's courts.

Candidates for union office have to be current or former employees of an establishment or group of establishments. The Registrar of Trade Unions has wide powers to interfere in internal union affairs and may also cancel the registration of a union with Labour Court approval.

Exclusions from union membership: Under the BLA, workers in government or employed in offices under government authority are prohibited from belonging to a trade union with the exception of railway, postal, telecommunications, public works, public health engineering and government printing press workers. Members of local government units, fire fighters and the security forces are also denied the right to form unions. Managerial staff and employees who are designated by employers as "confidential" are prevented from joining unions.

On the positive side, new categories of workers, including teachers and NGO workers, are permitted under the BLA to form unions. However, because of the strict restrictions on union organising during the state of emergency, the new regulations were not formally instituted.

Right to strike barely recognised: Three quarters of a union's members must agree to a strike before it can go ahead. The government can ban any strike if it continues beyond 30 days (in which case it is referred to the Labour Court for adjudication), if it involves a public service covered by the Essential Services Ordinance or if it is considered a threat to the national interest. In this last case, the 1974 Special Powers Act can be used to detain trade unionists without charge. The government may ban strikes for renewable periods of three months. Sentences of up to 14 years' forced labour can be passed for offences such as "obstruction of transport".

Strikes are not allowed in new establishments for three years from the date the establishment begins commercial production if the factory is newly built, owned by foreign investors or established with foreign aid.

Compulsory conciliation and court referral procedures: The labour law requires that parties to an industrial dispute must follow legal procedures (such as request conciliation, serve notice of a strike or lock-out, or refer the dispute to the Labour Court for settlement) within a specified period or the authorities will consider the labour dispute to be terminated. Section 212 of the BLA prohibits for a period of one year the raising of the specific issue or subject of such an industrial dispute after a termination order of this type is issued.

EPZ Law - significant restrictions continue: EPZs are considered outside the purview of the BLA. The EPZ Workers Association and Industrial Relations Act (2004) provides for the formation of trade unions in EPZs from 1 November 2006. However, the law sets out several phases for implementation, with complicated and cumbersome procedures to be followed at each stage.

At stage one, EPZ factory workers were only allowed to set up Worker Representation and Welfare Committees (WRWC). Stage one ended on 31 October 2006, but continued in practice into 2007 because of systematic delays of the government to set out and implement the administrative procedures to transition worker organisations to stage two of the law.

At the second stage of the law, workers were allowed to go through a process to transform their WRWC into a trade union, referred to as a Workers' Association (WA) in the law. A WA can be created provided over 30 % of the workforce requests that the association should be set up. More than 50 % of all the workers in the factory must vote affirmatively for the WA to be formed. Only one federation of WAs can be formed per EPZ, if at least 50 % of the registered WA in the zone vote for it.

The Bangladesh Export Processing Zone Authority (BEPZA) Executive Chairman also has almost unlimited authority to deregister a Workers' Association should he determine that the WA has committed an "unfair practice", violated any aspect of its own constitution or of the EPZ Law, or failed to submit a report to him.

The ban on strikes or lockouts in the EPZs was due to expire on 31 October 2008. But the rules allowed BEPZA to extend it until 31 October 2010.

EPZ Labour tribunals still not formed: Although the EPZ law provides for the establishment of an EPZ Labour Tribunal and an EPZ Labour Appellate Tribunal, these two tribunals have yet to be established. As a result, workers in the EPZs were effectively denied access to the judicial system for their grievances. BEPZA is vested with responsibility to administer labor matters for all enterprises in EPZs.

On 7 September, a government order said that labour rights bodies can carry out their activities under the Bangladesh Labour Act 2006 on a limited scale at any place in the country. Election to collective bargaining agents (CBA) is now possible on permission from police commissioners in city corporation areas and from district magistrates elsewhere. The trade unions will have to report to metropolitan police commissioners, district magistrates and in some cases upazila nirbahi officers (UNO) or the officials 48 hours ahead of any meetings. No assembly exceeding 500 people will be permitted. Labour unions will be allowed to convene indoor meetings at their offices or officially approved places. Outdoor meetings are prohibited. Meeting agendas will be restricted to labour and organisational issues. Devices that could make the discussions audible outside the meeting venues have also been prohibited.

Trade union rights in practice and violations in 2008

Background: On 17 December, Bangladesh lifted its two-year-old state of emergency, less than two weeks ahead of parliamentary elections. In the absence of any legal framework to resolve work-related issues, workers resorted to street demonstrations, strikes, and sit-ins. The Bangladesh government blamed ‘outsiders’ for worker unrest in the garment sector. The country has some 4000 garment factories, employing around 2.2 million workers, mostly women. Workers faced inhumane treatment, unannounced plant closures, late payment of wages, cheating on overtime pay, and violent aggression from company thugs and police. The minimum salary, last fixed in 2006 at US\$25 per month, remained frozen throughout 2008.

The International Labour Organisation (ILO) condemned Bangladesh for its continuing failure to provide full trade union freedoms and for permitting serious violations of ILO Conventions both in law and in practice.

Elections in the EPZs: At the start of 2008, 69 enterprises in Dhaka and Chittagong EPZs voted to establish trade unions. Based on a decision of BEPZA, 124 more enterprises in the two EPZs will have to hold elections by 2010. According to our information, a number of Asian foreign investors had publicly warned that allowing the formation of trade unions in export processing zones would hold back further investment in Bangladesh’s garment sector.

Arrests, turmoil and death in the garment industry: In January, Bangladesh police brought charges against the following trade union officials for alleged violations of the 2007 EPR: Asma, President; Rabeya, General Secretary; Rashedul Alam Razu, CBA Secretary; and Abul Kalam Azad, all from the Bangladesh Independent Garments Workers Union Federation (BIGWUF); Samima Nasren, Shadeen Bangla Garments Workers Federation (SBGWF); Lovely Yesmin, Textile Garments Workers Federation (TGWF); Tuhidur Rahaman, Bangladesh Posak Shilpo Sramik Federation (BPSSF); and Amirul Haq Amin, National Garments Workers Federation (NGWF). The charges were later dropped.

Ronjit Haldar, a Bangladeshi staff member of the American Center for International Labor Solidarity (ACILS), was arrested, questioned and then released on bail on 22 January. Bent Gerht, the Southeast Asia Field Director for the US-based Worker Rights Consortium (WRC), was briefly detained and interrogated by Bangladesh authorities on 24 January. They also arrested Mehedi Hasan, the WRC representative in Bangladesh. Mehedi Hasan was charged with provoking labour unrest in violation of the provisions of the EPR of 2007 and detained for several days after a court order for interrogation. After pressure from national and international labour organisations, on 3 February, Hasan was released from custody. All charges were then dropped.

On 3 November, the NGWF demanded the release of Hafizur Rahman Sabuj, a Hamim Group garment worker in Dhaka and President of the New Modern Garment Workers and Employees Union (NMGWEU), who was put in prison from 29 September until early December after the company filed bogus charges against

him and the union's vice-president. In September, the NMGWEU had demanded a pay increase and better working conditions. Hamim Group also sacked 21 workers who are NMGWEU members and officials. In addition, according to the International Textile, Garment and Leather Workers Federation (ITGLWF), workers were being asked to sign letters saying they would not engage in trade union activities in the factory and acknowledging that management could fire them if they do so.

Garments workers at Magpie Knitwear were dismissed as they joined Shadhin Bangla Garments Sramik Karmachari Federation, in November 2008. A solidarity action was launched by the ITGLWF asking for the reinstatement of a worker unfairly dismissed as well as for the set up of industrial relations mechanisms. The ITGLWF also contacted the brand known to be sourcing from the factory. No answers had been received at the time of writing.

A group of female garment workers of New Town Knitwear Co. were stripped naked and savagely beaten by their supervisor as a result of their participation in a strike following management's announcement that working hours would be extended from 9.30 p.m. to 12.30 a.m. The ITGLWF asked for an independent enquiry into the incident and wrote to C&A and Franke & Schulte GmbH, the companies thought to be sourcing from the plant, to inform them of the situation and request their intervention. C&A replied indicating that they would investigate the allegations.

Murdered at work: Two workers, Mohammad Khokon and Abdul Malek, both of whom worked at 500 World Dresses Limited in Dhaka, were severely beaten by factory security guards on 30 January. Khokon died the following morning from injuries. At least ten workers were injured by the police during a demonstration following the death. Police arrested the factory manager and a security guard and charged them with Khokon's murder.

Workers protest against inhumane treatment: At the end of December 2007, factory workers at SQ Garment Ltd in Dhaka engaged in a two-day strike to protest against the death of a female worker, Salma Aktar, 22. She died from being forced to work even though she was seriously ill. On 2 January, the company closed the factory because workers engaged in a strike. One thousand workers protested the closure and were joined by 1,000 workers from 20 other factories in the area.

On 3 April, Russell, a worker at RM Sweater Ltd in Dhaka died at the factory gate after having been refused to seek medical treatment after he lost consciousness at work.

Worker protests met with intimidation and attacks: All along the year workers, mainly working in the garment sector, were attacked and some of them injured by the police or security guards while demonstrating either for better working conditions, pay increase or dismissals. This occurred in January at Kimberly Fashion Ltd factory (25 workers injured), the MBM garment factory in Dhaka Export Processing Zone (DEPZ) (50 workers injured), Metro Garments factory in Narayanganj, Jaya Group of Industries at Kanchpur under Rupganj upazila in Narayanganj, Shine Fashion Ltd factory in DEPZ (20 workers injured – three seriously), in a garment factory located in Kalurghat Industrial area in Chittagong, in the garment factory Gazipur, near Dhaka (40 workers injured), Honor Way Textile and Apparels Ltd in DEPZ (one hundred workers injured out of 700 hundred demonstrating - 18 of them critically) and Abani Knitwear Textile Mills of Babylon Group at Rishipara in Savar.

Police launched an attack against about 20,000 garment workers from more than a dozen garment factories in Fatullah on 12 April, in Narayanganj. At least 50 workers were injured including three by shotgun pellets.

In November, 16 Esses Fashions workers were arrested and detained following protests for unpaid overtime and poor working conditions including physical abuses and injuries by security guards. The trade union, Shadhin Bangla Garments Sramik Karmachari Federation (SBGSKF), was not invited to attend a meeting held earlier between the company and the police in order to try to quell the unrest. When informed about the situation, Inditex, the brand known to be sourcing from the factory, immediately audited the factory.

Barbados

Population: 281,968 / **Capital:** Bridgetown

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Although freedom of association is recognised by the law, the law omits to secure trade unions recognition by employers and the right to collective bargaining. The employers continued to use anti-union strategies.

Trade union rights in law

Freedom of association: The law recognises the right to form unions except for members of the armed forces, who are prohibited from doing so.

However, under the law, employers have no legal obligation to recognise unions.

In addition, anti-union activity by employers is not prohibited, but workers who are wrongfully dismissed can apply to the courts; however, this right is very limited, since the judges generally award compensation instead of the reinstatement of the workers who were unfairly dismissed.

Right to collective bargaining: The law does not explicitly recognise the right to bargain collectively. Barbados has ratified ILO Convention 98 and this right is widely accepted. The Executive Council of the Barbados Workers' Union (BWU) has made repeated calls for the right to bargain collectively to be enshrined in law.

Since 1993 a set of protocols has provided for increases in wages and increases based on productivity. The fifth prices and incomes protocol was signed by government, the private sector and union representatives in 2005.

Right to strike: The law grants private and public sector workers the right to strike, with, however, restrictions for workers providing essential services, who can only exercise the right in certain circumstances and after following the prescribed procedures.

Trade union rights in practice and violations in 2008

Background: Barbados is governed by a parliamentary democracy that held its latest legislative elections in January 2008. The opposition Democratic Labour Party (DLP) won the elections over the ruling Barbados Labour Party (BLP), ending 13 years of BLP domination. David Thompson was appointed prime minister. A referendum for a new constitution was originally planned but was then postponed. This referendum is aiming to transform Barbados into a republic. Despite a rather stable political environment and calm industrial climate with limited strikes, violent crime linked to narcotics trafficking has emerged as a major problem. Most strikes were related to wage increase demands or to the consequences of the international financial crisis on the national labour market.

Right to organise is still weak: As they are not obliged to do so by law, in certain cases employers refuse to recognise the unions. The Barbados Workers' Union (BWU, an ITUC affiliate) is asking the government to make recognition of trade unions mandatory provided they fulfill the requirements of representativity.

The government neither supports nor guarantees collective bargaining: Collective bargaining is only practised on a voluntary basis or based on tradition, since there are no legal requirements. Generally the bargaining is restricted to four areas: minimum wages, working hours and standards, recruitment procedures and disciplinary and grievance procedures. Often, despite recognising unions, employers refuse to negotiate a collective agreement.

Anti-union discrimination: As there are no laws prohibiting anti-union discrimination, when workers are dismissed for union activities, they are hardly ever reinstated and only receive compensation if they win the court cases. According to the BWU, a law should be adopted to make it an offence punishable by the Courts for employers to deny this human right to associate freely.

Harassment for union activities: In January, employees of the telecommunication company Cable & Wireless (C&W) were threatened not to be able to get work if they go on strike after the breakdowns of talks over wages and working conditions. In addition, the company later announced lay-off plans without, according to the BWU, properly expressing justification and without adequate trade union consultation.

Anti-union tactics: At the beginning of 2008, the Royal Shop, a leading jewellery retailer, resisted to the workers' exercise of their right to freedom of association. The Company moved to beset, harass and frustrate the workplace union leadership, eventually seeking to vary workers' conditions of employment. The outcome was a work stoppage. The matter has, up to the time of writing, not been resolved. The government proposed a mediation panel to bring closure to the dispute. This panel had not met at the end of 2008.

Ten members of the staff of Archer Daniel Midlands (Barbados) Mills were locked out of the plant without industrial relations cause, and the work was given to non-nationals. The Company had previously indicated that it wanted to outsource the work, and the union had indicated that there was no basis on which that could be done. When the union sought to meet to address the matter, officials were denied entry to the plant. The dispute was resolved at the level of the Labour Department and the workers returned to work. The company was made to recognise there had to be discussion and agreement with the workers and their representatives. However, afterwards the company wrote to the union indicating it would not pursue the matter.

Belize

Population: 297,613 / **Capital:** Belmopan

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

The structural and legal conditions undermining the full exercise of trade union rights have not changed. Since the beginning of the year workers have been faced with redundancies.

Trade union rights in law

Freedom of association: By law, workers are free to establish and join trade unions, and members are free to elect officers from their membership. Foreigners are not allowed to hold leadership posts in trade unions. The law prohibits anti-union discrimination, but does not provide for reinstatement in the case of dismissal for union activities. The fines imposed on companies for anti-union discrimination are extremely low.

Restrictions on the right to strike: Unions do have the right to strike, but this is limited for public sector workers in areas designated as "essential services". The Essential Services Act empowers the authorities to refer a dispute to compulsory arbitration to prohibit or terminate a strike. Such services are broadly defined, extending to postal, monetary, financial and transport services (civil aviation), and even the marketing of petroleum products. According to the ILO the list is too long and many of the services are not essential in the strict meaning of the term.

Restrictions on collective bargaining: The law provides for collective bargaining but, under the Trade Unions' and Employers' Organisations Act, a trade union can only be certified as a bargaining agent if it receives 51 per cent of the vote.

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

Trade union rights in practice and violations in 2008

Background: Belize held general elections in February, which led to the election of Dean Barrow of the United Democratic Party (UDP) as the first black Prime Minister of the country.

Export Processing Zones (EPZs): Officially trade unions are not banned in the banana plantations or the EPZs, however workers have traditionally had problems organising themselves in these sectors.

Trade union leaders dismissed: In February, 13 employees of Belize Healthcare Partners Limited (BHPL) received redundancy letters. All of them were members of the Technical Administrative Medical and Managerial Workers' Union of Belize (TAMM), and some were leaders of the union. The union centre that TAMM is affiliated to, the National Trade Union Congress of Belize (NTUB), reported that having checked through the evidence and reports it had reached the conclusion that the management of BHPL had acted in bad faith and violated trade union protection and workers' rights with the clear intention of destroying the union.

Violation of a collective agreement: In June the Belize Energy Workers Union (BEWU) denounced abuses of a collective agreement by the company Belize Electricity Limited (BEL). BEWU represents around 72% of the workers in the company. Since 2006, trade union leaders had been re-negotiating the collective agreement that had elapsed the year before but so far with no success; on the contrary, the company was trying to cut the pay increments. Sheryl Cuthkelvin, the union leader and negotiator was dismissed in May after receiving just two days' notice.

Botswana

Population: 1,900,000 / **Capital:** Gaborone

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

The barriers placed on freedom of association by law are excessively severe. It is almost impossible to strike legally. Managers in the private sector, which includes a large number of foreign companies, have no desire to bargain with workers' representatives.

Trade union rights in law

Workers have the right to form unions: All workers, with the exception of police officers, the Botswana Defence Force and the prison service, are allowed to join unions, and the ILO has requested Botswana to amend its legislation to allow prison officers to join a union. Workers may not be fired for union-related activities.

Ministry has power to interfere in union affairs: Registration of trade unions, via the Registrar at the Ministry of Labour, is compulsory. The law requires a minimum of 30 employees in order to form a trade union, and the Trade Disputes Act empowers the Labour Minister to determine the conditions for union membership. If a trade union is not registered, union committee members are not protected against anti-union discrimination. Unions are allowed to affiliate to international trade unions and receive funds from outside the country without the Minister's approval.

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

The right to strike: The 2004 Trade Disputes Act gives the government extensive power over industrial relations. The right to strike is recognised, but workers must submit their demands to complex arbitration procedures, which unions say always result in strikes being declared illegal. Sympathy strikes are prohibited. The Act does not protect workers' organisations against acts of interference by employers and their organisations.

The Act sets out the procedure to be followed once a dispute is deemed to exist: first, the matter is submitted to the Commissioner of Labour, who, if s/he decides that a dispute exists, refers the matter to mediation or failing that, to an Industrial Court, composed of Ministry of Labour officials.

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

Trade union rights in practice and violations in 2008

Background: In April, Seretse Ian Khama was appointed by Parliament to succeed his father Festus Mogae at the head of state. As the world's leading diamond producer, the country is experiencing strong economic growth.

Very restricted right of association: While workers (with the exceptions noted above) have the right to organise, in practice this is restricted, as each government sector has its own rules. Collective bargaining remains embryonic, as few unions meet the 25% representational criteria and only the mineworker and diamond sorter unions have enough organisational power. In recent years the government has used legislation to order strikers back to work.

Employer hostility and hypocrisy: Although labour legislation has improved in many areas over recent years and the government has ratified all ILO core labour standards, many employers still trample workers' rights, and the government is also either unable or unwilling to confront employers. Trades unions criticise the behaviour of foreign investors who, too often, maximise their profits on their workers' backs, going as far as to invoke their poor knowledge of English as an excuse for refusing to negotiate with their workers. This applies in particular to the many Chinese employers in the retail distribution trade. In July the management of Sinohydro, a Chinese company building the Dikgatlong dam at Robelela, refused to negotiate with representatives of workers who had just gone on strike. The employer stated that the strike was illegal and called the strike committee a "group of terrorists". He also added that he had "assigned our Public Relations Officers to guide workers on how to set up a proper committee". Working conditions in this company are said to be deplorable (lodging, hygiene and safety, non-renewable three-month contracts, etc.).

Strikers still waiting for a court decision: The industrial tribunal still has to give its ruling in appeal on the two labour disputes that broke out in 2004 and 2006 in the Debswana and BCL companies. In both cases the management tried to undermine the Botswana Mine Workers Union (BMWU). In 2004, 461 workers at Debswana were sacked for taking part in a strike that was ruled illegal by the authorities. In 2006, the management of BCL, a subsidiary of LionOre, supported a dissident union, several of whose leaders were in prison for corruption, which encouraged the workers to hold a strike that the management knew would be illegal. The manoeuvre resulted in the sacking of 181 strikers.

Brunei Darussalam

Population: 398,000 / **Capital:** Bandar Seri Begawan

ILO Core Conventions Ratified: 182

There is virtually no union activity in Brunei, and there is no legal basis for either collective bargaining or strikes.

Trade union rights in law

Limited rights in law, no provision for collective bargaining, no coverage of migrant workers: The Trade Union Act of 1961 authorises the creation of trade unions, which must be registered with the government. The law prohibits employers from any sort of discrimination against workers connected to trade union activities, and unions are permitted to form federations. However, the law prohibits unions and federations from affiliating with international trade union bodies unless they receive prior written consent from both the Minister of Home Affairs and the Labour Department.

Civil servants are permitted to form and join unions, except for those in the army, police, and prisons, but none have done so.

No provision on collective bargaining: There is no provision in law that underpins the right to collective bargaining. An individual contract is required between an employer and each employee, and trade union activities are not allowed to violate these individual employee contracts.

Right to strike: The law does not explicitly recognise any right to strike.

Migrant workers: The majority of labour laws only apply to citizens of Brunei, thereby failing to cover skilled and unskilled migrant workers. Migrant workers do not enjoy freedom of association. But in early 2008 the government stated that barely 31% of the private sector workforce were Bruneian nationals.

Export processing zone: There is one export processing zone, the Muara Export Zone, where labour laws apply in full.

Brunei became a member of the ILO on 17 January 2007, but has not yet ratified the conventions on freedom of association and collective bargaining.

Trade union rights in practice and violations in 2008

Suspension of democratic rights prevents trade union activity: Constitutional provisions regarding fundamental rights of freedom of speech, association, press and assembly remain suspended under a state of emergency declaration dating from 1962. Government permission is required for holding a public meeting involving more than ten people, and the police can break up any unofficial meeting of over five people if they regard it as liable to disturb the peace. The Sultan appoints all ministers in the Cabinet and all judges, who do his bidding.

Only one active trade union: There are only three trade unions registered in the country, and only the Brunei Oilfield Workers Union (BOWU) is active. BOWU signed a collective agreement with Brunei Shell Petroleum (BSP) and Brunei Liquefied Natural Gas in August 2008, covering a three-year period. In July

2008, BOWU represented just 26% of the employees of those two companies, however, with a total of 182 members.

