Focus on South Korea

- Right to strike: major development at ILO
- Freedom of Association: new rulings from the Canadian Supreme Court
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Editorial: inequality, precariousness, and routine repression of the right to strike

The Republic of Korea is often touted as a shining example of economic growth, and it is true that since 1960 the country has grown from a poor and under-developed economy to become one of the world’s most dynamic, joining the OECD club of industrialised nations in 1996. It is today wealthier than New Zealand or Spain, with a per capita GDP of just over euro 24,000. The World Bank says that ‘Korea has experienced remarkable success in combining rapid economic growth with significant reductions in poverty’. The country has experienced ‘real GDP growth averaging 10 percent annually between 1962 and 1994’, adds the Bank, and says that this performance is ‘spectacular’. To this extent, Korea is sometimes presented a poster child for mainstream liberalising economic theories. But it is quite wrong to portray Korea as a country that grew under political liberalism. Indeed, for four decades – including, specifically, much of the period during which this formidable economic performance was reported – the country was under authoritarian rule. It was in these conditions that Korea experienced an explosion of rapid industrialisation and economic progress, but here too that a unique economy emerged, dominated by the activities of family-owned industrial conglomerates, known as ‘chaebol’. World famous brands, such as Hyundai and Samsung are examples of chaebol companies that flourished in this period, inculcated by State support.

The country has experienced major economic shocks arising from the two financial crises, which are discussed in Kwang-Yeong Shin’s opening article for this edition. As he explains, the response to these economic shocks tended to massively increase inequality and precariousness, gravely undermining workers’ standing to defend their rights. Besides this tale of economic fluctuation and a liberalising response focussed on labour market ‘flexibility’ (that created a hugely precarious workforce) is the story of South Korea’s political history of military rule and its enforcement of a single union system. Multi-party democracy was introduced in 1987, and the single union system was opened up in 1997, the year after the country joined the OECD, and just six years after the country joined the ILO (though it is significant to note that Korea has not yet ratified either Conventions 87 or 98, the key ILO instruments on freedom of association). The tendency towards strong repression of unions continues, despite these formal advances, either because they are perceived as left-wing or radical or because they were in sectors that the government thought should be free from unionisation – like teaching and the civil service. Where these factors converged and unions with radical politics attempted to organise in the civil service and in teaching, repression has been particularly fierce.

In this edition of IUR, academic lawyer Kwang Bae Cho, KCTU legal advisor Du-Seop Kwon, and ITUC lawyer Jeff Vogt each examine aspects of the extent to which repression of trade union rights continues. A particular problem exists around the right to strike, which is subject to routine criminalisation and the issuance of massive claims for damages based on losses that