Cameroon

Population: 18,900,000 / **Capital:** Yaoundé

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

At the end of February, a strike by transport unions, promptly relayed by the poorest sections of the population in the major cities, gave way to riots. The security forces responded with brutal force. Heavy legal restrictions encourage trade union rights violations.

Trade union rights in law

Freedom of association: Freedom of association is guaranteed by the Constitution of 1996 and the Labour Code. It is illegal to form a union that includes both public and private sector workers. The Labour Code establishes prison sentences and fines for workers who form a trade union and carry out union activities without a registration certificate from the trade union registrar.

The Labour Code is not applicable to members of the public service, judges, military, national intelligence, prison administration and auxiliary administrative staff. Public servants may form trade unions, but must have the prior approval of the Minister for Territorial Administration and may not affiliate internationally without obtaining prior authorisation. In 2007, the government indicated that it had introduced a bill to amend the Labour Code before the National Assembly, under which the process of registering trade unions would be simplified. It also indicated that the new procedure would imply an end to prison sentences and fines for failing to comply with registration provisions.

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

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

Collective bargaining: The law provides for collective bargaining between workers and management, as well as between trade union federations and employers' associations, but the legal mechanisms for enforcing collective agreements are ineffectual.

Right to strike: The Constitution and the Labour Code recognise workers' right to strike, but only after compulsory arbitration. Ignoring the procedure can be sanctioned by immediate dismissal and fines. Workers have an obligation to provide a minimum service in certain sectors, including transport. Civil servants do not have the right to strike. At the ILO's recommendation, the bill to reform the Labour Code of 1992 foresees the removal of restrictions linked to the exercise of the right to strike.

Trade union rights in practice and violations in 2008

Background: Despite the catastrophic management of the country, President Biya does not seem ready to relinquish power. In April, at his request, the Parliament amended the Constitution to allow him to stand for a third term of office. On 30 December 2008, the national confederation of free trade unions, Confédération des syndicats autonomes du Cameroun (CSAC), gave notice of its intention to organise strike action in support of its demand for the opening of comprehensive negotiations on pay and working conditions.

Collective bargaining almost nonexistent: Collective bargaining is almost nonexistent. No formal collective bargaining negotiations have taken place since 1996. One of the major union confederations acknowledges that social dialogue does exist, but the outcome of the negotiations is rarely honoured. The government has shelved or simply ignored a number of agreements after negotiating them.

Transport workers among the victims of the violent repression during riots at the end of February:

Trouble, qualified by some as hunger riots, broke out in the major cities at the end of February following the strike called by 14 transport unions against the rise in fuel prices and the high cost of living. The brutality with which the police and army suppressed the unrest resulted in tens of deaths. Hundreds of people were arrested. The public sector confederation, Centrale syndicale du secteur public (CSP), reported that one of its leaders, Claude Edmond Melongo, was arrested in Ebolowa, on 28 February, while holding a meeting with other CSP members on the launch of a health insurance scheme. The local authorities held him in detention for several days, arguing that the purpose of his visit to Ebolowa was to stir trouble.

Government interference: In recent years, the government has interfered in trade union activities in several ways, favouring those workers' organisations it sees as easier to control and using excessively strict union registration requirements to withhold recognition from trade unions it deems too independent. One example is the public service confederation, CSP, one of the country's seven trade union centres, which has still not been recognised, despite being formed in the year 2000. Similarly, when industrial disputes arise, the government chooses the union with which it is willing to negotiate.

The government has also been known to require workers setting up a union to produce job descriptions signed by the employer before the union can be registered. This makes it impossible for self-employed and informal economy workers to form a union.

Anti-union tactics in the brewing industry: At the end of 2008, the national confederation of free trade unions, CSAC, denounced the anti-union tactics being deployed by the human resources management at SIAC-Brasserie Isenbeck, which was in the process of being taken over by the Société anonyme des brasseries du Cameroun. According to the CSAC, employees belonging to the Wouri food workers' union, Syndicat autonome des travailleurs des industries alimentaires du Wouri (SATIAW, affiliated to the CSAC), were the victims of threats and intimidation after holding meetings for several months. After trying in vain to coerce SATIAW's members to agree to terms that the union deemed unacceptable, the company decided to opt for "tripartite" negotiations with workplace representatives considered to be close to management.

Canada

Population: 33,000,000 / **Capital:** Ottawa

ILO Core Conventions Ratified: 87 - 100 - 105 - 111 - 182

In a number of provinces, the laws fail to provide statutory protection for certain groups of workers to organise, or they contain restrictions on the right to strike or limitations on the requirements to respect negotiated agreements with unions. In practice, restrictions remain in the public sector (especially at the federal level) on the freedom to join a union, to effectively negotiate wages or indeed to freely choose the issues to be negotiated with employers.

Trade union rights in law

Freedom of association: Under federal legislation, workers in both the public and private sectors have the right to associate freely. Trade union rights are officially guaranteed in federal legislation, although each province also has its own legislation, setting limitations on these rights. The law prohibits anti-union discrimination.

Right to collective bargaining: Public and private sector workers have the right to organise and bargain collectively. The law protects collective bargaining, but there are limitations which vary from province to province.

In 2007, the Supreme Court, in the case of Health Services and Support, struck down legislation, passed in the province of British Columbia, that substantially interfered with the union's ability to bargain on behalf of its members in the public sector. The court thereby established unionisation and collective bargaining as a protected freedom under the country's Charter of Rights and Freedoms.

Since then, provincial and national authorities have been slow to amend conflicting legislation that does not conform to the Court's ruling.

Province of Saskatchewan: In May 2008, Bill 5 (The Public Services Essential Services Act) and Bill 6 (The Trade Union Amendment Act, 2008) were adopted, reducing the bargaining rights of a union or weakening the right of workers to organise. Bill 5 has the potential to strip unions of their effectiveness as bargaining agents for potentially tens of thousands of workers. It permits employers to potentially designate every worker individually as providing an "essential service" without recourse to such potential avenues as binding arbitration. It includes named employers such as universities, municipalities and technical institutes. It allows, through a simple "Order in Council", the making of regulations or laws by the executive of government without the consent of the elected legislative assembly.

Bill 6 weakens the rights of workers and unions to organise into associations, and it potentially permits employers to use coercive means to stop the formation of union associations, and to potentially punish workers for engaging in union associational activities.

Right to strike: All workers have the right to strike, except for those in the public sector who provide essential services (with a few exceptions and where the definition is misrepresented by authorities). Replacement labour may be used in industries governed by the Canada Labour Code.

Manitoba – restrictions to the right to strike: The 1996 Essential Services Act is used as a tool to restrict the right to strike by certain workers. The law provides the right to employers to designate the classifications,

numbers of employees and names of the employees who are essential and, as a result, those who must work during a strike. The employer is further permitted at its will to increase that number of designated workers during a strike. The Manitoba Labour Board does not have the power to overturn the number of employees that are so designated.

Trade union rights in practice and violations in 2008

Background: In practice, violations appear to be on the rise and offending legislation and practice remain in force because the current political climate in the country continues to legitimatise them. The current Conservative Government announced retroactive budgetary measures that would retroactively circumvent negotiated settlements in the public service to 2007 and 2008.

Restrictions of collective rights in the postal sector: Canada Post continues to hire and use temporary workers hired by private companies to handle and process custom mail. Article 13.5 of the Canada Post Corporation Act, revised in 2007, restricts certain temporary and contracted-out workers from joining a union or engaging in collective bargaining. Further, in 2008 Canada Post threatened to unilaterally review the Canadian Union of Postal Workers (CUPW) collective agreement, relative to "competitiveness" issues. The CUPW have launched appeals for review with the Canada Industrial Relations Board, but a ruling had not yet been issued by the end of 2008.

Quebec: In 2008, the Quebec City news division of TQS Television restructured its financial affairs, through a formal Companies' Creditors Arrangement Act (CCAA) Plan of Arrangement to avoid bankruptcy. By using the provisions of the CCAA, a corporate entity may declare bankruptcy, thus allowing a new owner to bypass the currently valid collective agreement to restructure operations, lay off workers and abrogate its responsibility for severance payments. Originally about 60 workers at the Quebec City News were members of the Canadian Union of Public Employees (CUPE) 3946. A collective agreement with no-contracting-out language and with provisions for severance pay was in force. Yet under the provisions of the CCAA, the company was restructured, most staff members laid off and new staff hired outside of the bargaining unit. Only four members of the bargaining unit remain on staff. The CUPE Local has appealed to the courts about the missing severance pay and has appeared before the Canada Industrial Relations Board with charges of bad faith. No decision has been taken by the end of the year.

Dominican Republic

Population: 9,100,000 / **Capital:** Santo Domingo

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Workers rights are non-existent in the export processing zones (EPZs). Nor are they adequately respected in the rest of the country, as they are undermined by a range of anti-union strategies, with new cases emerging daily.

Trade union rights in law

Freedom of association: All workers are free to organise, with the exception of members of the armed forces and the police force. Unions must have at least 20 members and are legal once they have been registered by the Labour Ministry. If the government fails to act on an application for registration within 30 days, the applicants may declare it in default over the next three days, and then one day later, the union is automatically recognised. Unions may form federations, which can in turn form confederations.

There are some restrictions, however. Civil servants may, for instance, only form a union if at least 60 per cent of the employees of a given governmental body agree to join. Employees of independent and municipal state bodies are excluded from the Labour Code. The laws and regulations governing these bodies contain no provisions on trade union freedoms.

The law does not provide for the reinstatement of workers dismissed on account of their union activities, stipulating only their right to meagre compensation.

Restrictions on collective bargaining: To be able to bargain collectively, a union must represent an absolute majority of workers in an enterprise or branch of activity.

Restrictions on the right to strike: Strikes can only be called if a majority of employees, regardless of whether they are trade union members, vote in favour of action – a requirement which could seriously hinder strike action. There must have been a prior attempt to resolve the conflict through mediation. If this fails, written notification of the strike must be given to the Ministry of Labour and a 10-day waiting period observed before the strike goes ahead.

People working in key public services and civil servants are not allowed to strike. If a strike that has been declared illegal is carried out, the contracts of the workers involved are terminated, with no remaining responsibilities for the employer, unless the illegality ruling is for procedural reasons or the workers return to their posts within 24 hours of the ruling.

Export processing zones: There are no laws exempting EPZ companies from complying with the national labour legislation.

Trade union rights in practice and violations in 2008

Background: Leonel Fernández of the centre right Liberación Dominicana party won the Dominican Republic's presidential elections of 16 May 2008. The country has been affected by the downturn in the international economy, as a result of free trade. The situation of Haitian migrant workers, most of whom work in sugar production, is particularly bad.

Poor and inefficient state intervention on the protection of workers' rights: The law theoretically prohibits the dismissal of trade union members and their leaders for trade union activities, however the law is not applied and the penalties are not sufficiently dissuasive to prevent employers from violating workers' rights.

Labour court proceedings are too long. It takes an average of 15.3 months to settle cases in courts of first instance and 16.4 months in the court of appeal.

Furthermore, justice is still administered, albeit to a lesser extent than in the past, by judges and magistrates who are political appointees and tend to be in league with employers. Employers enjoy impunity when violating workers' rights because of ineffective sanctions.

Restrictions in the public sector: Given that over 58 per cent of formal economy workers are State employees, the exercise of the right to strike is limited. What is more, despite the Law on the Civil Service and Administrative Careers, mass dismissals take place in the public sector without any guarantee of the employees receiving the required compensation.

Collective bargaining restricted in practice: Collective bargaining is restricted, in practice, by the requirement that unions must represent an absolute majority of workers in a company. Only a minority of companies have a collective bargaining agreement. The ILO examined the requirements and deemed that they were excessive and thus constitute a barrier to collective bargaining. In the EPZs, only four companies have negotiated collective agreements.

Terms of employment make it hard to organise trade unions: In the stagnating formal economy, companies are increasingly imposing so-called "flexible" terms of employment, which are gradually stripping workers of their rights and indirectly hindering freedom of association.

Subcontracting represents a particularly serious obstacle, as it means that workers are constantly being moved to different companies, thus hampering union organising. In addition, they do not have a contract with the employer at their actual workplaces, which makes collective bargaining impossible even when workers do manage to set up a union.

The practice of cancelling contracts every three months leaves workers in a state of perpetual insecurity, increasing their dependence on their employers and leaving them under the constant threat of losing their jobs.

Highly unsatisfactory labour relations and workers' rights situation: Viewing the country as a whole, workers' rights are hampered by a lack of effective sanctions against anti-union discrimination, the dismissal of union leaders on the sugar cane plantations, blacklists containing the names of union leaders in the export processing zones and the dismissal of all the founding members of unions that are denied registration by the administrative authorities.

Complete lack of protection of Haitian workers: Most of the workers on the sugar plantations are undocumented Haitians. They do not have the right to form unions or therefore to bargain collectively. Employers prefer to hire them as a means of evading the law and paying lower wages.

Workers' rights not respected in EPZs: Of the 57 companies that operate in the EPZs and employ about 155,000 workers, only eight have a trade union (14%), the unions report. Harassment and persecution mean that workers have to deal with union matters outside the workplace, for fear of dismissal. Blacklists of trade unionists are circulated, preventing them from getting new jobs.

The government has reported on campaigns to promote the respect of labour standards in the sugar refineries and on labour inspections in the sugar plantations, but it has not provided any concrete information about the complaints made by trade union organisations.

Collective bargaining rights increasingly restricted: There have been recent and dramatic examples of trade unions being violently broken up, and their leaders removed from the workplace, at Coca Cola, Cemec Dominicana, Corporación Industrial DIER, C&F Industries and Tabacalera Fuente. Unions have been prevented from engaging in collective bargaining at TOS Dominicana (Hanes Brand), Codassa Internacional and Cola Real.

Oil tanker drivers' strike: The CNUS national trade union centre (Confederación Nacional de Unidad Sindical) supported its affiliate, the oil tanker drivers' unión (Sindicato Autónomo de Choferes Transportadores de Petróleo y sus Afines - SACTPA), in its dispute with Chevron Caribbean.

In a press release, the CNUS leadership urged the Labour and Industry and Commerce authorities to find a rapid solution to the dispute. Their aim was to avoid harmful consequences for transport workers, arising from the creation of monopolies such as that planned by Chevron Caribbean.

The strikers' union wanted to prevent Chevron withdrawing its contracts with the transport companies, as that would lead to 150 job losses. According to SACTPA, the company planned to apply measures that were contrary to the sectoral collective agreement, and that would undermine the rights enshrined in ILO Conventions 87 and 98.

Fiji

Population: 850,000 / **Capital:** Suva

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

The provisional government formed following the military coup in 2006 is still in power, but the new labour legislation provides for greater respect of trade union rights.

Trade union rights in law

Freedom of association: Under the Fijian Constitution, workers are entitled to the right of freedom of association. However, it also provides for the possibility of enacting legislation applying restrictions in the public interest or to protect national security. Workers have the right to form and join trade unions as well as to organise and bargain collectively.

In October 2007, after ten years of campaigning by the unions, the new "Employment Relations Promulgation 2007" (ERP) came into force. The new Promulgation, which has been gazetted, cannot, properly speaking, be called a law since it was enacted under a military regime. While making progress in some areas, numerous provisions of the ERP are still not in line with conventions 87 and 98.

The ERP appears to have solved the problems previously associated with the registration of unions. Application for registration is now mandatory and, in order to avoid excessive delays, the new regulations provide for a maximum period of 21 days between receipt of the application for registration and the decision of the Ministry of Labour. Seven employees are required to form a union. To obtain recognition from the employer is no longer a requirement. As well, the requirement for recognition of meeting the 50% threshold has been removed. The Registrar's discretionary powers to reject the merger of unions have been limited to those cases where the proposed rules for the merger contravene the provisions of the ERP or where one of the union's aims is unlawful.

However, the Registrar retains the discretionary power to refuse to register a union with an inappropriate name or to cancel the registration of a trade union in the cases provided by the law. The ILO Committee of Experts requested the Fijian government to establish appropriate protective measures to prevent undue interference from the Registrar. Trade unions now have the right to appeal to the Employment Relations Tribunal against the decisions of the Registrar.

The ERP does not apply to prison and correctional services that should be entitled to the right to organise.

The ERP contains a comprehensive prohibition of acts of anti-union discrimination for all types of trade union activity, at all stages of the employment relationship, including recruitment. The Employment Relations Tribunal and the Employment Relations Court have the power to order remedies including reinstatement, reimbursement and/or compensation for humiliation, loss of benefit or loss of property.

Collective bargaining: The right to collective bargaining is also enshrined in the Fijian Constitution. In addition, the ERP promotes and encourages collective bargaining. It sets a requirement of good faith on the part of both the union and the employer when negotiating a collective agreement.

In 2008, the Employment Relations Advisory Board, a tripartite body, developed a Code of Good Faith to provide guidance on the application of this duty. Tribunals and courts may refer to this Code.

The right to strike: The right to strike is recognised for all matters except those relating to trade union recognition. Under the ERP, the conditions governing the right to strike remain unchanged in relation to previous legislation, and unions are required to give 21 days' notice to the Registrar of Trade Unions (who reports to the Minister of Labour) before putting a strike to the ballot. The strike is allowed if more than 50 per cent of the paid-up members vote in favour. This applies to all unions, in both "essential" and "non-essential" industries.

With respect to "essential" industries, however, a further 28 days' notice must be given to the Registrar, and organisers must provide the Ministry of Labour with information concerning the date, time and location of the strike, together with a list of participants. The requirement that more than 50 per cent of the paid-up members vote in favour of the strike is too restrictive and is a substantial obstacle to the exercise of the right to strike. The ILO Committee of Experts requested the government to modify this requirement so that only the votes cast in the strike ballot need to be taken into account. The list of "essential" industries has been reduced and is now broadly in line with the terms of ILO Convention 87.

The Minister of Labour has the right to declare existing or proposed strikes unlawful. If s/he does so, the dispute is referred to a Permanent Arbitrator and workers are obliged to return to the workplace. This power effectively enables the government to restrict the exercise of the right to strike. Trade unionists can face criminal charges and risk imprisonment if they persist with strike action. There is no adequate judicial protection to prevent abuses and the imposition of disproportionate penalties on trade unionists.

The ERP maintains the possibility of imposing compulsory arbitration at the request of one of the parties or of the Ministry of Labour when the strike is not considered to be in the public interest or could jeopardise the economy. This runs counter to ILO Convention 87, which only allows compulsory arbitration to end a strike in very limited circumstances or with the agreement of both parties. There are no provisions prohibiting employers from hiring strike breakers.

Trade union rights in practice and violations in 2008

Background: Commodore Frank Bainimarama is running a civilian government with no democratic legitimacy, resulting from a coup d'état. Elections have not been planned yet and there has been a huge outcry from civil society and international organisations regarding the delay. Press freedom is still restricted. The Fiji Trades Union Congress worked with some employers during the year on establishing an effective wage mechanism to cover unorganised and informal economy workers earning poverty wages, but these efforts were hampered.

The political situation in the country and the international economic turmoil strained trade union efforts to tackle labour issues in 2008. The Fiji Trades Union Congress (FTUC) continued its public efforts to re-establish democracy.

Collective bargaining in practice: While the law does not promote individual contracts, in practice they are common. Employers tend to offer advantageous packages to new employees, especially graduates or skilled personnel in key industries, as a means of promoting individual contracts.

Thirty workers sacked after joining a union: At the end of May, the Fiji Times reported that the Building, Construction and Timber Workers Union had filed a complaint with the Ministry of Labour following the dismissal of 30 workers in the company Haroon Holdings after they had joined a union.

Ghana

Population: 23,900,000 / **Capital:** Accra

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 182

Several trade union leaders were dismissed. Labour law insufficiently guarantees the freedom of association. The list of essential services that was officially decided in 2007 is too long and restricts the right to strike even further. There was anti-union discrimination in the banking and insurance sector.

Trade union rights in law

Rights protected: Article 21 of the Constitution of Ghana recognises the right of all persons to freedom of speech and expression, freedom of association, including forming and joining trade unions or other associations for the protection of their interest, and freedom of assembly.

The 2004 Labour Act removed restrictions on the right to organise, bringing the law into line with ILO Convention 87. However, the Emergency Powers Act 1994, which grants extensive powers to suspend the operations of any law and to prohibit public meetings and processions, has still not been repealed. The Labour Act 2004 has been supplemented by other regulations in 2007.

The armed forces, the police, the prison service, and the security and intelligence agencies mentioned under the 1966 Security and Intelligence Agencies Act are excluded from the scope of the Labour Code. The denial to prison staff of the right to organise is considered to be a violation of the principles of freedom of association.

Section 79(29) of the Labour Act excludes workers from the right to join a trade union, where their function is considered as: (a) policy-making, (b) decision-making, (c) managerial, (d) holding a position of trust, (e) performing duties that are of a highly confidential nature or (f) being an agent of a shareholder of an undertaking. The exclusion of managerial and supervisory staff is only compatible with C.87 if the workers concerned have a right to establish their own associations.

Restricted right to strike: The law recognises the right to strike, with limitations. All disputes have to be referred to the National Labour Commission (NLC), which is an arbitration body composed of government, union and employers' representatives. Strikes are seen as a last resort, where arbitration is unsuccessful, and unions must give seven days' notice.

During the year the government drew up a list of essential services, which includes many sectors (such as fuel distribution and public transport) that should not be regarded as essential services based on the ILO definition. In addition, limitations can be imposed on the right to strike for workers in a private enterprise if their services are deemed essential to the enterprise's survival.

Risk of bias in recognition of trade unions for collective bargaining purposes: The 2004 Labour Act makes the "chief labour officer" responsible for designating the most representative trade union, which will be authorised to negotiate with the employer, through giving the union a collective bargaining "certificate". That official decides which union should be awarded the certificate where there is more than one union in the company. The ILO maintains that the chief labour officer has totally discretionary powers and that the criteria on which the decision is based are not clear. Any system requiring mandatory recognition should also apply objective criteria so as to avoid any risk of bias or abuse, but this is not the case.

There is no minimum statutory length of time for a collective agreement to last.

Trade union rights in practice and violations in 2008

Background: John Atta-Mills won the December presidential elections. The Ghana Employers' Association (GEA) and the trade union confederations have since called for a revision of labour law on the basis that certain texts are overly ambiguous and do not promote social peace. The sections involved directly concern the right of association (setting up trade unions and collective bargaining), but the calls for revision also target certain legal texts that allow employers to dismiss their workers for no stated reason.

Persistent violations in export processing zones (EPZ): Even though the Labour Act (Act 2003/651) protects trade union members and their officers against discrimination if they organise within the free zones, in practice some employers have persistently resisted unionisation of the employees.

The Blue Skies Products (Gh) Ltd (a subsidiary of Blue Skies Holdings UK) is an EPZ fruit processing company established in Ghana in April 1997 and employs over one thousand workers. The Food and Allied Workers Union (FAWU) of the Ghana Federation of Labour (GFL) organised the workers and was issued with the Collective Bargaining Certificate in February 2004. Since then the company has refused to allow the unionisation of the workers, and the dispute is still pending at the National Labour Commission.

Anti-union discrimination: The banking and insurance sector saw a large number of dismissals of trade union activists. In January, five leaders of the Industrial and Commercial Workers' Union (ICU) and three other employees were dismissed at Barclays Bank Ghana Limited. The ICU denounced what it saw as a manoeuvre by the employer to pressure workers in order to achieve a favourable (for it) outcome of negotiations for the renewal of the collective agreement. At the end of June, following threats of sanctions against strikers by the employer, the Bank of Ghana dismissed two employees, Benjamin Duffour and Frank Mensah of the Bank of Ghana Senior Staff Association, leading to a work stoppage by their colleagues. In this case, once again, the two workers' trade union activity was very clearly the principal reason for their dismissal. The ProCredit company in turn dismissed just as summarily the Vice-President of the union affiliated to the Union of Industry, Commerce and Finance Workers (UNICOF) after doing everything possible, since 2005, to slow down discussions on the collective agreement, including promoting the introduction of a yellow union.

Trade union leader dismissed in the mining sector: At the beginning of 2008, Kweku Shaibu, Chair of the local branch of the Ghana Mineworkers Union (GMU), was dismissed by the management of Newmont Ghana Limited for questioning his employer's decision to withdraw the 4 a.m. coffee break. In a press release, the GMU denounced this "ruthless, vindictive and unfair" decision, together with the general deterioration of the social climate, with workers accusing management of discrimination, in particular against pregnant workers, and complaining of racist comments by an expatriate.

India

Population: 1,100,000,000 / **Capital:** New Delhi
ILO Core Conventions Ratified: 29 - 100 - 105 - 111

Barriers to the organising of trade unions continued in law and practice, and the government maintained strong restrictions on the right to strike. Unilever and Maersk again stood out for their anti-union practices.

Trade union rights in law

Workers may establish and join unions of their own choosing without prior authorisation. However, there is no legal obligation on employers to recognise a union or engage in collective bargaining.

The legislation makes a very clear distinction between civil servants and other workers. Public service employees have very limited organising and collective bargaining rights.

Freedom of association limited: Under the 2001 Trade Unions Act, a union has to represent a minimum of 100 workers – which is excessive by international standards – or ten per cent of the workforce, whichever is less. The act also sets limits on the number of "outsiders" (those not employed at the enterprise) allowed to sit on a union executive committee and requires unions to submit their accounts for auditing.

Anti-union discrimination: The Trade Unions Act prohibits discrimination against union members and organisers, and employers can be punished if they discriminate against employees engaged in union activity.

Restrictions on the right to strike: Under the 1947 Industrial Disputes Act (IDA), industry workers in public utilities have to announce a strike at least 14 days in advance. In some states, the law demands that certain private sector unions must submit formal notification of a strike before it is considered legal.

Strike bans: The Essential Services Maintenance Act (ESMA) enables the government to ban strikes in public enterprises and demand conciliation or arbitration in certain "essential" industries. However, the Act does not define which these essential services are. Interpretation therefore varies from one state to another. Legal mechanisms exist for challenging a decision taken under the terms of this Act, if a dispute arises.

The Central Civil Services Rule (1964) stipulates that no government servant shall resort to, or in any way abet, any form of strike.

In August 2003 the Supreme Court ruled that government employees did not have the right to strike because it "inconvenienced citizens and cost the state money". The ruling came following a strike in Tamil Nadu state, whose government had dismissed 350,000 striking employees. In December 2003, the Supreme Court ruled that lawyers had no right to go on strike, or to boycott the courts.

Sikkim - excluded from the law: The Trade Unions Act, even after its amendment in 2001, does not apply in Sikkim, a State annexed to India in 1975. Consequently, workers there do not benefit from trade union rights. Although there are some workers' associations, no one sector, as such, is organised. Registration of trade unions is subject to a police inquiry and then depends upon receiving the permission of the Land Revenue Department of the Government of Sikkim. One negative comment by the police about a member of the union's executive can be grounds for refusing registration. Furthermore, the public too has an opportunity to state its objections to the creation of a trade union, which can also prevent its registration.

Repressive legislation in Tamil Nadu State: The Tamil Nadu Essential Services Maintenance Act (ESMA) was passed in May 2002. Characterised by trade union leaders as one of the most repressive pieces of legislation enacted against workers in India since independence, the Act prescribes a punishment of up to three years' imprisonment and a 5,000 rupee fine against participants in a strike involving "essential services". A large number of public services are included within the definition of "essential", such as those relating to the supply of water and electricity, passenger and goods transport, fire fighting and public health. Activists who call for a strike or instigate workers to go on strike, or anyone who provides financial assistance for the conduct of a strike, risks the same penalties. Under the Act, the word "strike" not only includes the refusal of employees connected with these "essential services" to "continue to work or to accept work assigned", but also a "refusal to work overtime" and "any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service". The government has ignored ILO recommendations to amend the Act.

General strikes banned in Kerala: In 2002, the State of Kerala issued an order stating that all general strikes were illegal when they involved a complete closedown of all activities. Furthermore, organisers of a general strike who cause a shutdown can also be held financially liable for damages caused to an employer. The Kerala state order was challenged, but it was upheld as legal by the Supreme Court.

Export processing zones (EPZs): The right to join trade unions and bargain collectively exists in law for EPZs. In the 2001 Trade Union Act, the government designated the EPZs and special economic zones as "public utilities", requiring a 45-day strike notice period.

Trade union rights in practice and violations in 2008

Union protection restricted to a small minority of workers: In practice, workers' rights are only legally protected for the small minority who work in the organised industrial sector. Over 90 per cent of workers are employed in the agricultural sector and the informal economy. In those sectors there is little union representation and it is difficult to enforce legislation. The growing use of contract labour is also creating problems for organising workers.

Hostile employers, poor law enforcement: The generally hostile attitude of employers towards trade unions is clearly a deterrent to organising. Employers tend to either ignore the law making it illegal to dismiss a worker for their trade union activities or circumvent it by transferring workers to other locations to disrupt union activities or discourage union formation. Seeking justice through the judicial process is time consuming and very costly.

Another common form of harassment is the filing of false criminal charges. These lead to unfair dismissal, and here too the slowness of the courts prevents workers from obtaining justice within a reasonable period. Unions report also that some employers resort to intimidation, threats, demotion, beatings and, in extreme cases, death threats or even attempted murder against trade unionists. Intimidations took place in particular in 2008 in Hyderabad and in 2007 in Bangalore, when store managers from the Metro Cash and Carry chain pressured their employees to quit their trade union, UNICOME.

Dismissals of trade unionists: On 2 April, five members of the Delhi State Electricity Workers' Union (DSEWU) were dismissed for supposedly "shouting slogans" criticising the management of their employer the Indraprastha Power Generation Company Ltd (IPGCL). Employees' protests followed the failure by IPGCL management and Delhi Transco Ltd to respect a tripartite agreement requiring consultation and negotiation with the trade union, despite a court decision upholding the validity of this agreement. The dismissed workers are Somi Chetterji, Krishan Chakroborty, Amarjeet, Rama Kant and N.C. Joshi.

The ITGLWF also reports that in April it contacted the company KMD Apparels in Bangalore to protest against the dismissal of two unionised workers. When workers began to organise, management repressed all trade union activities.

Maersk continues to tolerate violence against trade unions: In January 2008, SC Thakur (which transports containers for Global Terminals India (GTI), a subsidiary of the multinational Maersk, in the port of Mumbai) created a yellow trade union, Navi Mumbai General Kamgar Sanghatana Union. Various intimidation measures were also used to force workers to join. One driver, Sunil Kumar, was even attacked and had to be hospitalised. Despite several attempts at conciliation, in particular by the ITF, no lasting solution has been found until now, among other things because GTI is lobbying in favour of the yellow union, which has been unable to prove it has the number of members it says. SC Thakur had already been mentioned in the 2008 Annual Survey for violence against trade union militants.

Unilever continues fight against independent trade unions: Unilever management at Hindustan Unilever at the Doom Dooma industrial estate in the province of Assam, already mentioned in the 2008 Annual Survey, has continued its pressure on the HLWU trade union in 2008. The IUF also reports that, on 6 February, the heads of the puppet trade union HUSS attempted, on false pretences, to get workers to sign up to negotiating a new long-term agreement, as the present agreement (negotiated by HLWU) expired on 1 April (this would establish HUSS as the sole negotiating agent). Given the doubts and refusal of certain workers, Hindustan Unilever management threatened to close the factory! The IUF informed the OECD's National Contact Point for the UK in charge of monitoring compliance with the OECD Guidelines for Multinational Enterprises (which prohibit company managements from threatening product transfers in the context of a labour conflict).

Repression in the construction and ship-breaking industries: Contractors and sub-contractors in the construction industry are loathe to allow workers to exercise their right to trade union membership and are likely to threaten them with dismissal should they try. Since all work is project-based, the possibilities for engaging in collective bargaining are extremely limited.

Similarly, in the ship-breaking industry, employment is so precarious that workers do not try to enforce their right to organise trade unions. Anyone who even attempts to demand a wage increase is fired instantaneously. Intimidation is commonplace and the "muqaddam", a kind of foreman responsible for hiring and supervising the workers, sides more with the ship-breaker than with the workers.

Export processing zones (EPZs): The government seeks to keep trade union activity in the country's EPZs to a minimum. Although the right to join trade unions and to bargain collectively exists in law, in reality entry to the zones is restricted to the workers, some of whom are transported in by their employers. Since trade unionists are not able to enter, organising is extremely difficult and union activity rare in the EPZs.

There are moves to exempt the zones from the application of labour laws. Some states, such as Andhra Pradesh, have even dissuaded labour departments from conducting inspections in the zones.

Workers fear victimisation by management and those who protest are immediately sacked. It is common for workers to be employed by fictitious contractors on temporary contracts rather than directly by the company.

Jamaica

Population: 2,780,000 / **Capital:** Kingston

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Trade union rights are recognised by law, but collective bargaining remains limited and the law allows the Minister of Labour the possibility of intervening to end a strike. Several union busting cases were reported during the year.

Trade union rights in law

Freedom of association: Under the 2006 Labour Relations and Industrial Disputes Act (LRIDA), workers have the right to create and join trade unions.

The law prohibits anti-union discrimination. Employees may not be fired solely for trade union membership.

Limitations on collective bargaining: The LRIDA also provides for the right to collective bargaining. However, collective bargaining is denied if no single union represents at least 40% of workers or when the union seeking recognition for collective bargaining does not obtain 50 % of the votes of the total number of workers.

Right to strike: The right to strike is not specifically protected in law, but neither is it explicitly prohibited except for workers in essential services.

The Ministry of Labour has the power to refer an industrial dispute to compulsory arbitration and to terminate any strike. As the ILO has commented, compulsory arbitration should be limited to essential services or situations of acute national crisis and the notion of "a strike which is likely to be gravely injurious to the national interest" can be interpreted very widely.

The law applies in export processing zones.

Trade union rights in practice and violations in 2008

Background: Despite having a rather stable political situation, Jamaica faces major economical and social problems. Human rights violations including by the police are regularly reported by human rights organisations. In 2008, the country started to face the consequences of the international financial crisis especially in the mining (bauxite) and the sugar cane sectors. Restructuring plans have been announced and some wage agreement negotiation suspended – all this leading to social unrest and strikes.

Few unions and de-recognition or dismantling of existing ones: It is estimated that 20% of workers belong to a union. In some companies where a union already exists, managers have been fighting to get the recognition withdrawn. In the private sector, employers tend to sack unionised workers before re-recruiting them with short-term contracts and lower benefits.

Anti-union practices are preventing the creation of unions in EPZs: It is common practice in companies in EPZs to threaten workers and create pro-employer "workers' councils", which interfere in the handling of complaints but are not allowed to engage in collective bargaining on working conditions or minimum wages. As a result, so far there are no unions at all in these zones.

Government intervention in labour disputes: Although the right to strike is not recognised in law, strikes were held during the year. However, those workers who go on strike risk being dismissed. The Ministry of Labour intervened directly in labour disputes at some workplaces, since the law supports it when intervening to end strikes.

Union busting: Several cases of union busting were denounced by trade unions during the year.

In April, 18 former employees of Solo Jamaica and their union, the National Workers Union (NWU), accused the company of union-busting and wrongful termination. Furthermore, the company attempted to bribe them not to join the union. Workers were also forced to sign a temporary contract although they had been without any for several years. The attempts of bribery started when the NWU submitted a claim to represent the workers' interests to the company. The company reported not to have received such a claim. According to the NWU, the layoff was illegal and the NWU was seeking reinstatement for the workers by the Ministry of Labour.

In 2008, two workers, Diego Bencosme and Deon Furtick, were fired from the Jamaica Plain store of Harvest Co-op Markets. According to them, though this is denied by the company, they were fired for supporting a current effort by the Industrial Workers of the World (IWW) to organise at Harvest. Both have filed complaints with the National Labor Relations Board.

Other union busting cases were reported at the Love FM radio and the beverage producers, RST Industries Limited.

Kenya

Population: 38,500,000 / **Capital:** Nairobi

ILO Core Conventions Ratified: 29 - 98 - 100 - 105 - 111 - 138 - 182

Despite some major reforms to the labour law, its application in practice has remained very inadequate. It should be noted that Kenya has still not ratified Convention 87. Employers interfered in trade union affairs. The right to strike was flouted.

Trade union rights in law

Freedom of association: The Constitution of Kenya provides the right of freedom of association to every person in Kenya and specifically recognises the freedom of association to form or belong to trade unions or other associations for the protection of the person's interests. The Labour Relations Act (No. 14 of 2007) excludes members of the prison service from its scope, which is considered to be a violation of the principles of freedom of association.

The Labour Relations Act sets out requirements for registration of trade unions, and if registration is denied, then written reasons must be given. The Registrar does not appear to have wide discretionary powers to refuse registration or to cancel or suspend registration of a union. Any application for registration must be signed by at least seven members. Any decision of the Registrar may be appealed in the Industrial Court.

Collective bargaining: The Labour Relations Act recognises collective bargaining. A union must be recognised as a bargaining agent if it represents a simple majority of those employees eligible to become union members; this provision extends to the public sector employers. Collective agreements must be submitted to the Industrial Court and become binding upon registration by the court. All labour laws, including the right to organise and bargain collectively, apply in the export processing zones (EPZs).

Bargaining rights still denied to teachers and others in non-essential services: Civil servants are allowed to bargain collectively and to go on strike, but this right is still denied to workers in the military, prisons, the National Youth Service and teachers under the Teachers' Service Commission. The Labour Relations Act provides that the Labour Minister may, after consultations with the National Labour Board, make regulations establishing machinery for determining terms and conditions of employment in the public sector, and these shall have the same effect as a registered collective agreement.

Restrictions on the right to strike: The law authorises the right to strike, but the criteria for a protected strike (or lock out) are stringent. The dispute must relate to terms and conditions of employment or union recognition, formal conciliation procedures must have been exhausted and seven days written notice must have been provided to the other party to the dispute and the minister of labour. The definition of "essential services" under the LRA is quite broad, as the reference is to any service the interruption of which would probably endanger the life of a person or the health of the population or any part of the population. In addition the Minister may after consultation with the National Labour Board declare any service as an essential service in order to prohibit the right to strike. The general prohibition on sympathy strikes imposed by the LRA is also contrary to ILO Convention 98.

Delays in finalising labour law review: Despite the enactment of the new LRA, there appears to be no further development concerning the promised reform of the Labour Code. A government task force was formed in 2006 to revise the Labour Code to ensure conformity with ILO core labour standards and the African Growth and Opportunity Act (AGOA).

The LRA contains no provisions relating to child labour, forced labour or discrimination and as such does not constitute a complete reform process in line with the mandate of the government task force.

Trade union rights in practice and violations in 2008

Background: Around 1,500 deaths and 350,000 displacements was the catastrophic toll of the post-electoral violence at the start of the year. In April, after some bitter negotiations, the two rival parties agreed to share power. Mwai Kibaki of the Democratic Party (a constituent party of the Party of National Unity) remained the President, whilst Raila Odinga of the Orange Democratic Movement became the new Prime Minister. The government consists of an equal share of members of the two parties.

Employers have tended increasingly to cut their permanent staff and instead use day workers or sub-contractors, thereby reducing workers' chances of representation by trade unions, since the latter are finding it harder to get the number of members needed for obtaining official recognition.

Interference in trade union activities and intimidation: Employers have been depicting unions as incompetent organisations and trying to convince their employees not to join up, claiming that they will get higher wages that way. Union leaders and members have been threatened with dismissal or actually sacked for participating in trade union activities. Trade unionists have frequently had problems obtaining meetings with their employers.

Tripartite body prevented from functioning: The government twice dissolved the Executive Board of the National Social Security Fund (NSSF), a tripartite structure in which the Central Organisation of Trade Unions (COTU) is involved. COTU denounced these unilateral decisions in breach of the NSSF Act, deploring the paralysis of a body that is vital to workers.

Obstructing the right to organise: Some unions complained that Labour Ministry officials hindered efforts to establish unions in factories where at least 80 percent of workers wanted union membership and representation. The unions alleged that the officials refused to approve applications by continually finding fault with minor technicalities in the applications.

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

Legal action against striking prison warders: The authorities decided to take nine prison warders to court as suspected ringleaders of a strike in April that affected almost all the country's prisons. It should be noted that prison warders are not allowed to form unions or to go on strike. This illegal strike did, however, lead the authorities to make a few improvements to the disgraceful working conditions of these workers.

Workers allowed to join unions in EPZs, but with restrictions: Workers in the export processing zones (EPZs) are allowed to join trade unions, but they still suffer appalling working conditions, and those who complain are threatened with the sack. Labour law does apply in the EPZs; however, there are many exemptions. According to the Tailors and Textile Workers Union (TTWU), most firms based in EPZs have refused to recognise trade unions and obstructed their efforts to organise workers. The country has 39 EPZs, but the number of people working in them, the majority of whom are women, has dropped sharply in recent years, from 50,000 in 2003 to 35,000 in 2008.

Lesotho

Population: 2,000,000 / **Capital:** Maseru

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Trade union freedoms remained a largely abstract notion in this small, isolated kingdom in Southern Africa.

Trade union rights in law

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

Public servants denied union rights: Currently, public employees, including university lecturers, are prohibited from forming and joining trade unions, in spite of the fact that the Lesotho Constitution guarantees freedom of association. They can only form or join "associations" that have consultative status. The government has promised that the new Public Service Bill will guarantee freedom of association to public officers and allow them to form associations for collective bargaining.

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

Right to strike: The right to strike is recognised, but complicated procedures must be followed before strike action is authorised. Civil servants are not allowed to strike, and all public sector industrial action is illegal by definition.

Trade union rights in practice and violations in 2008

Union centre COLETU excluded from collective bargaining: A top official of the Ministry of Labour prevented the Congress of Lesotho Trade Unions (COLETU) from taking part in the work of the commission in charge of setting wages, which is supposed to be a tripartite body.

Legislation not enforced: The government and some employers, particularly in the textile sector, do not observe trade union freedoms. In the private sector, the complex procedures and employers' anti-union attitude make it very difficult to operate a trade union. Foreign employers in the export processing zones (EPZs), mainly textile groups from South Africa, Hong Kong and Taiwan, ignore national legislation and pay wages below the statutory minimum. They are usually very anti-union, and collaborate with government to declare strikes "illegal". However, according to a report published in 2007 by the Centre for Research on Multinational Corporations, the pressure exerted on the big brands with suppliers in Lesotho by NGOs and trade union organisations like the Lesotho Clothing and Allied Workers Union (LECAWU) and the International Textile, Garment & Leather Workers' Federation (ITGLWF) were having a real impact. "Trade unions' access to the factories has improved, though the percentage of organised workers remains rather low and some companies still prevent all contacts".

No legal strikes: Because the strike procedure is complicated, there have not been any official strikes in the country for many years. There have been regular spontaneous protest actions over the years, however. As these are technically defined as illegal, workers continue to risk losing their jobs and being taken to court.

Labour Court cannot review civil servants rights' cases: The government has removed cases concerning civil servants' rights from the Labour Court, thus effectively taking away their rights to present their cases. This has prevented the affiliates of COLETU, the Lesotho Union of Public Employees (LUPE) and the Lesotho Teachers' Trade Union from assisting their members.

Malawi

Population: 14,300,000 / **Capital:** Lilongwe

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

The large informal economy and gaps in the labour law make it very hard to carry out trade union activities. In the tobacco industry, almost 300 workers were sacked for carrying out an "illegal" strike.

Trade union rights in law

Freedom of association - rights recognised in theory: Workers have the right to form and join trade unions. This includes civil servants, with the exception of army personnel and the police. Unions must register with the Ministry of Labour, although this is largely a formality.

The law prohibits anti-union discrimination and requires that workers sacked because of union activities must be reinstated.

Collective bargaining: Collective bargaining is recognised in law, provided the union represents at least 20 per cent of employees at enterprise level. At sectoral level, unions must represent at least 15 per cent of employees. In the absence of collective agreements, the law provides for industrial councils to set wages and conditions and resolve disputes.

Cumbersome strike procedures: Registered unions may strike. However, strike action can only be taken after all dispute settlement and conciliation procedures have been exhausted. The employer and the Ministry of Labour must be given at least seven days' notice after the lapse of the 21 days' notice and further to the declaration by Ministry of Labour conciliators that the dispute is unresolved. Workers in essential services have a limited right to strike. The law does not specifically prohibit retaliation against strikers.

Labour laws apply in the export processing zones (EPZs).

Trade union rights in practice and violations in 2008

Background: After being one of the last African countries to maintain diplomatic relations with Taiwan, Malawi decided to break them and establish relations with China instead. The "chequebook diplomacy" that has been criticised for several years by Taiwan is likely to bring an influx of capital to this agricultural country that is extremely dependent on its tobacco exports.

Employer resistance: Since barely 10 per cent of workers are in formal employment, the labour legislation automatically excludes the vast majority of workers in the informal economy. For the small minority in formal jobs, the resistance of some employers, and the government, towards respecting their rights, limits freedom of association and collective bargaining. This was the case in a local branch of Group 4 Securicor (G4S), which was cited in the previous Survey for its anti-union hostility. After the breakdown of negotiations in January and a threatened strike, the manager finally agreed to a 17% wage rise. The workers in the informal economy have organised themselves into a union and have since been affiliated to the Malawi Congress of Trade Unions (MCTU), but it took them over two years to get registered with the Ministry of Labour, as they claim the union had no negotiating partner. The MCTU has reported in recent years on a number of cases where workers are badly mistreated, and where employers appear unaware that workers have employment rights by law.

Right to strike opposed: Legal ambiguities in the application of the right to strike are making it very hard to exercise. For instance, the law does not specify exactly which services are essential, enabling the authorities to declare strikes illegal. The length of the procedure is also problematic. In August, for example, 297 workers belonging to the Tobacco Tenants and Allied Workers Union of Malawi (TOTAWUM) were sacked by the Limbe Leaf Tobacco company (which sells a lot of its production to the Philip Morris group) for allegedly failing to respect the normal procedure, thus rendering the strike illegal. The union then tried to meet the management. The workers were demanding a wage increase, better working conditions and, above all, proper equipment to protect them against toxic substances.

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

Malaysia

Population: 27,730,000 / **Capital:** Kuala Lumpur

ILO Core Conventions Ratified: 29 - 98 - 100 - 138 - 182 - (105 - denounced)

According to the Malaysian Trades Union Congress (MTUC), the Trade Unions Act (TUA), amended again in 2008, is designed to obstruct the creation and development of independent and strong unions. Migrant workers are prevented by law from organising or applying to register a trade union and suffer from harsh working conditions. Cases of union busting remain numerous.

Trade union rights in law

Government weakens union rights in core labour laws: The law recognises the right of most workers to form and join trade unions, but the 1959 Trade Unions Act (TUA) and the 1967 Industrial Relations Act (IRA) place extensive restrictions on freedom of association. The ILO Committee on Freedom of Association (CFA) has found that many provisions of the TUA violate the principles of freedom of association, and it noted in its 349th Report that recent amendments in the laws were done "without consideration" of the ILO's recommendations.

Other laws also place restrictions on freedom of association. For example, the Malaysian Penal Code requires police permission for public gatherings of more than five people.

Many restrictions on union formation, wide discretion in de-registering unions: The Director General of Trade Unions (DGTU) has the power to supervise and inspect trade unions, can refuse to register a trade union without giving any reason for the refusal and can withdraw registration. Unions that do not register, or whose registration has been denied or withdrawn, are considered illegal organisations. The DGTU is given very broad discretion in deciding these matters. The DGTU may also deregister a union if s/he finds that two or more registered trade unions exist in a "particular establishment, trade, occupation or industry". The DGTU has the authority to suspend a branch of a trade union if s/he "is satisfied" that the branch has contravened any part of the Act or the rules of the union.

The DGTU can specify the sector and category in which a union would be permitted to organise. The TUA limits trade union membership to workers in similar trades. General unions are prohibited. The government continues to bar the formation of national unions in the electronics industry and only allows the creation of in-house, enterprise-level electronics unions.

A particularly worrying development is that of the new amendments to the IRA, passed through Parliament by the government and which will allow the Director-General to delegate many of these expansive powers to local officials.

The Minister of Human Resources may also suspend a trade union for up to six months in the interests of national security or public.

Banned from organising: The law prohibits industrial unions from organising employees in managerial and executive positions.

A 2007 IRA amendment adds "executive" and "security" employees to the classifications of "managerial" and "confidential" staff who are not protected against anti-union discrimination, but then fails to define the parameters of "executive" and "security" service. This causes a real possibility of systematic abuse by

employers. The amended law also provides that the Director General and the Minister have absolute authority to determine designations of workers' status as "executive", "security", "managerial" and "confidential" staff. Their decisions cannot be appealed to any Court.

This definition is extensively abused by most employers to deny union membership rights and remove experienced union leaders, often by interpreting the managerial and executive category as including supervisors, assistant supervisors, section leaders and lower-level supervisory personnel.

Requirement of union to receive recognition from employer: The IRA provides that a trade union must apply for recognition from the employer, who then can recognise the union, deny recognition or appeal to the Director General for a ruling on whether the members of the union are members. This provision is systematically abused by employers to delay union recognition and thwart efforts by unions to organise and collectively bargain.

The new IRA has further weakened union protections by abandoning the previous practice of requiring officials to use the register of trade union members (which is required by law) to determine the legitimacy of challenges to employers' refusal to recognise a union. This provides for a secret ballot of workers to be undertaken, but the law completely fails to provide adequate safeguards against employer manipulation of the size of the bargaining unit (through addition of temporary or fixed-term contract workers) for the purposes of the election. The new IRA law also contains provisions that are biased towards recognition of enterprise-level unions as opposed to industrial unions.

Another amendment to the IRA in 2007 provides that if the trade union fails to report to the Minister within 14 days about the employer's refusal to recognise the union, the Minister shall deem the union's application for recognition withdrawn. Furthermore, the law now states that workers in a union that has its recognition withdrawn in this manner shall have no protection against dismissal.

Migrant workers: In early 2008, the government completed a process of amending the TUA 1959 and the IRA 1967 in a number of ways which were vehemently opposed by the Malaysian labour movement. One of the provisions that has relevance to migrant workers is a change in the method for determining the legitimacy of a union's challenge to an employers' refusal to recognise the union. The new IRA has further weakened union protections by abandoning the previous practice of requiring officials to use the register of trade union members (which is required by law) for determining the legitimacy of challenges to an employers' refusal to recognise a union. Now the law requires a secret ballot of workers to be conducted, in which the union must achieve a majority to win. However, the law fails to provide adequate safeguards against employer manipulation of the size of the bargaining unit (through addition of temporary or fixed-term contract workers, including those who are migrants) for the purposes of the election. Employer intimidation then is used to either prevent migrant workers from voting or ensuring they vote against the union – in either case contributing to the same goal of defeating the union's effort to prove its representative status to challenge the employer's refusal to recognise the union.

Under the TUA and the IRA, a migrant worker can join an existing labour union and participate in its activities. However, Article 28(a) of the TUA requires that any union officer must be a citizen of Malaysia, effectively disqualifying migrant workers from serving as leaders of a union. The Ministry of Home Affairs (MHA) also sets out a series of conditions connected to the issuance of work permits to migrant workers. One of these conditions is an absolute prohibition on migrant workers joining any sort of association.

Restrictions on the public sector: In the public sector, employees working for the defence sector, police force or prisons do not have the right to form or join trade unions.

Restrictions on the right to strike: The right to strike is not specifically recognised, and legislative restrictions make it practically impossible for workers to hold a legal strike. Trade unions are not allowed to go on strike for disputes relating to trade union registration or illegal sackings. General strikes and sympathy strikes are not permitted.

Penalties for executive committee members of a union who engage in an illegal strike include fines and imprisonment for up to one year. Rank and file workers who engage in an illegal strike are considered by the government to be automatically stripped of their union membership and cannot join another trade union in the future without the written approval of the DGTU.

Pre-strike authorisation procedures are cumbersome. Two thirds of the members of a trade union must vote in favour of a strike in a secret ballot, and the ballot must include a resolution that states "the nature of the acts to be carried out or to be avoided during the strike". The results of the ballot are passed to the DGTU for verification. Once all procedures have been complied with, a seven-day cooling-off period is imposed. During the cooling-off period, the Ministry of Human Resources' Industrial Relations Department can attempt conciliation and, if this fails, refer the dispute to the Industrial Court. While the dispute is before the Industrial Court, picketing, strikes and lockouts are prohibited.

Trade unions in "essential services" must give at least 21 days' notice before going on strike. Essential services are very broadly defined and include health care, education and transportation.

Prior approval needed for international affiliation: The TUA requires that trade unions seek prior permission from the DGTU before affiliating with any "consultative body...established outside of Malaysia". Consideration of that application is subject to whatever conditions the DGTU sees fit to impose.

Significant restrictions on collective bargaining: The IRA excludes hiring and firing, transfer and promotion, dismissal and reinstatement from the scope of collective bargaining. The latest amendment of the IRA has further restricted the scope of collective bargaining by setting out very narrow areas that can be proposed for bargaining. These topics include making provisions for training to enhance skills, for an annual review of the wage system and for a performance-related remuneration system.

The IRA also restricts collective bargaining in companies in "pioneer" industries, such as the electronics industry.

In the public sector, the joint council system limits public sector unions to a consultative role where their only power is to "express their point of view" on principles regarding wages and working conditions.

Setting caps on court-ordered remedies in the event of anti-union dismissals: The new IRA law sets firm instructions that judges must provide no more than 24 months of back pay from the date of dismissal in an anti-union firing case and requires that money that a sacked worker earns post-dismissal shall be deducted from the back pay awarded.

Industrial Court's discretionary power removed: According to the MTUC, the new amendments removed the discretionary powers of the Industrial Court, which had hitherto played a prominent role in the settling of labour disputes and promoting industrial harmony.

Trade union rights in practice and violations in 2008

Ban on general confederations: Owing to the ban on forming general confederations of trade unions, the MTUC, which covers both private and public sectors and has 500,000 members, is not recognised as a trade union confederation in law. Instead, the MTUC is registered under the Societies Act and therefore does not have the right to conclude collective bargaining agreements nor to undertake industrial action.

Union recognition arbitrary and extremely slow: Obtaining a response from an employer to a request for union recognition should take a maximum of 21 days. However, in reality this takes much longer if a dispute occurs, because the matter must be taken to the Director General of Industrial Relations (DGIR), the DGTU and then the Minister of Human Resources, who has the final say, unless that is challenged in the High Court. Some applications take as long as three to five years.

In a previous complaint to the ILO, the MTUC listed cases in which the DGTU had arbitrarily denied organisational and collective bargaining rights to more than 8,000 workers in manufacturing companies.

Longstanding complaints from the MTUC and its affiliates over the cumbersome process to obtain union recognition and collective bargaining remained unresolved despite the changes to the Industrial Relations Act. The amendments stipulated specific measures to resolve the unions' claim for recognition within a period of six months. Unfortunately, government authorities claimed that they could not enforce the amendments because of the absence of appropriate regulations. Ten months after the promulgation of the amendment bill, the Human Resources Ministry had not produced the implementing regulations.

Canon Opto's refusal to recognise in-house trade union: Japanese multinational Canon Opto refused to recognise the in-house union despite certification by the Ministry of Human Resources that the union represented more than 60% of the workforce. Canon has filed a challenge in the High Court. Until the matter is decided in court, which the MTUC says could take between five and ten years, the employer is not required to recognise the union and can refuse to commence collective bargaining. By the end of 2008 most members had stopped paying their union fees.

As of December 2008, there were 18 such cases dragging through the legal process.

Inefficient labour courts: So far, the government has failed to apply any sanctions against employers who have opposed its directives granting trade union recognition or who have refused to comply with industrial court orders to reinstate illegally dismissed workers. In some cases, companies have used tactics such as changing their name to thwart workers' legal efforts.

According to the MTUC, the new amendments facilitate union busting activities by multinational companies.

Prohibition on migrant workers forming or leading trade unions: The approximately 2.6 million migrant workers in Malaysia (25% of total workforce) are prevented by law from organising or applying to register a trade union and are barred from serving as officers of the trade union. The MTUC claims that companies intimidate migrant workers to prevent them from joining the union and then use the fact that they are not members to deny recognition to unions by claiming they have the support of less than 50% of the workforce. Notices placed on migrant work permits state that these workers are prohibited to join unions. The system for registering migrant workers discourages workers from asserting their rights because it grants total discretion to employers to terminate workers for virtually any reason.

In addition, the MTUC reports that migrant labour suppliers often withheld the workers' travel documents, which made it difficult for the workers to venture outside their workplaces. MTUC received many reports throughout the year that labour suppliers owed huge sums of money in unpaid wages and breach of contract terms. Reports state that many workers who managed to lodge a complaint at the labour department to seek redress were arrested and sent to a detention camp for overstaying or for not being in possession of a valid travel document.

Police intimidation: On 1 May, police prevented about 200 people in Pudu from gathering at Dataran Merdeka for the start of a Labour Day march.

Migrant workers: Employers have interpreted the IRA and TUA provisions regarding migrant workers to mean that migrant workers are forbidden to join unions. The MHA has declined repeated appeals by the MTUC to make a judgment on the employers' interpretation of this MHA policy. Employers have proceeded to write the restrictions on association into migrant worker contracts, and the MHA has taken no steps to prevent this. Furthermore, violation of the terms of the contract can be punished by dismissal, which in turn leads to revocation of the migrant's work permit and initiation of deportation proceedings. The threat of firing and deportation prompts great fear in migrant workers, who have become reluctant to join in workers' mutual support and assistance efforts.

Underpaid and imprisoned migrant workers: Thirty-nine Vietnamese and 19 Indonesian workers were locked in their dormitory and barred from work at the beginning of May. Despite management's threats and police intervention, they had for several days insisted on talking to the management about increasing their wages. On 10 June, the management asked the Vietnamese workers to sign a statement apologising to the firm and accepting its pay regime in order to return to work. Five accepted the terms. Three others, whose passports had been confiscated by management, fled to Kuala Lumpur and paid for travel documents in order to go home. Over 30 Vietnamese workers remained held in their dormitory.

Eight Indian workers who were legally employed in a factory in Shah Alam in Malaysia became illegal workers when they complained to the Industrial Court claiming they were underpaid. Their employer immediately cancelled their work permits and classified them as illegal workers.

Death at the workplace: On 6 November, hundreds of migrant workers at a factory in Merglembu went on strike to protest about the death of Dil Bahadur, 40, a fellow worker and Nepalese national. The workers claim that Dil Bahadur died because the management officials at the factory delayed sending him to hospital after he developed chest pain and breathing difficulties. The striking workers also complained of being underpaid, being prohibited from being able to return home at the end of their contract and having to pay for their board and lodging. On 28 May, five migrant workers, four Bangladeshis and one Burmese, died after being trapped in a fire at a furniture factory in Kampung Melayu Subang.

The MTUC estimates that 15 to 20% of the registered foreign workers in the country are being mistreated, and it noted that it receives hundreds of cases every month of migrant workers whose rights have been abused by employers and government authorities.

Domestic workers: no rights and an abundance of abuse: Many of the approximately 400,000 primarily Indonesian domestic workers in Malaysia experience withheld wages, forced confinement and excessively long working hours without days off; some face physical and sexual abuse. Domestic workers are excluded from key provisions of Malaysia's 1955 Employment Act, and their work permits tie them to a particular employer, making it difficult to report abuse for fear of deportation. Cases of severe physical abuse of migrant domestic workers continue to be reported. In September 2008 a Malaysian employer forced an Indonesian domestic worker to drink boiling water.

People's Volunteer Corps (RELA) institute reign of fear among migrant workers: The RELA, a volunteer corps of civilians serving as auxiliaries to the authorities and receiving a reward for each undocumented migrant worker they apprehend, was implicated in numerous grievous human rights abuses against migrant workers during the year. The MTUC proclaimed in 2007 that "law enforcement should always be done by professionally trained police and other law enforcement officers" and called for RELA to be abolished. However, the government was actively seeking a new law to formalise RELA as an organisation under the Ministry of Home Affairs.

Maldives

Population: 306,000 / **Capital:** Male

ILO Core Conventions Ratified: Not a member state

The adoption of a new constitution and the organisation of multi-party elections placed the Maldives on the path to democracy. The first legislation on employment was also adopted. Some workers are forming organisations to defend their rights.

Trade union rights in law

Freedom of association and right to strike recognised in new Constitution: The new constitution ratified in August 2008 includes a charter of fundamental rights and contains provisions on the separation of legislative and judicial powers. This new constitution guarantees, amongst other things, freedom of expression, freedom of association and the right to strike.

New Employment Act: For the first time in the country's history, an Employment Act was also adopted. It guarantees workers a series of rights including a minimum wage, maximum working hours and protection against unfair dismissal. When adopted in May, it initially excluded the tourism industry, which is one of the driving forces of the national economy. Following a strike threat by the Tourism Employees Association of Maldives (TEAM), the Parliament adopted an amendment in early October to include tourism under the scope of the Act. Police and armed forces members remain excluded, however.

Plan to join the ILO: The Maldives are intending to join the ILO. The government has already acceded to the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR). Article 8 of the ICESR explicitly commits governments to recognise the rights to form a trade union and to strike.

Trade union rights in practice and violations in 2008

Background: A former political prisoner, Mohamed 'Anni' Nasheed, was elected in the first multi-party presidential elections in October 2008. The election ousted the autocratic government of President Maumoon Abdul Gayoom, which had been in power for 30 years. Following the election the new President promised a smooth transition to democracy and more freedom.

Associations and some strikes, but still no unions: Some workers' organisations have been established, particularly in the tourism and education sectors, though these are associations rather than real unions. Some strikes also took place in the tourism industry and education. The teachers' strike held on 1 July by the "Association of Teacher's Link" was the first strike to have been recognised by the government.

Confrontation between the police and striking workers: On 28 November, the employees of a luxury hotel, the "Reethi Rah", went on strike to demand better working conditions, the application of the new Employment Act and the transfer of a member of the management. The following day, 13 workers were sacked. On 30 November, around 200 workers took part in a protest, during which the police briefly arrested a number of workers, some of whom told Reuters that they had been beaten. The Human Rights Commission confirmed, after an investigation, that the police had used truncheons and spray.

These events sparked off protests in some other luxury hotels in the Maldives. The dispute was ended after the intervention of the President's Office. The new government promised to establish an industrial tribunal and an industrial relations authority for enforcing the new Employment Act

Mauritius

Population: 1,300,000 / **Capital:** Port Louis

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Union activists are frequently harassed or even dismissed. Four trade unionists were sacked in 2008. In practice, workers in export processing zones and migrant workers have virtually no trade union rights.

Trade union rights in law

Freedom of association: The Constitution protects the right of workers to form and join trade unions. In 2008 the Parliament passed the Employment Relations Act (ERA), which replaces the Industrial Relations Act 1973. The law will come into force in 2009.

The new Act, which applies to workers of both the public and private sector, recognises the right to organise for prison staff and fire-fighters, abolishes the discretionary powers of the Registrar on the creation and activities of trade unions, and introduces provisions against acts of interference in trade union activities.

Collective Bargaining: The ERA introduces measures for the promotion of collective bargaining and establishes a system for the recognition of bargaining agents. It further recognises that federations or confederations may engage in negotiations at the sectoral level.

Strike restrictions: The right to strike is recognised under the ERA but certain discrepancies remain in relation with Convention No. 87. The requirements established for the strike ballot, as regards the voting system and the necessary quorum and majority, are too restrictive. The requirement to provide a minimum service in the event of a strike covers too many sectors (telephone, hotels, transport, etc.).

The ERA also provides for a complex conciliation and mediation procedure lasting two months in total between the failure of negotiations and the beginning of strike action. Even when a strike has been organised legally, the ERA empowers the Prime Minister to request the Supreme Court to prohibit it - if it entails that an industry or service is likely to be seriously affected, employment is threatened, or if the strike may result in a real danger to the life, health or personal safety of the whole or part of the population - and to refer the dispute for mandatory arbitration. The ERA still denies trade unions the possibility of organising strikes at the national level and those concerning general economic policy issues.

The unions have continued to press for two important changes in law: a constitutional guarantee of the right to strike and the repeal of the Public Order Act, which requires organisers of demonstrations involving more than 11 participants to give seven days' notice to the police and which, additionally, prohibits demonstrations during the sittings of the Parliamentary Assembly, thus seriously restricting the right to strike.

Trade union rights in practice and violations in 2008

Legal proceedings and harassment of union leaders: On 11 April, Toolsiraj Benyadin, President of the Civil Servants Federation, and Radakrishna Sadien, President of the Government Servants Association (GSA), were fined for contravening the Public Gathering Act (PGA) during a protest action that had actually been carried out in June 2006. This demonstration followed the announcement of the closure of the Police Mechanical Workshop. The gathering was considered unlawful under the PGA, which prohibits any public gatherings in

the capital, Port-Louis, on days when Parliament is in session. The two leaders appealed against this arbitrary decision. The Supreme Court's decision is expected in early 2009. The authorities often invoke the PGA to repress demonstrations. In a similar case (a demonstration following the closure of a semi-public enterprise in June 2006), five trade unionists, including the two above-mentioned leaders, had also had a court case filed against them. After having had their passports confiscated, they were subjected to bureaucratic harassment for several months when they needed to leave the country to attend international trade union meetings. However, on 2 August the court dropped all the charges relating to this second case "for humanitarian reasons".

Two union leaders sacked in the telecoms sector: On 28 August, Raj Rughoonuth, President of the Mauritius Telecom Employees Union and Indiren Carpenen, General Secretary of the Telecommunications Workers Union, were sacked by Mauritius Telecom "for passing on confidential information to the press". In fact, they had been calling for greater transparency in the company's operations. At the end of the year, the two trade unionists, who had received a show of support from the authorities, denounced the anti-union manoeuvres by the management, which was trying to link their reinstatement to signing some new confidentiality clauses forbidding them to criticise the company publicly in leaflets, the press or SMS messages. Neither of the two has ever had a disciplinary hearing, as the law requires, and both affirmed that they had refused some substantial offers of compensation from their employer, as a means, they said, of getting rid of trade union rights in the company.

Two trade unionists suspended at Air Mauritius: On 5 September, Moteelall Manic, President of the Air Mauritius Staff Association (AMSA) and Narvada Beenessreesingh, President of the Air Mauritius Cabin Crew Association (AMCCA) were suspended from their jobs by the management of Air Mauritius. Their employer claimed that they had made "defamatory" statements in an e-mail they had sent him, passing on criticism from members of the unions of his mismanagement of the crisis facing Air Mauritius. They were reinstated after been forced to send an apology letter, in which they did, however, call on their employer to start a real social dialogue with the unions. However, at the end of 2008 all four unions in the joint committee at Air Mauritius expressed anger at the management's refusal to meet them for over one year, despite the company's being on the verge of bankruptcy.

Export processing zones: Employers in the export processing zones remain hostile to the unions, which find it very difficult to approach the workers, given also that in most cases trade unionists are denied access to the industrial sites. As a result, union membership levels in the EPZs are below 12 per cent. The competent ILO bodies have consistently highlighted the need for greater protection against acts of interference by employers and employer organisations in the activities of trade unions and the need for rapid appeals procedures and sufficiently dissuasive sanctions in this regard. The Committee of Experts has also urged the government to take measures for the promotion of collective bargaining in all areas of economic activity. The Export Processing Zone Labour Welfare Fund (EPZLWF) received numerous complaints, but failed to follow them up. At the end of the third quarter of 2008, the EPZs included 413 companies and 64.648 workers, just over 18,000 of whom were migrants.

Migrant workers: Migrant workers are particularly vulnerable to trade union rights violations. When these workers go on strike, the coordinated response of the employers and the authorities is frequently to send them back to their country of origin on the grounds of "breach of contract" and "illegal strike". In August 2008, Bangladeshi workers at the textile factory Sonia Wear in Tyack were forced to go back to work, after a two-day strike, in order to avoid expulsion. Their employer had just announced that they would from now on be receiving piece rate pay. Fayzal Ally Beegun, President of the Textile Manufacturing and Allied Industries Workers Union (TMAIWU), one of the few organisations that manages to provide support to the migrant workers in the textile sector, criticised the fact that these workers' contracts did not mention their rights, or only in very sketchy terms, and that the "linguistic barrier" was an additional obstacle, as the unions and labour inspectorate had major problems explaining their rights and duties to them. In recent years, the union leader has repeatedly complained that in spite of the very poor working and living conditions endured by migrant workers, many of them are afraid to speak out for fear of losing their jobs and being deported. At the end of June, during a strike by 300 Chinese workers employed on construction sites, Mr. Beegun again

decried the lack of recourse available to migrant workers who are at the mercy, as in this case, of recruitment agencies that refuse to reimburse the money they paid in order to get their jobs.

Mozambique

Population: 21,800,000 / **Capital:** Maputo

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

The recent reform of the Labour Code, which finally allows public sector workers to join unions, still needs to be acted on. In the private sector, the right to collective bargaining continues to be widely flouted.

Trade union rights in law

New Labour Code: The Labour Code, which came into force in 2007, recognises the right of public servants and state officials in the public administration to organise. It covers the central institutions of the public administration, local state bodies and authorities, public institutions and other subordinate or dependent institutions. However it excludes firefighters, members of the judicial authorities and prison guards from the right to establish and join organisations.

Non-compliance with international labour standards: The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has observed that the draft Code in its Section 189 provided for compulsory arbitration in case of "essential services", the list of which includes postal services, the petroleum sector, meteorological services, and loading and unloading of cattle and perishable goods, which the ILO does not regard as essential. The provisions in the code concerning the right to strike also need to be amended and brought in line with ILO standards, removing the time limit on strikes and ensuring that responsibility for declaring a strike illegal lies with an independent authority. Furthermore, the CEACR has noted that although the draft Code prohibits acts of anti-union discrimination and acts of interference, it did not provide sufficiently dissuasive sanctions. The CEACR also requested that the draft law allow public servants who are not engaged in the administration of the State to bargain collectively.

Trade union rights in practice and violations in 2008

Background: Despite the strong economic growth in recent years, coupled with macro-economic and political stability, all of which have been welcomed by the IFIs, the country remains one of the poorest in the world. Income disparities increased amongst a population that was again hit by natural disasters (flooding of the Zambezi in January 2008), irregular harvests, malaria and HIV-AIDS.

Employers block union activity: The Organizaçao dos trabalhadores moçambicanos–Central sindical (OTM-CS) has, in recent years, reported frequent trade union rights' violations by employers who try to stop the unions from protecting their workers, and do not comply with collective agreements or with state legislation to protect them from being sacked. Union officials are threatened with dismissal, and union members have been dismissed under false pretences. Employers also carry out misinformation campaigns about unions and prevent organisers from entering premises to carry out recruitment campaigns. The OTM-CS has also reported cases where receiving a job depended on the person not being a member of a union, particularly for the youngest applicants. Laws preventing public meetings without written permission hinder trade unions' ability to operate freely.

Unionists discriminated against in export processing zones: Unionists face discrimination and unfair dismissal, and workers have been dismissed for going on strike. Collective agreements are not respected, nor is the principle of equal pay for equal work.

Collective bargaining rights flouted: A recent report by the Ministry of Labour on inspections showed that of the 522 companies visited just 16 had signed a collective agreement with their employees.

Namibia

Population: 2,200,000 / **Capital:** Windhoek

ILO Core Conventions Ratified: 29 - 87 - 98 - 105 - 111 - 138 - 182

The Labour Act of 2007 no longer allows prison staff to join trade unions, which was a great upset for the unions in that sector and their members. Managers in the mining industry showed anti-union hostility through sacking strikers and their reluctance to sign agreements with unions. The closure and departure of the textile company Ramatex confirmed the lack of respect of the rights of workers and their organisations in the EPZs.

Trade union rights in law

Freedom of Association: The Constitution protects the right of workers to form and join trade unions. The new Labour Act 2007, which came into force in 2008, provides for the right of freedom of association to every person, with the exclusion of the military, the police and prison staff. According to ILO principles, prison staff should be allowed to exercise this right.

The Act also guarantees trade unions the right to form federations and affiliate with international organisations and sets out detailed requirements for registration of trade unions. The Labour Commissioner may cancel the registration if trade unions fail to comply with its obligations under the law. Any decision of the Labour Commissioner may be appealed to the Labour Court.

Collective bargaining: The Labour Act 2007 recognises the right to collective bargaining. A registered trade union that represents the majority of the employees in a bargaining unit is entitled to recognition as the exclusive bargaining agent. According to the ILO, it is not clear if the minority unions in the bargaining unit enjoy collective bargaining rights, at least on behalf of their members, where no union represents the majority.

Collective agreements may also be extended to employees and employers who are not affiliated to the parties to the agreement, subject to the approval of the Minister of Labour.

Restrictions on the right to strike: Strike action can only be used in disputes involving specific workers' interests, such as pay rises, subject to conciliation and a 48 hour notice period. Disputes over workers' rights, including dismissals, must be referred to the Labour Court for arbitration. Current arbitration and dispute solving mechanisms are cumbersome, leading to a long backlog of cases.

Essential services are established by the Minister of Labour, upon recommendations of the Labour Advisory Council. It remains unclear if parties directly affected may appeal the Minister's decision.

Trade union rights in practice and violations in 2008

Background: The Minister of Labour denounced the persisting "master-slave" relations between employers and employees. He stressed the need to do everything possible to ensure that the new Labour Act, which came into force at the end of 2008, is known by all parties. One of the real improvements is the ban on recruitment agencies. On 1 December the unions were relieved by a court ruling rejecting an appeal by Africa Personnel Services.

Employer hostility: Employers are generally very hostile towards the unions, refusing to recognise them or let them carry out their activities in workplaces, or to engage in collective bargaining with them. This

tendency is particularly prevalent in the export processing zones. The categories most vulnerable to trade union rights' violations are farm and domestic workers. The use of subcontracting makes things harder for the unions. In September, the local authority of Windhoek refuted the arguments of cleaning staff representatives who were complaining about the deterioration of their working conditions and their reduced wages, after the town had decided, in 2006, to put 16 subcontractors in charge of cleaning services.

Discrimination against independent unions: Trade unions not affiliated with the ruling SWAPO (South West Africa People's Organisation) party have continued to be marginalised. Only representatives of the National Union of Namibian Workers (NUNW) were serving as members of the Board of Directors of the Social Security Commission and the Government Institution Pension Fund. The Trade Union Congress of Namibia (TUCNA) was the main butt of that discrimination, together with the Namibian Nurses' Union (NANU) which, despite being the most representative organisation in the health sector, has still not been recognised by the authorities as the union they should negotiate with. In past years the government repeatedly tried to intimidate the nurses belonging to that union and its General Secretary, Abner Shopati, received death threats. At the end of 2008, NANU was awaiting a ruling that would put an end to this injustice.

Ramatex, the EPZs and the union – a test case: On 6 March, the abrupt closure of Ramatex left its 3,000 employees redundant and forced the Namibian Food and Allied Workers' Union (NAFAU) to fight hard to get decent severance pay for the workers, mostly women. In addition to the disastrous economic impact (loss of jobs and wasted public investment), it became clear over the following months that Ramatex had also caused environmental damage (pollution of the site) and damage to people's health, since dozens of workers are now suffering from serious illnesses linked to the very mediocre hygiene and safety conditions in the group's factories. Since its arrival in Namibia in 2002, Ramatex had taken full advantage of its location in an EPZ, whilst neglecting the unions' concerns and showing hostility towards them. Ramatex's strategy reportedly consisted of dividing its employees based on their nationalities and giving them different levels of wages and benefits. Namibian workers had not supported their Asian colleagues and vice versa. Any protest action by the migrant workers had generally resulted in their expulsion. Paradoxically, the departure of Ramatex prompted the Namibian authorities to review the framework for investment and make the country even more attractive to foreign investors. Despite the many incentives, the authorities' ambitious objective of creating 25,000 jobs via the EPZs has never been met.

Over 250 strikers sacked in the diamond industry: On 8 July, the management of LDD Diamond and Polishing Company sacked 153 of its employees who had been holding an illegal strike since 19 June and were camping a few metres outside the company site. The strikers, supported by the Mineworkers' Union (MUN), were protesting against the management's hostile attitude and the unfair treatment they had been suffering. Around 100 workers who joined in the protest were also dismissed over the next few days. Following the intervention of the National Union of Namibian Workers (NUNW), the sacked workers were re-recruited, though on condition that they serve a new three-month trial period.

Mining group Skorpion reluctantly signs a collective agreement: On 29 May, in Rosh Pinah, the Mineworkers' Union of Namibia (MUN) and the Ministry of Labour managed to avoid last-minute manoeuvring by the management of the Skorpion Zinc group and reached an agreement on working hours and pay. The mining company wanted to move to continuous shift operations, with daily work shifts of 12 hours seven days a week – an exemption to the Labour Code accepted by the union and the Labour Ministry – but with no financial compensation, which the MUN rejected. A strike had started on 8 May and the management had initially agreed to the union's demands but then changed its mind and started a lockout to put pressure on the union to give up its demand for payment of overtime. In the end the three parties agreed that the matter should be resolved in court. The collective agreement, which is valid for one year, provides for a 12% increase in wages. There was also some violence on 29 May, with a security guard from G4S arrested for firing rubber bullets at the demonstrators.

Prison warders' unions now banned: In November the Public Service Union of Namibia (PSUN), which organises some 600 to 800 prison warders announced that it would be filing a complaint against the government concerning the amendment to the labour law, which now bans unions from representing prison

staff. Victor Kazonyati, the PSUN General Secretary, explained that as a sign of disobedience, the members had refused to ask their unions to stop deducting their fees. Many workers were worried that they would no longer be able to express their demands freely via the unions.

Nigeria

Population: 151,500,000 / **Capital:** Abuja

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

With one trade union leader assassinated and hundreds of activists and members threatened or dismissed, exercising trade union rights proved a formidable task throughout the year. Nigerian legislation is not in line with Conventions 87 and 98, particularly in the EPZs.

Trade union rights in law

Freedom of association: The Constitution recognises the right of workers to join or form trade unions but, despite the repeal of some of the anti-labour decrees from the military era, restrictions still remain. At least 50 workers are needed to form a trade union.

There was no progress regarding the government's commitment to the ILO in 2006 to prepare – with with the ILO's assistance – a new draft Bill on Collective Labour Relations in conformity with C.87 and C.98.

New National Industrial Court: In June 2006 the National Industrial Court Act was passed. The new Act gives the National Industrial Court (NIC) exclusive jurisdiction to determine all civil cases relating to industrial disputes and labour matters, making it a superior specialised court. The new NIC would mean that labour matters would no longer be subject to the congestion of the nation's regular courts and thus go a long way towards speeding up trials on labour matters.

Trade Union Amendment Act 2005: The Trade Union Amendment Act was passed in March 2005. It retains the Nigeria Labour Congress (NLC) as a central labour union but gives other trade unions the freedom to federate and form umbrella unions, and makes union membership voluntary.

Previously, freedom of choice was restricted by the stipulation in the Trade Unions Act that no trade union could be registered to represent employees where a trade union already existed.

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

Protection against anti-union discrimination: Only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer.

Collective bargaining rights restricted: In the private sector, collective bargaining rights are restricted by the requirement for government approval. Every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Councils Act. It is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister (according to the Trade Disputes Act) – which is contrary to the principle of free collective bargaining.

Right to strike undermined: The 2005 Act sets out strict conditions that trade unions and labour federations must meet before they can embark on a strike. The law specifically prohibits trade unions or registered federations of trade unions from compelling anyone to strike, and stipulates that during strikes unions must

not block airports nor obstruct public highways, institutions or premises of any kind. Workers taking strike action which is deemed to be illegal are liable to both a fine and being imprisoned for up to six months. These provisions make it extremely difficult to carry out a normal strike picket.

In addition, the Act prohibits and criminalises strikes that are deemed to be about conflicts of interest or any strikes about economic issues, including strike action to protest against the government's social or economic policy.

The 2005 Act also includes a strike ban in the essential service sectors, which relies on the definition of essential services provided in the Trades Disputes Act (1990). This definition has been criticised by the ILO Committee of Experts as 'overly broad' and includes services for or in connection with banking services, postal services, sound broadcasting, ports, harbours, docks or aerodromes, transportation services, road cleaning and rubbish disposal.

Unions must also give 15 days notice for a planned strike. The Trade Disputes Act further limits the right to strike by imposing compulsory arbitration, with a penalty, a fine or six months' imprisonment for anyone failing to comply with the award issued by the National Industrial Court.

Export processing zones (EPZs) – anti-union decree: Article 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions, but rather by the authorities managing these zones. Article 13(1) of the same Decree makes it very difficult for workers to form or join trade unions, as it is almost impossible for worker representatives to gain free access to the EPZs. Moreover, the Export Processing Zones Act prohibits strikes and lockouts for a period of 10 years after a company begins its activities in a given EPZ.

Trade union rights in practice and violations in 2008

Background: The country's economic development and the improvements in the population's living conditions are being undermined by endemic bad governance, ethnic and religious rivalries – over 200 died in the violence between Christians and Muslims in the town of Jos – and the country's heavy dependence on oil revenue. In August, after a prolonged border dispute, Nigeria ceded control of the Bakassi peninsula to Cameroon.

Widespread refusal to engage with unions: Unions across the sectors complained of refusals to recognise labour organisations and to negotiate with them, interference by employers and/or the government in union affairs, and the use of threats and intimidation against workers' representatives. The Nigerian Union of Journalists (NUJ) criticised the negative attitude of employers in the press towards the trade unions, making organising difficult. Similarly, in the banking sector the Association of Senior Staff of Banks and Financial Institutions (ASSBIFI) complained of freedom of association violations in several of the banking companies recently created in the country. ASSBIFI reported that in 11 of these companies, workers suspected of wanting to create or join a trade union were threatened with dismissal. In an insurance company (Lasaco Assurance Plc.), Olusola Fasanmi, President of the union affiliated to ASSBIFI, was suspended on 15 October for alleged embezzlement. Following an internal inquiry, the union leader was totally exonerated, but he had to wait until 30 December before his employer allowed him to return to work. The unions also criticised the increasingly systematic use of subcontracting firms and casual labour, making it all the more difficult to organise the workforce.

Little respect for the right to strike: While the government and some employers may agree to collective bargaining, they generally fail to honour the agreements made, leading to many strikes. Police permission is required prior to a strike, but is rarely given. The use of security forces to intimidate, harass and arrest strikers, often accompanied by the use of violence against trade unionists prior to or during strikes or protests, seriously undermines the right to strike.

Death of a transport union leader: On 6 January, Alhaji Saula Saka, President of the Lagos State branch of the National Union of Road Transport Workers (NURTW), was murdered in his home by four armed men. The killers fired several shots at the union leader before shooting in all directions to prevent anyone intervening. The killing was believed to be linked to Alhaji Saula Saka's trade union activities.

Forty-nine lecturers dismissed in 2001 still not reinstated: Throughout the year the Academic Staff Union Universities (ASUU) continued to demand the reinstatement of colleagues from the Ilorin university. Strikes were carried out in support of these demands. In 2007, the government promised to recall the 49 Ilorin University lecturers, unfairly dismissed following a strike in 2001. The courts ruled in favour of the ASUU, but thus far to no avail. In the meantime, three of the dismissed lecturers have died and, says the ASUU, the others are "living in abject poverty".

Trade union leader dismissed from Lagos airport: At the end of June, management at Airlines Services Limited (ASL), a company providing catering services for several local and international airlines, dismissed James Ogu, the vice-president of the ASL union, affiliated to the National Union of Hotel and Personnel Services Workers (NUHPSW), over food portions. According to the NUHPSW, the dismissal was in retaliation for union complaints that led to the dismissal of an expatriate employee.

Anti-unionism at Mobil Oil: At the beginning of March, Mobil Oil, a subsidiary of ExxonMobil, dismissed 100 leaders and members of the Petroleum and Natural Gas Senior Staff Association of Nigeria). The decision came a few days after management at Mobil Oil refused to take part in a national tripartite mediation meeting that three other companies had been invited to, and had participated in. At the beginning of the year PENGASSAN had criticised the lack of progress in implementing agreements – albeit fairly limited in scope – signed with these companies in 2007. According to PENGASSAN, Mobil Oil has emerged in the last few years as the worst oil company operating in the Niger Delta in terms of respecting workers' and trade union rights. At the end of March, PENGASSAN cancelled a planned strike after Mobil Oil agreed to reinstate the 100 dismissed workers. At a more general level, PENGASSAN and the National Union of Petroleum and Natural Gas Workers (NUPENG) have repeatedly complained of the hostility the oil companies have shown towards the unions, particularly in restructuring operations, when union activists have often been the first victims of mass dismissals.

Pakistan

Population: 163,900,000 / **Capital:** Islamabad

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Although the new Industrial Relations Act adopted in 2008 does represent progress, it remains partially at odds with international standards. Restrictions on freedom of association remain in many sectors. Legal barriers prevent the effective exercise of the right to strike.

Trade union rights in law

Freedom of association: The Constitution of Pakistan states that "Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law". In this regard, a new Industrial Relations Act was adopted in 2008 repealing the Industrial Relations Ordinance (IRO) 2002. It is an interim law that will lapse on 30 April 2010. While some of the provisions of this law are progressive in relation to previous legislation, others run counter to ILO Conventions 87 and 98.

Many sectors are still excluded from the right to organise, including services connected with the armed forces; persons employed by the State administration other than those employed by the railways and the post; the security staff of Pakistan International Airlines; employees of the Pakistan Security Printing Corporation or the Security Papers Limited; employees of the public administration in charge of treatment or care of sick persons; and members of the security or fire service of an oil refinery or an establishment engaged in the production or distribution of gas. Supervisory and managerial personnel are also excluded as well as agricultural workers, workers employed in the Karachi Electric Supply Company (KESC) and workers in export processing zones. According to the Civil Servants Act, 1973, civil servants are allowed to establish associations but not to form or join trade unions.

According to the new law, the Registrar of Trade Unions can no longer cancel a union's registration. However, the Registrar retains wide powers to inspect the accounts and records of the registered trade unions.

Collective bargaining: Unions generally have the right to bargain collectively, with the notable exceptions of civil servants, workers in export processing zones and the other categories of workers excluded from the right to organise. Employees of the State administration, government services, state enterprises such as oil and gas production, electricity generation and transmission, and the state-owned airline and ports – all of which are covered by the 1952 Essential Services Maintenance Act (ESMA) – are not allowed to bargain collectively.

Workers may elect their representatives to act as collective bargaining agents. When there is only one trade union in an establishment or group of establishments, the union can be recognised as a collective bargaining agent if it affiliates no fewer than one-third of the total number of workers employed. Where there is more than one trade union, workers may elect, by secret ballot, a registered trade union to act as their collective bargaining agent.

Right to strike: Legal obstacles to the right to strike remain in the new Act. It takes at least one month before a strike can be legally declared, and the federal government has wide powers to prohibit a strike if it lasts for more than thirty days causing "serious hardship to the community" or is "prejudicial to the national interest". In the case of public utility services, strikes may be prohibited at any time before or after the commencement of the strike.

The new Act (as the previous one) does not provide any clarity regarding the right to strike in response to problems raised by major social and economic policy trends and as to whether workers may conduct sympathy strikes without penalty. Workers in export processing zones are deprived of the right to strike as are workers covered by the ESMA. A one-year prison term is foreseen for anyone who contravenes the ban established by this law.

Based on the Anti-Terrorist Ordinance 1999, illegal strikes, go-slow actions and picketing are still considered as forms of "civil commotion", which carry a penalty of imprisonment for terms ranging from seven years to life, as well as fines. Moreover, section 144 of the Code of Criminal Procedure makes any gathering of more than four people subject to police authorisation. Hence, it can easily be used against any trade union gathering.

Trade union rights in practice and violations in 2008

Background: The February elections brought the return of a civilian government after General Musharraf's nine years in power. The protection of civil rights and policies has improved since then, but still falls far short of the standards of a democracy. Poverty has continued to rise, as has insecurity. The population has also been suffering fallout from the war in Afghanistan. Bomb attacks and armed combat caused at least 843 civilian deaths in 2008.

Employers circumvent legislation: Employers sometimes artificially promote workers to managerial status, usually without the concomitant salary increase, so that they no longer qualify for union membership. Employers often strongly resist the unionisation of their employees, with management resorting to intimidation, dismissal and blacklisting. Moreover, if an employer is opposed to the formation of a union, the procedures for union registration and the appeals process can take many years.

Strikes: The rare strikes that do occur are, given the complications attached to organising a strike, usually illegal and short. They are often broken up by police and used by employers to justify dismissals. On 30 July, for instance, union leaders and activists were meeting in front of the Naveena textile factory to insist that the management pay the minimum wage and respect international labour standards. Witnesses reported that the police attacked the peaceful demonstrators with truncheons and tear gas to disperse them. They also arrested and briefly detained six workers, including union leaders, whilst 300 workers were locked out.

Weak labour law enforcement by state governments: The Factories Act of 1934 provides for inspection of enterprises, but this authority has been increasingly assumed by state governments. Unionists report that the net result has been that labour inspections are hardly ever performed, and the employers are therefore able to violate key provisions of the law on wages and conditions of work with impunity. In October, the Punjab Minister for Labour and Human Resources had assured industrialists that visits of the labour department to industries had been banned, but that if they were required, they would be conducted jointly with employers' representatives.

Anti-union discrimination in banks: In recent years, hundreds of trade union leaders have been dismissed under the terms of the Banking Companies (Amendment) Act, 1997. The United Bank Employees' Federation believes this is an attempt to undermine its very existence. In 2008, the Pakistan Workers' Federation, an ITUC affiliate, reported some reprisals against trade unionists by the National Bank of Pakistan.

Unilever steps up its anti-union action by using short-term employment contracts: Unilever systematically employs temporary workers, who are not allowed to join the company's union and receive lower wages and benefits than permanent staff. According to the IUF, just 371 of the 8,000 people making Unilever products in Pakistan are employed directly by Unilever.

On 31 August, Unilever shut its Lipton Tea factory in Karachi and transferred the entire production to another site, where all the staff are employed on a temporary basis by subcontractors.

In addition, the attacks by the Unilever management on trade unions and union rights at its Rahim Yar Khan factory have intensified since the IUF's complaint to the OECD in 2007, in which it accused the company of violation of the OECD Guidelines for Multinational Companies. The complaint followed the dismissal of 287 of the 292 temporary employees at the factory after the union's announcement that it would be allowing temporary workers to join it and would help them obtain permanent employee status.

Dalda Foods, a subsidiary of Unilever Pakistan, opposed the registration of a union consisting of 430 workers that was duly registered with the competent authorities on 13 May. According to Dalda Foods, the workers had not been recruited by Dalda but by employment agencies. The company went on to sack 266 workers, including trade unionists, despite a court order barring it from doing so.

Pearl Continental Hotel refuses any dialogue with the unions: The workers of the Pearl Continental Hotel in Karachi have been fighting for over seven years for recognition of their rights to freedom of association and collective bargaining. The management has consistently refused to recognise the union formed in this hotel, which is a member of the "Pakistan Hotel, Restaurant, Clubs, Tourism, Catering and Allied Workers' Federation", an affiliate of the IUF. Many members and leaders of the union have been sacked, threatened, harassed and imprisoned. On 29 July, sacked union leaders and other dismissed workers were assaulted by the police when holding a peaceful protest in front of the hotel. They were arrested and then released thanks to pressure from the union members and supporters.

Mass dismissal of trade unionists in a construction company: PUT Sarajevo General Engineering Company, a construction company, sacked all the leaders and 32 other members of the Awami Labour Union (ALU) on 24 July, after the union had put forward a series of demands regarding the application of legislation. The company also brought in the police to deal with the protesting workers. Some of the protestors were arrested and subsequently released, following the intervention of the Punjab Minister for Labour and Human Resources. The General Secretary of the Pakistan Federation of Building and Woodworkers, to which ALU is affiliated, was threatened with physical violence by the company management.

Singapore

Population: 4,840,000 / **Capital:** Singapore

ILO Core Conventions Ratified: 29 - 98 - 100 - 138 - 182 - (105 - denounced)

A number of restrictions continue to exist in the labour law, but in many cases, discretion is provided for the Minister of Manpower to make exemptions. Foreign workers, who comprise a significant proportion of the workforce, continue to be legally barred from serving as officers, trustees, or staff of trade unions. Union members do not have the power to accept or reject collective agreements negotiated between their representatives and the employer. The vast majority of unionised workers are members of a union affiliated to the National Trade Union Congress (NTUC). There were no strikes during the year.

Trade union rights in law

Private sector – limitations exist on the right to organise: The Constitution gives workers the right to join trade unions in the private sector, with any group of seven or more prospective members able to form a union. However, Parliament may impose restrictions on the formation of a union on the grounds of security, public order or morality.

Formation is also subject to the approval of the Registrar of Trade Unions, who has wide-ranging powers to refuse or cancel registration, particularly where a union already exists for workers in a particular occupation or industry. Trade unions must also submit new rules, or alterations to their existing rules, to the Registrar for approval within seven days of the rule change. The Registrar has the right to refuse the rule change if in the Registrar's discretion the rule change is either unlawful or "oppressive or unreasonable".

Public sector – restrictions still on the books: The Trade Unions Act still prohibits government employees from joining trade unions, although the law gives the power to the President of Singapore to make exceptions from this provision. The Amalgamated Union of Public Employees (AUPE) was granted such an exemption, and its scope of representation has expanded over the years to cover all public sector employees except the most senior civil servants. In addition to AUPE, 15 other public sector unions, including public employees paid on a daily rate, are exempted. Uniformed personnel involved in maintaining security and public order are the main group of government employees who are not allowed to join unions.

Government interference in internal trade union affairs: Despite the fact that Singapore has an increasingly multinational work force, the Trade Unions Act bars any person "who is not a citizen of Singapore" from serving as a national or branch officer of a trade union unless prior written approval is received from the Minister. The Act also stipulates that a foreign national cannot be hired as an employee of a trade union without prior written agreement from the Minister. Similarly, a foreign national is forbidden to serve as a trustee of a trade union without the Minister's written permission.

Trade union members who are under 21 years of age also need prior written approval from the Minister to serve as a trustee or executive of a trade union.

Persons with prior criminal convictions may not hold office or become employees of a union without prior approval of the Minister.

The Act limits what unions can spend their funds on and prohibits payments to political parties or the use of funds for political purposes.

Collective bargaining rights restricted: Under an amendment to the Trade Unions Act adopted in 2004, union members no longer have the power to accept or reject collective agreements negotiated between their union representatives and the employer. The change in the law was in direct response to a dispute involving the Airline Pilots Association – Singapore (ALPA-S), described in detail in the 2005 Survey.

Restrictions on the right to strike: To call a strike, 50% plus one of all the trade union's members must vote in favour. Workers in "essential services" are required to give 14 days notice to an employer before taking strike action, although strikes are prohibited in some essential services such as water, gas and electricity. There is no specific legislation that prohibits retaliation against strikers.

Collective bargaining – courts can reject agreements: Collective agreements between labour and management are renewed every two to three years, although wage increases are generally negotiated annually. Guidelines for negotiations are recommended by the National Wages Council, which includes labour, industry and state representatives. Collective agreements must be certified by the tripartite Industrial Arbitration Court (IAC) before they come into effect. The IAC can refuse certification on the grounds of public interest, although in practice it has never refused to certify a collective agreement for this reason. A certified agreement is legally binding to both the employers and the union. Transfers and layoffs are excluded from the scope of collective bargaining, although unions have the right to ask for the reasons behind the retrenchment and to negotiate compensation for workers in such cases.

Disputes can be settled by means negotiations through the Ministry of Manpower using the procedures laid down by the Industrial Relations Act. If conciliation fails, the parties may submit their case to the IAC. In limited situations, the law provides for a system of recourse to compulsory arbitration, which can put an end to collective bargaining at the request of only one of the parties. The last time it was invoked was in 2004 when the Minister compulsorily referred a dispute between the Singapore Industrial and Service Employees Union (SISEU) and a textile company to the IAC over the management's delay in concluding a collective agreement.

Trade union rights in practice and violations in 2008

With the exception of six unions, the rest of the country's 62 unions are affiliated with the National Trades Union Congress (NTUC), which is closely linked to the ruling People's Action Party (PAP). The NTUC Secretary General currently serves on the PAP Central Executive Committee. The NTUC secretary general also holds a seat in the Cabinet as a minister in the Prime Minister's Office. The NTUC-PAP relationship, which dates back to founding of the NTUC in 1961, is described as "symbiotic" and was formally endorsed in 1980 at the NTUC Ordinary Delegates Conference. It was publicly reaffirmed in December 2004. Currently, there are 15 PAP MPs with direct or former ties to the NTUC while another 4 PAP MPs serve as appointed NTUC advisors.

Restrictions not applied: Practice suggests that many of the laws are outdated, as in reality many of the potential restrictions on trade union rights are not applied. The unions have called for these outdated restrictions to be removed from the country's legislation.

Strikes: The government's tight rein on industrial action, and the tradition of non-confrontational industrial relations, has meant that there have been only two officially recorded days of strike action since 1978. However, strike actions have occasionally occurred. There were no strikes in 2008.

Migrant Workers: Restrictions on migrant workers' rights to serve as an officer, trustee or staff member of a union (without prior written approval by the Minister) affect a significant percentage of the country's workforce. According to the government's Ministry of Manpower, at the end of 2007 the total work force in Singapore was 2,730,000 with 900,800 (33%) noted as foreign workers.

Foreign domestic workers have little opportunity to organise to defend their rights or demand improvements in their conditions of work. Labour laws exclude approximately 180,000 migrant domestic workers from key

protections guaranteed to other workers, such as a weekly day off, limits on working hours, annual leave, paid holidays, and caps on salary deductions.

South Africa

Population: 48,600,000 / **Capital:** Pretoria

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Five hundred workers at the Nelspruit football stadium were sacked and then rehired. Subcontracting, temporary labour and other forms of precarious employment are increasingly serving as ways for employers to violate trade union rights.

Trade union rights in law

Freedom of association: The law provides for freedom of association. All workers, with the exception of members of the National Intelligence Agency (NTA) and the Secret Service, are allowed to join unions and are protected against unfair dismissal. Employers can, however, lay off workers on the grounds of "operational requirements".

Collective bargaining: The law provides for collective bargaining rights and organisational rights, such as trade union access to work sites and the deduction of trade union dues. The law contains provisions to encourage collective bargaining in small businesses, and among home workers and workers in the informal economy. Unions can seek redress in the courts for unfair dismissal.

Right to strike: The right to strike is recognised for all workers including those in the public sector, provided they do not work in essential services or the security forces. This right is undermined by the legal right of employers to hire replacement workers during a strike.

Trade union rights in practice and violations in 2008

Background: With soaring food and transport prices, living conditions of ordinary people have worsened further. Companies are increasingly using temporary labour or other forms of precarious employment. In May, a wave of violence aimed at foreigners was unleashed in the townships with dozens of deaths. In September the government appointed Kgalema Motlanthe as the country's new president following Thabo Mbeki's resignation.

Anti-union pressure: In January the Building and Wood Workers' International was informed that an affiliate, the Building Construction and Allied Workers Union (BCAWU), was the butt of anti-union attacks from the new local management of the Johnson Tiles group. According to the BCAWU, management never consults with its militants, members are pressured to resign from the union and workers' committees have been formed.

Five hundred strikers dismissed: At Nelspruit, nearly 500 workers were dismissed by the Mbombela Stadium Joint Venture consisting of France's Bouygues Group and the South African construction company Basil Read. Workers had been on strike since February for better pay. The National Union of Mineworkers (NUM) succeeded in reaching agreement with the consortium management. The dismissed workers were reinstated and returned to work on 10 July.

Refusal to recognise trade union: On 17 September, workers at the Woolworths trading chain went on strike in protest against the company's refusal to recognise the representative nature of the South African Commercial Catering and Allied Workers Union (SACCAWU). In recent years, Woolworths had considerably unsettled its workforce with atypical types of employment. The strike and boycott of products

ended on 24 October after the signing of an agreement under which the company undertook to accept a counting of members by a public commission.

Sri Lanka

Population: 19,300,000 / **Capital:** Colombo

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Sri Lanka's labour law is not fully in line with international labour standards and is not always enforced by the authorities. Anti-union behaviour is still rife in the EPZs.

Trade union rights in law

Freedom of association and collective bargaining: The Trade Union Ordinance 14 of 1935 allows all workers to form and join unions, including public sector workers. Members of the armed forces, police officers, staff in the judicial service, prison officers and corps established under the Agricultural Corps Ordinance are not entitled to unionise, however. Agricultural workers can by law only form associations but not unions.

Public service unions are not allowed in law to form federations. The law does not recognise their right to engage in collective bargaining either.

A minimum of seven workers is required to found a new union. The Industrial Disputes Act grants compulsory recognition to any union that represents over 40% of workers at any given workplace, which is too high a threshold based on recent ILO case law that considered even a 30% requirement as excessive. The government has consistently failed to take any significant steps to reform the Act in line with ILO recommendations.

In addition, the ILO Committee of Experts on the Application of Conventions and Recommendations recommended that where a union does not represent more than 40% of the workers, collective bargaining rights should be granted to all the unions in the production unit so that they can at least negotiate on behalf of their own members. So far the Sri Lankan government has not acted on that recommendation. The National Trade Union Federation (NTUF) believes the threshold for union recognition should be lowered to facilitate collective agreements.

Special restrictions for young workers: According to the Trade Union Ordinance, young workers between 16 and 21 years of age are not allowed to be members of a union's executive committee or management board.

Broad definition of essential services and draconian penalties against strikes and industrial action: The Public Security Ordinance, and the Emergency Regulation No. 01 of 2005 which implements it, allow the President to ban any organisation that s/he considers to be impeding, obstructing or delaying the production and delivery of an "essential" service.

On 3 August 2006, the Ordinance and the Emergency Regulations were amended to expand on the number of services defined as essential, adding to a list of sectors which already went far beyond what the ILO considers as "essential". Further to protests by Sri Lankan trade unions and their international supporters, in a further amendment to the regulation promulgated on 29 September 2006, the long list of essential services was replaced by a broad, unrestricted definition. The regulations allow the President to designate as "essential" any service "which is of public utility or is essential for national security or for the preservation of public order or the life of the community and includes any department of the government or branch thereof". To make such a declaration, the President only needs to order the restriction to be issued in the government gazette.

These texts give the President unlimited power to impose new, draconian restrictions on any sector of the economy.

Export processing zones: The law grants workers in Sri Lanka's export processing zones (EPZs) the same rights to join unions as other workers.

Trade union rights in practice and violations in 2008

Background: Sri Lanka has been experiencing a civil war since the breakdown of dialogue between the Liberation Tigers of Tamil Elam (LTTE) and the government. Throughout the country, there is general impunity for human rights violations, including violations of trade union rights. Reports mention hundreds of disappearances, murders, arbitrary arrests and torture of human rights activists, journalists and anyone who dares criticise the all-out war waged by the government. It is virtually impossible to carry out trade union activities in the north of the country because of this war.

Weak enforcement of union recognition law: The recognition of unions for collective bargaining purposes is dogged by excessive delays. Employers tend to delay the holding of polls for the creation of trade unions for a long time and use this time to identify, victimise and, frequently, fire the union activists concerned. In the worst cases, activists have been physically assaulted and threatened with death. As a result, workers are afraid of being identified with the union, and the union loses the poll. To prevent such situations, the unions would like to hold their elections within four weeks of sending the application for recognition of the union.

Alternatively, employers change their staffing figures to ensure the 40% representation target is even harder to meet. They sometimes include middle and top managers in the calculation of the total number of staff, for instance. Where an employer refuses to recognise a union for collective bargaining purposes, the union can complain to the Commissioner General of Labour, who holds a referendum at the workplace. If it is then found that the 40% requirement has been met, the Commissioner directs the employer to recognise the union. However, as stated above, the 40% threshold is too high.

International labour standards: When it was pointed out to the Supreme Court that Sri Lanka had ratified ILO Conventions 87 and 98, the Court declared that it was not bound by ILO Conventions.

Victimisation of union activists: Many serious cases have been reported of anti-union discrimination and non-recognition of trade unions. Such offences are tried before a Magistrate's Court. Workers and trade unions can also complain to the Human Rights Commission. There is no time limit on bringing cases to court; hence, they can be delayed indefinitely until the union has been weakened or even disbanded. However, hitherto no complaints against employers alleged to have engaged in unfair labour practices have been filed.

Ridiculous fines: The maximum fine for employers found guilty of anti-union discrimination is 20,000 rupees (around 187 US dollars), which is far too little to be dissuasive.

Public sector federations tolerated: Though the law prohibits federations of public sector trade unions, there are a few such federations operating openly such as the Public Service National Trade Union Federation (PSNTUF) and the Ceylon Trade Union Federation (CTUF). These federations do not engage in collective bargaining, however. Furthermore, the law is now strictly enforced, and no such federation is registered by the Commissioner General of Labour.

EPZs – a history of anti-unionism: There are widespread violations of trade union rights in Sri Lanka's free trade zones. The zones are managed by the Board of Investment (BOI), which sets wages and working conditions and has a history of discouraging union activity. In many cases, union members or officials are suspended, demoted or dismissed, and many have been assaulted. New workers are warned not to join unions.

Labour inspection is clearly inadequate in these zones. The government labour inspectors are not allowed to carry out unannounced visits to factories in the EPZs. The BOI has its own industrial relations department, but the BOI is always headed by a prominent businessman. In practice, therefore, the BOI's handling of industrial relations always works against the interests of the workers in the zones (most of whom are women).

When complaints are received by the competent government body, employers rarely turn up to the hearings, and, when they do so, they frequently flout the rulings with total impunity. The government has proved incapable of forcing employers to respect the decisions of the authorities.

Union activists are not allowed inside an EPZ unless their entry is approved by the employer. Even if workers are unionised in a particular factory within an EPZ, such entry into the zones is extremely rare. This ban is one of the main barriers to organising in the EPZs.

Some unions have observed a new anti-union tactic by employers in the EPZs: instead of waiting for a ballot to be held in a company before recognising a union, they only recognise the branch within their company, refusing to have any dialogue with the federation's representatives. There is nothing in the law that requires an employer to engage in dialogue with the federation that their workers' branch union is affiliated to. Isolated and without the support of their federation, shop floor unions are in a weak position.

The demotion of trade unionists is another anti-union tactic. In the Katunayake EPZ, for example, the National Workers' Congress (NWC) reported that the Brooky Diamond company had demoted the leader of their branch union, Jennifa Silva, from supervisor to machine operator.

Employees' councils: Employees' councils are structures funded by and functioning under the aegis of the employer, without the workers needing to make contributions. This gives them an advantage over unions, which rely on membership dues. This consideration inevitably influences the choice of workers. They have been promoted by the BOI as a substitute for trade unions in the EPZs. In theory, according to the BOI, their role is to promote "the effective participation of employees in the affairs of the enterprise through consultation". In reality, the great majority of companies do not have employees' councils, as these councils tend to be created primarily as a barrier against an attempt to set up a trade union. In these union substitute councils, the selection of members is heavily influenced by management. These employees' councils are at times not mandated to discuss the main issues for the staff such as wages and working conditions. Unlike registered trade unions, employees' councils have no legal standing before the law.

Threats and attacks against the FTZ&GSEU: R. Pieris, Vice President of the Free Trade Zones & General Services Employees Union (FTZ&GSEU, affiliated to the International Textile, Garment and Leather Workers' Federation - ITGLWF) branch at the Star Garment clothing factory in the Katunayake EPZ, was beaten up on 23 June by three individuals who warned him to stop his trade union activities. The police arrested one of his attackers, who said he had been paid by a Star Garment manager to attack the trade unionist. Two days later, he retracted his statement.

Anton Marcus, General Secretary of the FTZ&GSEU, was threatened in July by the President of the Joint Apparel Association Forum (JAAF, the clothing manufacturer's association), who told him that he would end up being kidnapped one day. Such threats are to be taken very seriously in Sri Lanka.

Trade unionists forced to resign: There is a growing trend among employers to press union leaders into resigning in exchange for financial compensation. At the Alitex towel factory in the Biyagama EPZ, for example, unionised workers were strongly encouraged to resign because the factory was making a loss. Those who did leave only received part of the compensation due to them. When the NWC union protested, Alitex began to harass trade union leaders and forced them to resign.

Blue Diamond Limited in Liyanagemulla prepared a voluntary retirement scheme aimed at trade union representatives. When the latter refused to comply, management applied to the Ministry of Labour for permission to dismiss a group of workers, including eight trade union leaders.

No improvement for workers at GP Garments: A major industrial dispute broke out in 2005 at the GP Garments factory in the Biyagama EPZ. Employees affiliated to the FTZ&GSEU occupied the factory and prevented two foreign managers from leaving the premises for several hours. The company retaliated by dismissing 518 workers, including the whole union delegation. An international solidarity campaign was launched in support of the workers and a complaint lodged with the OECD, but no progress has been made since then. In 2008, 37 workers were summoned to appear before court on 13 counts of breaching the penal code; then on 3 November, GP Garments closed the factory down. By the end of the year, the 37 workers had been released on bail. The case is scheduled to be reopened in May 2009.

Anti-union employers turn to the courts and the police for help: Trade unions report that there is a tendency among employers to use the courts to prevent trade union action (such as strikes), citing the potential financial losses. In July, for example, police from the Anuradhapura district put pressure on teachers who were preparing to go on strike. Two union leaders from the Angoda hospital were also briefly arrested.

When 17 trade unions at the port of Colombo resorted to a go-slow on a salary issue, the employers complained to the Supreme Court alleging that their products were being held up at the port. The Court ruled that the union action was illegal. Similar rulings were made in the railway strike and in the union action at the Petroleum Corporation.

European Commission examines union rights violations: The ITUC and the European Trade Union Confederation (ETUC) alerted the European Commission to the Sri Lankan government's failure to meet the commitments it made in 2005 to qualify for the GSP+ scheme, namely implementation of all the ILO's core conventions (and particularly Convention 87 on freedom of association and Convention 98 on the right to organise and collective bargaining.) The Commission assured the ITUC and the ETUC that these breaches would come under close scrutiny in its examination of Sri Lanka's application.

Swaziland

Population: 1,100,000 / **Capital:** Mbabane

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

One of the largest strikes in recent years, in the textile sector, was brutally repressed by the police. Trade union leaders are subjected to constant harassment.

Trade union rights in law

State of emergency still in force: The State of Emergency, introduced in 1973, suspended constitutional freedoms.

The 2006 Constitution, which entrenches the political status in force since 1973, invests all power in the King's hands, bans opposition political parties and meetings, and gives the government the ultimate executive, judicial and legislative authority. The Constitution also constitutes a threat to trade union rights, since the notion of breaching state security can be interpreted very broadly.

Many legal restrictions: The current Industrial Relations Act (IRA) allows workers, apart from those employed in the export processing zones (EPZs), to form trade unions, to draw up their own constitutions, and to negotiate their terms and conditions of employment. Members of the police are not allowed to form unions.

However, unions must represent at least 50 per cent of workers in a workplace to ensure recognition, (an unreasonably high percentage), and failure of this test leads to recognition being dependent on the employer's goodwill. There is also no effective protection for trade unions against employer interference.

Right to strike – collective action is virtually impossible: The procedure for announcing a strike is long, lasting up to 74 days, and the procedures for voting on strike action are complex, thus making legal strikes virtually impossible. Should a strike take place, the trade union faces civil liability for any damage caused during a strike.

The IRA prohibits protest actions in "essential services", which include police and security forces, correctional services, fire fighting, health and many civil service positions.

Government fails to fulfil its promise to bring in improved labour legislation: Repeated government assurances to the ILO that it will amend its legislation to bring it in line with international labour standards have so far proved meaningless.

Trade union rights in practice and violations in 2008

Background: The parliamentary elections in September, which were not open to any political party, gave rise to more protests. The extravagant lifestyle of the royal family is increasingly contested in a country where two-thirds of the population lives in dire poverty and the rate of HIV/AIDS infection (around 40%) is the highest in the world.

Refusal to recognise two unions: The authorities continued to refuse to recognise the Swaziland Police Association (SPA) and the Swaziland Correctional Service Union (SWACU), although the new Constitution had opened up this possibility through allowing all workers to form and join trade unions.

Numerous violations in textile factories: Violations are common in textile companies, and the abuses appear to be committed with the collusion of government authorities. On 5 March, a dozen workers from the textile sector were injured by the police in the Matsapha industrial zone in Manzini. Police used tear gas and beat the demonstrators, who were marching peacefully. According to the Swaziland Manufacturing and Allied Workers Union (SMAWU), the employers gave instructions to the police to repress the demonstrators, although the march had been authorised by the competent authorities. The strike had started on 3 March and involved over 16,000 workers, mostly women. Their demands were for a wage rise but also for an end to the brutal and disrespectful behaviour of the employers, who were mainly Taiwanese investors. In February, the SMAWU had denounced the action of the Conciliation, Mediation and Arbitration Commission, which had done all it could to prevent the smooth operation of the strike vote, thereby showing blatant favouritism towards the Swaziland Textile Exporters Association (STEAs). The workers had also been threatened with dismissal if they voted to strike.

Repeated arrests of union leaders: For several years now the top trade union leaders have been in the sights of the authorities. Jan Sithole, the General Secretary of the Swaziland Federation of Trade Unions (SFTU), was arrested twice in 2008, for instance. On 21 August he was arrested, by more than 30 police officers, after taking part in a demonstration by unions and civil society organisations to protest against the participation of the President of Zimbabwe, Robert Mugabe, and the King of Swaziland, Mswati III, at a meeting of the Southern African Development Community (SADC) in Johannesburg. On 18 September, on the eve of the undemocratic parliamentary elections, Jan Sithole was again arrested, this time along with several other trade union and political leaders; they were on their way to the border between Swaziland and South Africa to protest against the deterioration of the political, economic and social situation.

Job insecurity: The regime ignored the deregulation measures taken by employers to make jobs less secure. Many skilled workers, most of whom are union members, have lost their jobs as a result of this. This type of policy has weakened trade unions in the sugar industry and the hotel sector.

Tanzania

Population: 41,500,000 / **Capital:** Dodoma

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

It is very difficult for trade unions to negotiate with their employers. Strike calls remain numerous but the procedure is very complex and strikes are often declared illegal. In Zanzibar, strikes are illegal and banned.

Trade union rights in law

Freedom of organisation – excessive power of Registrar: The Trade Unions Act allows workers to form trade unions but contains several restrictions on trade union rights. Trade unions must have at least 20 members to register, and unions must register within six months of being established. Those that fail to do so are subject to (unspecified) sanctions.

A union has to provide the Registrar with annual lists of its membership and financial audits, and the Registrar can suspend a union if public security or public order are endangered. Trade union affiliation to other organisations can be annulled if it was obtained without government approval or if the union is considered to be an organisation whose remit is broader than just employer-worker relations.

The government also prescribes the terms of office of trade unionists. Failure to comply with government requirements is subject to fines and/or imprisonment. In any given trade union, only one union leader may be employed full-time to carry out trade union functions; all others must work full-time in the enterprise or industrial sector in which they have been elected.

Collective bargaining: Collective bargaining is recognised in law. Collective agreements must be submitted to the Industrial Court for approval and may be refused registration if they do not conform to the government's economic policy.

Collective bargaining forbidden in the public service: According to the 2002 Public Service (Negotiating Machinery) Bill, workers in the public services do not have the right to collective bargaining. In addition, the government sets wages for employees of the government and state-owned organisations. There is also a minimum membership requirement of 30 people for a union to be registered, excessive by international standards. It prevents strikes by "staff grade officers", which include heads of public learning institutions. A system of compulsory arbitration at the authorities' discretion decides conditions and terms for public service employees. This effectively amounts to a strike ban.

Right to strike: In 2007 the amended Employment and Labour Relations Act (Code of Good Practice Rules) was adopted, establishing fuller guidelines for the implementation of the main ELRA. Strike action is permissible as a measure of last resort in the case of conflicts of interest, whilst rights-based disputes are referred to the labour court. There is a prior 30-day mediation period and requirement for a strike ballot before lawful strike action may be taken. Secondary strike action is allowed provided that the primary action is lawful, there is a relationship between the primary and secondary employer and the secondary action is proportional; a 14-day notice period is required for secondary action.

The law does not protect those taking part in legal strikes from retribution. Strikes are forbidden if the government considers they endanger the life and health of the population, and the law has now broadened the category to cover almost 50% of all services, including fire fighting, civil aviation, telecommunications,

health services and associated laboratory services and electricity. Strikes in other sectors may be either temporarily or permanently banned after a complicated investigation process.

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

Greater restrictions in Zanzibar: There are far greater restrictions on trade union rights in Zanzibar than in the rest of the country. There is a minimum membership requirement of 50 people before registration can go ahead and the Registrar has considerable powers to restrict registration, for example, if s/he does not agree with the union's provisions. Trade union officers must have a sufficiently high literacy level. The High Court can interfere in trade union affairs by appointing the Registrar to act as a trade union liquidator.

The law prohibits all workers from going on strike.

There are three export processing zones (EPZ) on the mainland, where working conditions are comparable to those outside the zones. There are two EPZs on Zanzibar, where there were unconfirmed reports of trade union rights violations.

Trade union rights in practice and violations in 2008

Background: The Labour Ministry has called on employers to take a more conciliatory attitude towards trade unions, to allow them to organise and to bargain with them in order to maintain social peace, to avoid unnecessary strikes, improve working conditions and to aim at more ambitious economic objectives. The same ministry has announced its intention of undertaking a "massive hunt of migrant workers employed in many sectors without following the legal procedures".

Privatisation – workers' rights ignored: Employees in the privatised industries are denied freedom of association and the right to collective bargaining, despite very difficult working conditions. There are reports that some employers were deducting union dues from workers' pay but were remitting them to the unions only after long delays if at all.

Difficulties in organising legal strikes: Workers tend to stage illegal wildcat strikes and walkouts because of the lengthy and cumbersome requirements for calling a legal strike. In October, after endless and fruitless legal proceedings by the Tanzania Teachers Union (TTU), teachers began selective strikes. On 14 October, after a court judgement banning them, angry teachers turned against TTU leaders. In the banking sector, a strike by 2000 employees of the National Microfinance Bank was also judged illegal by a labour tribunal. The employer immediately threatened the leaders of the Tanzania Union of Industrial and Commercial Workers (RUICO) with disciplinary measures against strikers refusing to return to work. Railway workers fared no better in the courts.

Fish processing plant workers locked in during an official visit: According to certain sources, workers in a fish processing factory in the Mara region were locked in a room by their employer during a visit by Vice-President Ali Mohamed Shein. This was done to prevent workers taking advantage of the arrival of this senior government official to formulate their complaints. They work in a rough environment and suffer frequent aggressive behaviour from their superiors. Most have been working for years on temporary contracts and are threatened with dismissal if they complain to management.

350 strikers dismissed in the textile sector: In February, 350 striking workers at the Sunflag textile factory were dismissed. They were protesting at the fact that the wage increases granted by their employer were way below those proposed by the government. Later around a hundred workers were rehired at another company production site.

Trinidad and Tobago

Population: 1,300,000 / **Capital:** Port-of-Spain

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

No changes in labour law. The restrictions on strikes remained in place and the State occasionally intervened to stop them. The government continued to refuse to amend the labour legislation.

Trade union rights in law

Freedom of association: The 1972 Industrial Relations Act (IRA) allows workers to form or join unions of their own choosing. The law also provides for the mandatory recognition of a trade union when it represents 51% or more of the workers in a specified bargaining unit, once this has been verified by the Registration, Recognition and Certification Board (R.R.C.B). Teachers and public servants are excluded from the scope of the Act but are covered by separate legislation.

The law provides for the compulsory reinstatement of any workers sacked for their union activities as well as financial compensation.

Collective bargaining restricted: The IRA establishes the right of collective bargaining. To obtain bargaining rights, a union must have the support of an absolute majority of workers. Furthermore, collective agreements must be for a maximum of five years and a minimum of three years, making it almost impossible for workers on short-term contracts to be covered by such agreements.

Heavy limitations on the right to strike: Industrial action is strictly regulated by the IRA, which stipulates that strikes may only be over unresolved "interest" disputes, i.e., concerning the formulation of terms and conditions of employment. Strikes are banned in essential services, which are too broadly defined by ILO standards, including, for example, the public school bus service. Strikes can also be prohibited at the request of one party if they are not declared by a majority union or when the government considers that the national interest is threatened. There is a penalty of up to 18 months' imprisonment.

Members of the teaching service and employees of the Central Bank are prohibited from taking industrial action, such action being subject to a penalty of up to 18 months' imprisonment.

EPZs: The same labour laws apply in the export processing zones as in the rest of the country.

Trade union rights in practice and violations in 2008

Background: The People's National Movement (PNM)'s government elected in November 2007 has launched a constitutional reform. The current Prime Minister purportedly aims to replace the current parliamentary system with a presidential one. Violence linked to narco-trafficking and corruption are major problems for the country. In the tourism sector many workers were laid off in 2008 due to a decline in tourist arrivals as a consequence of the global economic crisis. Employees of the Hilton Hotel, Telecommunications Services of Trinidad and Tobago, National Petroleum and several other companies took to the streets for higher wages.

Organising right has a limited scope: Although the law states that workers can form and join trade unions, in practice everyone working in the so-called "essential services", which include domestic workers, drivers, gardeners and others, are not recognised as workers and so cannot legally join unions. It is estimated that just 20 percent of the workforce are union members. The problems with obtaining union recognition continued owing to the slow handling of cases by the state.

Strike restrictions continue to hit workers: Despite the many formalities and bans on strikes, as in previous years, a number were held during the year in various sectors. In some cases the state intervened to stop the strike by penalising the workers.

Collective bargaining hampered: Many unions had their collective bargaining blocked by employers' delaying tactics. The state, too, repeatedly refused to negotiate collective agreements with public sector unions.

Government unwilling to amend labour law: The government has continued to refuse to amend its legislation on essential services and collective bargaining to bring it into line, at least, with ILO conventions.

Uganda

Population: 31,900,000 / **Capital:** Kampala

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

116 employees of Cobalt Company Limited were sacked for stopping work and demanding better wages.

Trade union rights in law

Some rights recognised: In March 2006, four labour reform bills were passed, becoming the Employment Act, the Occupational Safety and Health Act, the Labour Union Act and the Labour Disputes Act, all of which significantly improved labour laws concerning workers' rights. The Labour Union Act (LUA) repealed the Trade Union Act of 2000 and with it the requirements for a minimum of 1,000 employees in order to form a union and for the union to represent 51 percent of the workforce. However, the LUA does not specifically recognise the right to collective bargaining.

The LUA bars employers from interfering in workers' right to organise and makes it a criminal offence for an employer to obstruct this right. Anti-union discrimination by employers is prohibited, and the right to strike is recognised.

Labour disputes: The Labour Disputes (arbitration and settlement) Act, passed by Parliament in March 2006, provides for the fast resolution of labour disputes and elevates the Industrial Court to the status of the High Court.

However, Section 27 of the Act empowers the Minister of Labour to refer a dispute to the Industrial Court if either side does not comply with the recommendations of a board of inquiry. This is tantamount to imposing compulsory arbitration, according to the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), which has called for the Act to be amended.

Trade union rights in practice and violations in 2008

Dismissal of 116 strikers: In June, the management of the Cobalt Company Limited in Kasese sacked 116 workers who were demonstrating in front of the company's buildings after the breakdown of negotiations between the local union, affiliated to the Uganda Mines, Metal and Allied Workers' Union (UMMAWU), and the employers. The UMMAWU also denounced the management's recruitment of Kenyans to replace the strikers and the dreadful working conditions to which these replacement workers were subjected.

No collective bargaining in the public services: No public service unions, including medical staff and teachers, were allowed to negotiate their salaries and employment terms, which were fixed de facto by the government. Some real progress has been made over the last two years in the private sector, however, with many collective agreements being signed. One example was the national collective agreement signed between the Uganda Hotels, Food, Tourism & Allied Workers' Union (UHFTAWU) and the Uganda Hotel Owners' Association (UHOA), which covers 150 establishments and has helped the UHFTAWU gain 20,000 new members.

United Kingdom

Population: 61,000,000 / **Capital:** London

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Restrictions on the right to strike remain in place. British Airways have been using EU law to prevent a strike. The retail giant Marks & Spencer sacked a worker after he talked to the press about the company's plan to cap redundancy pay.

Trade union rights in law

Freedom of Association: The Trade Union and Labour Relations Consolidation Act (TULR(C)A 1992) sets out most trade union rights, including the right of workers to form and join trade unions of their choice. The Employment Relations Act (ERA) 1999 also contains provisions governing trade union rights. In 2004, a further Employment Relations Act was introduced, which strengthened existing legislation and created new protections.

On 13 November, the TULR(C)A was amended to allow a trade union to exclude a person on the basis of his or her membership, or former membership, of a political party. This followed the 2007 decision of the European Court of Human Rights arguing that UK law was in breach of Article 11 of the European Convention on Human Rights (ECHR), which upheld the right of the ASLEF trade union to be able to choose its members in accordance with the union's values. ASLEF's policy has always been to stand for equality and to "expose the obnoxious practices" of nationalistic political movements. An activist of the British National Party (BNP) who distributed anti-Islamic leaflets was expelled from the union in 2002. The Trades Union Congress (TUC, the national trade union centre) continues to take the view that the new laws do not fully comply with Article 11 of the ECHR, however.

Statutory recognition: Employers with 21 or more employees must recognise unions that can prove that a majority of employees want a union to represent them. A trade union may apply to the Central Arbitration Committee (CAC), a statutory body, for formal recognition, and the CAC has the power to compel an employer to recognise a union for the purposes of collective bargaining. Support for recognition must be shown either by majority membership, or via a workforce ballot, in which 40 per cent of those eligible to vote must vote in favour. A union has to show at least 10 per cent membership in the bargaining unit to trigger a ballot. Collective agreements are voluntary agreements and are not legally binding. Trade unions have traditionally supported the voluntary approach.

The 2004 ERA protects workers against being offered incentives by their employer not to become members of a trade union, not to take part in the activities of their union or make use of its services, and to give up having their terms and conditions of employment determined by a collective agreement negotiated by their union. Workers are also protected against dismissal or other forms of reprisal for making use of the services of their trade union. The Act protects the role of unions in grievance and disciplinary hearings by giving the workers the right not only to be accompanied by a union representative but also for the representative to speak on the worker's behalf, a point which had been unclear under the 1999 ERA. This rule applies even if there is no trade union at the company where the employees work.

Lack of protection for employees of small firms: Companies employing fewer than 21 workers are excluded from the statutory recognition provisions of the ERA.

Right to collective bargaining: Collective bargaining is protected by law. However in 2006, the ILO Committee of Experts expressed concern at the absence of any right for UK unions to access workplaces.

Information and consultation rights: The 2004 ERA empowered the government to introduce regulations for implementing the European Union's Information and Consultation Directive. Employees have the right to be informed and consulted about all decisions affecting their employment, failing which employers will face fines.

Strikes allowed – with limitations: Strikes must be confined to workers and their own employers, the dispute must be wholly or mainly about employment related matters, and the decision must be based on a secret ballot of the workers concerned. If striking workers are dismissed within 12 weeks of taking part in a legal strike, they can claim unfair dismissal. In most instances, after the end of a 12 week or longer period, where there has been a lock out, employees can be fired legally for participating in lawful strike action. However, the 2004 ERA places additional duties on employers to try to resolve the dispute, through conciliation. Failure to do so can mean that dismissals after the protected period are unlawful.

Secondary picketing and sympathy strikes still outlawed: Secondary picketing was prohibited by the 1990 Employment Act, and there is no immunity from civil liability for workers taking part in sympathy strikes.

Insolvency laws: Under current insolvency law, unscrupulous businessmen can sack workers, declare their companies bust, buy up the assets and then restart trading without having to pay the sacked workers a penny.

Trade Union Freedom Bill - greater protection of the right to strike: Further to a resolution adopted at its 2005 Congress, the TUC has been seeking the adoption of a Trade Union Freedom Bill. The proposals in the bill include improved protection from dismissal for workers taking part in industrial action, simplification of the complex regulations governing strike ballots and notices, strengthening the bar on the use of agency workers to replace striking workers, revising the law on industrial action injunctions and modernisation of the definition of an industrial dispute. The TUC notes that despite important changes in industrial relations law since 1997, UK trade unions members have fewer rights to take industrial action than in 1906, when the current system was introduced.

Jersey: The Employment Relations (Jersey) Law 2007 has been the subject of much controversy since it was adopted in 2005 and eventually came into force in January 2007. The Act has formed the basis of a complaint to the ILO Committee on Freedom of Association (CFA) in relation to various provisions concerning registration procedures; possible sanctions and penalties for legitimate trade union activity; definitions of "collective agreement" and "employment dispute" which limit the ability of unions to bargain collectively and take industrial action; and compulsory arbitration. The CFA has found substance in this complaint and urged the government seek the solution in consultation with the social partners. The government insists, however, that many restrictions criticised by the CFA, such as the ban on solidarity strikes, are necessary.

Trade union rights in practice and violations in 2008

Collective bargaining: The most outstanding feature of the statutory trade union recognition scheme has been a significant increase in voluntary agreements, although even today only about one third of the workforce are covered by collective agreements, about half the European average.

Anti-union tactics: Following reports in 2002 and 2006 on difficulties encountered by trade unions to secure recognition from employers, a 2007 survey of 583 human resource professionals and 524 union representatives conducted by the TUC and Personnel Today concluded that according to 92% of the unionists and 36% of the HR professionals, being a union representative could seriously damage one's career prospects.

In July 2008, the government signed a joint statement with trade unions, business and voluntary organisations providing for a set of rights for employees of government contractors, including access to information about trade unions.

Professional union busters: Following a 2003 TUC survey and TUC campaigning, new laws prohibiting union busting tactics by employers came into effect in 2005.

British Airways threatens to invoke the EU law, pilots turn to the ILO: The decision by British Airways (BA) to establish a new subsidiary triggered a dispute with the British Airline Pilots' Association (BALPA). At the end of February, after all negotiations had been exhausted, pilots voted overwhelmingly on strike action. BA threatened to take legal action against BALPA for unlimited damages on the basis of the Treaty on the European Community. BALPA went to the High Court to seek a view on the European legislation on strike action, however UK judges continue to avoid ruling on such matters, despite the fact that two recent decisions of the European Court of Justice (Laval and Viking cases) gave national courts the ability to adjudicate on the merit and legality of a strike under EU law. In September, BALPA decided to lodge a complaint, later endorsed by the International Transport Federation, before the ILO Committee on Freedom of Association (CFA), since the government had done nothing to clarify the law on strike action.

Marks & Spencer fires a whistleblower: On 3 September, Tony Goode, a member of the GMB trade union at Marks & Spencer (where he had been working for 25 years) was dismissed for revealing the company's plan to cut redundancy pay. However, Goode only spoke to the press after he had tried in vain to resolve the issue internally. GMB suspected that the company had access to Goode's private mobile phone records. Even though the leaked information was not classified as confidential, Goode was suspended and then sacked. After an unsuccessful appeal to the company, GMB decided to represent Goode in the industrial tribunal.

Unite wins recognition at Leicester Paper Company: "Unite", the country's largest trade union (affiliated to the TUC and ICEM), has been organising workers at the Leicester Paper Company in very hostile circumstances. The company tried to avoid recognising the union by constantly including new workers in the proposed bargaining unit and changing various employment contracts. On 14 July, after two hearings, the Central Arbitration Committee granted Unite recognition and obliged the employer to start negotiations within one month.

Workers forced into self-employment and sacked for turning to a trade union: Six Kosovo construction workers worked on a contract that was transferred to FM Conway Ltd. The new contractor put pressure on the men to work on a self-employed basis. When they refused to do so and involved the Union of Construction, Allied Trades and Technicians (UCATT), they were dismissed on trumped-up charges. UCATT planned to represent the Kosovans in this unfair dismissal case in court.

Zambia

Population: 11,000,000 / **Capital:** Lusaka

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Trade union rights are widely flouted in the mining sector, which is dominated by Chinese owners.

Trade union rights in law

Restrictions on freedom of association: Workers, apart from police officers, have the right to form and join trade unions. All unions must be registered, but must have at least 25 members in order to do so, and there can, in principle, only be one union per industry.

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

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

Restrictions on the right to strike: Workers have the right to strike, except those engaged in essential services, which exceeds the ILO definition by including fire fighting, sewerage, and certain mining operations.

Workers enjoy certain legal protections against an employer's retribution for strike activities. However, the right to strike is subject to a long series of procedural requirements, so it is almost impossible for workers to hold a legal strike. As a result, no legal strikes have been held in Zambia since 1994.

The Industrial and Labour Relations Act empowers a police officer to arrest someone without needing a warrant, if they are believed to be on strike in an essential service or are likely to damage property. Police can impose a fine and up to six months' imprisonment. The ILO has said that this punishment is disproportionate and has asked the government to amend it.

Revisions of labour laws: The government has been requested by the ILO for many years to amend the law to remove the above-mentioned restrictions and bring it into line with the principles of freedom of association.

Trade union rights in practice and violations in 2008

Background: In November, the acting Vice-President, Rupiah Banda, won the presidential elections following the death of Levy Mwanawasa. The opposition, which was defeated by a small margin, said the vote had been rigged. In recent years the unions have continuously complained about the worsening social climate in the mining industry, which is mainly owned by Chinese investors who are often accused of intimidating and brutal attitudes. Several projects for setting up export processing zones (EPZs) are planned or being developed. The project that has progressed furthest is in Chambishi, where China has said it will shortly be setting up 150 companies.

Mass dismissal of strikers and arrest of seven trade unionists: On 5 March, 500 striking workers at the Chambishi Copper Smelter (CCS) were sacked by their employer. The day before, seven branch officials of the National Union of Miners and Allied Workers (NUMAW) had been arrested by the police after a battle had broken out between 500 workers and 200 Chinese foremen, resulting in at least three people being

injured. The workers, employed to build a foundry, had gone on strike on 3 March to demand pay increases and better safety conditions. The union officials were released, and the workers were reinstated after some intensive negotiations.

Trade unionist is beaten and dismissed: In early June, again in Chambishi, Richard Sinkala, a union member working for another Chinese company, NFC (China Non-Ferrous Metal Industry's Foreign Engineering & Construction Company), filed a complaint that he had been assaulted by Ma Jong, a Chinese engineer. Richard Sinkala had repeatedly complained about the inadequate financial compensation paid to the family of a worker who had died from an occupational accident. After spending a few nights in prison, the engineer was released for lack of evidence. The trade unionist was sacked.

Violations of union rights in the mining industry: The fundamental rights of workers and their representatives are being increasingly flouted in the mining industry. There are more and more sub-contractors, and those trade union delegations that do manage to set up are faced with employers trying to avoid any social dialogue. One specific result of this trend is that occupational accidents, which are often fatal, are constantly rising.

Expulsion of 24 Indian strikers: The situation faced by foreign workers recruited by these foreign investors is not always any better. In May, 24 Indians were summarily repatriated to Bombay after being identified as the ringleaders of a strike involving over 300 of their compatriots employed by Onshore Construction Company, an Indian sub-contractor hired to build a copper foundry in Chingola. The workers were complaining about their pay and working conditions.

Zimbabwe

Population: 13,300,000 / **Capital:** Harare

ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Trade union violations deteriorated further and reached an extremely violent pitch during the period of the elections. One trade unionist was assassinated, whilst several were tortured, women activists were sexually assaulted and dozens of unionists were arrested and/or beaten. The main union leaders have been frequently arrested and threatened.

Trade union rights in law

Freedom of association - "draconian" legislation: The Labour Relations Act (LRA) gives private sector workers freedom of association, the right to elect their own representatives, and to join unions without prior authorisation. It allows for multiple unions per industry, provided that each is registered with the Ministry of Public Service, Labour and Social Welfare (MPSLSW).

The LRA gives the Registrar the power to supervise the election of officers of workers' and employers' organisations, to cancel or postpone elections and to change the venue of an election.

Organising is allowed in export processing zones (EPZs).

LRA removes trade union rights for public sector workers: The LRA excludes public sector workers from protection under labour laws by placing them under the Public Service Act, which does not provide for the right to form and belong to trade unions, collective bargaining, strikes or alternative dispute resolution mechanisms.

Collective bargaining – agreements subject to government approval: The LRA recognises the right to collective bargaining. However, Articles 25, 79 and 81 of the Act give the Minister of Labour the power to approve collective bargaining agreements, register and publish them – contrary to promises made by the government at the International Labour Conference in June 2004 that these Articles would be repealed. The Act also states that collective bargaining agreements should provide for measures to combat workplace violence. The Zimbabwe Congress of Trade Unions (ZCTU) believes this could be used to criminalise industrial action.

Collective bargaining is not the exclusive prerogative of trade unions, as workers' committees may also bargain at company level. The law encourages the creation of these committees in enterprises where less than 50 per cent of workers are unionised. They exist in parallel with trade unions, hence creating the potential for employers to undermine the unions by pitting the workers' committees against them. Their role is to negotiate on shop floor grievances, while trade unions are supposed to focus on industry level issues, notably wages, and negotiate through National Employment Councils – where they exist. The workers' committees meet with representatives of the management to discuss workplace issues in a Works Council.

Works Councils have to be approved by the Ministry of Labour. The National Employment Councils must submit their agreements to the Registrar for his or her approval, and they can be vetoed if they are deemed harmful to the economy.

If 50 per cent or more of employees are union members, there is no parallel body, as the workers' committee becomes the trade union committee.

Barriers to the right to strike: Although the LRA recognises the right to strike, there are many procedural hurdles, such as the fact that more than 50 per cent of the employees must vote for a strike, followed by a 30-day conciliation period and possible referral to binding arbitration and then a 14-day advance notice period. The sum effect of all these delaying tactics is that it is practically impossible to organise a legal strike. The Act does not include provisions to prohibit employers from hiring replacement workers in the event of a strike, and also includes a section that enables employers to sue workers for liability during unlawful strikes, with penalties ranging from fines to imprisonment, or both.

Strikes are prohibited in essential services. The definition of "essential" goes far beyond that envisaged by the ILO, and includes railway engineers, electricians, transport and communications' employees, veterinary services and pharmacies. The Minister can decide what constitutes an essential service, and so declare that any service or industry is essential and thus impose a strike ban. Those taking part in an illegal strike face harsh prison sentences of up to five years.

Repressive legislation: The 2002 Public Order and Security Act (POSA) bans any public gatherings held without police permission. This has been used to obstruct trade union activities and harass trade unionists. Under the Act, people found guilty of disturbing the peace, security or public order, or of invading the rights of other people, are liable to a maximum Z\$100,000 fine and/or imprisonment for up to ten years. In addition, organisers of public gatherings must apply for permission at least four days in advance.

The reformed Penal Code of 2006 is also often used to arrest and imprison trade unionists.

The Miscellaneous Offence Act carries less severe penalties. It is often used when charges of a public order offence cannot stand up in court. Blocking a public thoroughfare, for example, is an offence under this Act.

Trade union rights in practice and violations in 2008

Background: During the Parliamentary elections in March, a wave of violence and intimidation, orchestrated by the party of President Robert Mugabe, ZANU-PF, forced the main opposition party, the Movement for Democratic Change (MDC), to withdraw, shortly before the second round, though it had just won the first round. Although a power-sharing agreement was signed between the two parties in September, the political situation remained stagnant. At the end of the year the country faced a very serious economic and humanitarian crisis, with a cholera epidemic having already caused over 1500 deaths.

Intimidation, interference and frequent banning or prevention of meetings: In practice, members of independent trade union organisations face harassment from government forces and the ZANU-PF militia. It is extremely difficult for them to carry out any trade union activities. Although the High Court ruled in April 2002 that the ZCTU does not need permission from the police to hold private meetings, the police have continued to interfere with its meetings. In the town of Gweru (Midlands), the authorities refused the ZCTU permission to organise a march on 8 March to commemorate International Women's Day. Some trade union offices were forced to shut down owing to threats and violence.

"Illegal" strikes: The excessively complicated mechanisms for organising a legal strike means that many unions give up trying to organise a legal strike and instead resort to "illegal" stoppages, stay-aways or protest actions. In February, for instance, members of the Commercial Workers' Union of Zimbabwe (CWUZ) representing the staff of Kingstons Limited, a quasi-public company, were obliged to sleep at their workplace in order to get their wage demands heard. Their employer threatened them with disciplinary measures and accused the leader of the protest, Wilfred Nyamukuva, of passing on "confidential" information, i.e., regarding their wage levels, to the press.

Splinter unions: The Zimbabwe Federation of Trade Unions (ZFTU) is a government-created labour body designed to undermine and weaken the ZCTU. The ZFTU works closely with the ruling ZANU-PF and has created splinter unions in every sector of the economy. In some cases ZFTU unions have coerced workers,

telling them they have to join their union if they want to keep their jobs. In 2008, as before, the ZCTU reported that some of its members were assaulted for wearing ZCTU T-shirts.

Refusal to cooperate with the ILO: The government continued to renege on its international commitments by refusing, for the second year running, to appear before the Committee on the Application of Standards at the International Labour Conference.

Nine trade unionists from the education sector arrested and tortured: On 19 February in Harare, nine members of the Progressive Teachers' Union of Zimbabwe (PTUZ), including the President Takavafira Zhou and the General Secretary Raymond Majongwe, were abducted by members of ZANU-PF whilst handing out leaflets about the crisis in the education sector. The trade unionists were dragged to the ZANU-PF headquarters, where they were severely beaten. Two women unionists were not spared and were subjected to serious sexual assault. Death threats were also made by the militia. Following this violence, five of the victims had to be hospitalised and two had severe fractures. Despite the assaults the nine women were kept under arrest. Six were released four days later and the three others after one week.

Education trade unionists targeted by the authorities and their henchmen: During the run-up to the elections, teachers and especially their trade union representatives were amongst the main victims of the security forces and gangs of young militia members and war veterans of ZANU-PF, who accused them of trying to influence the vote in the communities where they worked. According to a report from the PTUZ, 77 teachers had to be hospitalised after being assaulted, sometimes in front of their pupils, whilst hundreds of teachers' homes were ransacked and a huge number of teachers, particularly in rural regions, took flight or emigrated.

Assassination of a member of the PTUZ: The violence reached its peak in the run-up to the second round of the elections. On 5 June, the PTUZ learnt that one of its members, Sheperd Chegwu, the head of the Katsukunya secondary school, had been assassinated. He had been abducted from his home on 3 June. His dead body was found two days later, showing signs of torture and bullet wounds to the neck and head. Sheperd Chegwu had been interrogated beforehand by members of the ZANU-PF militia.

New violence and intimidation against trade unionists from the PTUZ: On 9 June, members of ZANU-PF stormed the PTUZ offices in Gokwe. After ransacking the place and carting off all kinds of documents, the fifteen or so assailants shut the offices down. Earlier, on 6 and 7 June, two local PTUZ activists had been violently attacked. In Harare, the PTUZ closed its offices after its leader Raymond Majongwe, General Secretary, and its treasurer and his family had been harassed by unknown persons.

Violence and threats against the whole free trade union movement: On 12 June, in Chegutu, Edward Dzeka, a leader of the General Agriculture and Plantation Workers' Union of Zimbabwe (GAPWUZ) and President of the local ZCTU branch, was abducted by members of the ZANU-PF militia. He was apparently taken to a torture centre. In Chegutu too, Rebecca Butau, a ZCTU advisor, was beaten and had to have medical attention. Her assailants told her that they were looking for David Zunde, another GAPWUZ leader. Forty-six members of GAPWUZ had to seek refuge in Harare after being threatened and beaten up by militiamen. Also in June, the ZCTU President of the district of Chivhu, Tinashe Murau, was beaten up by ZANU-PF militiamen, who told him off for wearing a ZCTU tee-shirt. His hand was fractured.

Two main leaders of the ZCTU arrested and held for 11 days: On 8 May, Lovemore Matombo and Wellington Chibebe, the President and General Secretary, respectively, of the ZCTU, were placed under arrest after turning themselves over spontaneously at the Harare Central Police Station, aware that the police wanted to interrogate them after the speeches they had made on First May to workers at the Dzivaresekwa stadium. At that meeting, they had denounced the political violence raging across the country with the death of several people. They were charged with "spreading lies" and "fomenting rebellion against the government". On 19 May, after several delays and an initial ruling in the court of first instance denying them the right to bail, the High Court ordered their release on bail of 20 thousand million Zimbabwean dollars apiece. Raymond Majongwe, the General Secretary of the PTUZ, who was attending the hearing, was arrested and detailed for

several hours. The terms attached to the release of the two ZCTU leaders included a ban on "speaking at political meetings until the case was closed". After many adjournments, the accused men eventually managed, on 18 September, to get their case heard in the Supreme Court.

PTUZ President imprisoned for five days: On 18 September, Takavafira Zhou, President of the PTUZ, was arrested by some men dressed in plain clothes. After being insulted and manhandled, he was dragged to the police station in Masvingo where he was held, in degrading conditions and with no contact with the outside world, until 22 September. He was threatened and accused of organising illegal strikes. Takavafira Zhou ended up being released, however, with no charge brought against him.

Police brutality, including against union leaders, and mass arrests throughout the country: On 3 December, 69 trade unionists were arrested during peaceful demonstrations by the ZCTU in several towns. The demonstrations were aimed at protesting against the unprecedented financial crisis in the country by submitting petitions to the Reserve Bank of Zimbabwe. In Harare, the ZCTU General Secretary Wellington Chibebe was arrested along with nine other people whilst speaking to workers after handing over the petition. In the capital again, ten other trade union leaders were beaten up by the police, including five women activists: Gertrude Hambira, General Secretary of the General Agricultural and Plantation Workers' Union; Angeline Chitambo, President of the Zimbabwe Energy Workers' Union; Tecla Masamba of the Communications and Allied Workers' Union of Zimbabwe; Martha Kajama of the National Engineering Workers' Union of Zimbabwe and Mirriam Katumba, Vice-Chair of the Women's Advisory Council. The activists arrested in Harare were released on the same day, but those arrested in other towns were not released until the day after or even several days later.



Convention ratified



Convention not yet ratified



Convention denounced

Country	Freedom of association and collective bargaining		Elimination of forced and compulsory labour		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 100	Conv. 111	Conv. 138	Conv. 182
Antigua and Barbuda	02:02:1983	02:02:1983	02:02:1983	02:02:1983	02:05:2003	02:02:1983	17:03:1983	16:09:2002
Australia	28:02:1973	28:02:1973	02:01:1932	07:06:1960	10:12:1974	15:06:1973		19:12:2006
Bahamas	14:06:2001	25:05:1976	25:05:1976	25:05:1976	14:06:2001	14:06:2001	31:10:2001	14:06:2001
Bangladesh	22:06:1972	22:06:1972	22:06:1972	22:06:1972	28:01:1998	22:06:1972		12:03:2001
Barbados	08:05:1967	08:05:1967	08:05:1967	08:05:1967	19:09:1974	14:10:1974	04:01:2000	23:10:2000
Belize	15:12:1983	15:12:1983	15:12:1983	15:12:1983	22:06:1999	22:06:1999	06:03:2000	06:03:2000
Botswana	22:12:1997	22:12:1997	05:06:1997	05:06:1997	05:06:1997	05:06:1997	05:06:1997	03:01:2000
Brunei Darussalam								09:06:2008
Cameroon	07:06:1960	03:09:1962	07:06:1960	03:09:1962	25:05:1970	13:05:1988	13:08:2001	05:06:2002
Canada	23:03:1972			14:07:1959	16:11:1972	26:11:1964		06:06:2000
Cyprus	24:05:1966	24:05:1966	23:09:1960	23:09:1960	19:11:1987	02:02:1968	02:10:1997	27:11:2000
Dominican Republic	05:12:1956	22:09:1953	05:12:1956	23:06:1958	22:09:1953	13:07:1964	15:06:1999	15:11:2000
Fiji	17:04:2002	19:04:1974	19:04:1974	19:04:1974	17:04:2002	17:04:2002	03:01:2003	17:04:2002
Gambia	04:09:2000	04:09:2000	04:09:2000	04:09:2000	04:09:2000	04:09:2000	04:09:2000	03:07:2001

Ghana	02:06:1965	02:07:1959	20:05:1957	15:12:1958	14:03:1968	04:04:1961		13:06:2000
Grenada	25:10:1994	09:07:1979	09:07:1979	09:07:1979	25:10:1994	14:05:2003	14:05:2003	14:05:2003
Guyana	25:09:1967	08:06:1966	08:06:1966	08:06:1966	13:06:1975	13:06:1975	15:04:1998	15:01:2001
India			30:11:1954	18:05:2000	25:09:1958	03:06:1960		
Jamaica	26:12:1962	26:12:1962	26:12:1962	26:12:1962	14:01:1975	10:01:1975	13:10:2003	13:10:2003
Kenya		13:01:1964	13:01:1964	13:01:1964	07:05:2001	07:05:2001	09:04:1979	07:05:2001
Kiribati	03:02:2000	03:02:2000	03:02:2000	03:02:2000	17:06:2009	17:06:2009		17:06:2009
Lesotho	31:10:1966	31:10:1966	31:10:1966	14:06:2001	27:01:1998	27:01:1998	14:06:2001	14:06:2001
Malawi	19:11:1999	22:03:1965	19:11:1999	19:11:1999	22:03:1965	22:03:1965	19:11:1999	19:11:1999
Malaysia		05:06:1961	11:11:1957	13:10:1958 den.: 10:01:1990	09:09:1997		09:09:1997	10:11:2000
Maldives								
Malta	04:01:1965	04:01:1965	04:01:1965	04:01:1965	09:06:1988	01:07:1968	09:06:1988	15:06:2001
Mauritius	01:04:2005	02:12:1969	02:12:1969	02:12:1969	18:12:2002	18:12:2002	30:07:1990	08:06:2000
Mozambique	23:12:1996	23:12:1996	16:06:2003	06:06:1977	06:06:1977	06:06:1977	16:06:2003	16:06:2003
Namibia	03:01:1995	03:01:1995	15:11:2000	15:11:2000		13:11:2001	15:11:2000	15:11:2000
New Zealand		09:06:2003	29:03:1938	14:06:1968	03:06:1983	03:06:1983		14:06:2001
Nigeria	17:10:1960	17:10:1960	17:10:1960	17:10:1960	08:05:1974	02:10:2002	02:10:2002	02:10:2002
Pakistan	14:02:1951	26:05:1952	23:12:1957	15:02:1960	11:10:2001	24:01:1961	06:07:2006	11:10:2001
Papua New Guinea	02:06:2000	01:05:1976	01:05:1976	01:05:1976	02:06:2000	02:06:2000	02:06:2000	02:06:2000
Saint Kitts and Nevis	25:08:2000	04:09:2000	12:10:2000	12:10:2000	25:08:2000	25:08:2000	03:06:2005	12:10:2000
Saint Lucia	14:05:1980	14:05:1980	14:05:1980	14:05:1980	18:08:1983	18:08:1983		06:12:2000

Saint Vincent and the Grenadines	09:11:2001	21:10:1998	21:10:1998	21:10:1998	04:12:2001	09:11:2001	25:07:2006	04:12:2001
Samoa	30:06:2008	30:06:2008	30:06:2008	30:06:2008	30:06:2008	30:06:2008	29:10:2008	30:06:2008
Seychelles	06:02:1978	04:10:1999	06:02:1978	06:02:1978	23:11:1999	23:11:1999	07:03:2000	28:09:1999
Sierra Leone	15:06:1961	13:06:1961	13:06:1961	13:06:1961	15:11:1968	14:10:1966		
Singapore		25:10:1965	25:10:1965	25:10:1965 den.: 19:04:1979	30:05:2002		07:11:2005	14:06:2001
Solomon Islands			06:08:1985					
South Africa	19:02:1996	19:02:1996	05:03:1997	05:03:1997	30:03:2000	05:03:1997	30:03:2000	07:06:2000
Sri Lanka	15:09:1995	13:12:1972	05:04:1950	07:01:2003	01:04:1993	27:11:1998	11:02:2000	01:03:2001
Swaziland	26:04:1978	26:04:1978	26:04:1978	28:02:1979	05:06:1981	05:06:1981	23:10:2002	23:10:2002
Tanzania	18:04:2000	30:01:1962	30:01:1962	30:01:1962	26:02:2002	26:02:2002	16:12:1998	12:09:2001
Trinidad and Tobago	24:05:1963	24:05:1963	24:05:1963	24:05:1963	29:05:1997	26:11:1970	03:09:2004	23:04:2003
Tuvalu								
Uganda	02:06:2005	04:06:1963	04:06:1963	04:06:1963	02:06:2005	02:06:2005	25:03:2003	21:06:2001
United Kingdom	27:06:1949	30:06:1950	03:06:1931	30:12:1957	15:06:1971	08:06:1999	07:06:2000	22:03:2000
Vanuatu	28:08:2006	28:08:2006	28:08:2006	28:08:2006	28:07:2006	28:07:2006		28:08:2006
Zambia	02:09:1996	02:09:1996	02:12:1964	22:02:1965	20:06:1972	23:10:1979	09:02:1976	10:12:2001
Zimbabwe	09:04:2003	27:08:1998	27:08:1998	27:08:1998	14:12:1989	23:06:1999	06:06:2000	11:12:2000
ILO 183	150	160	174	171	167	169	154	171
Commonwealth 52	43	46	48	46	47	46	38	47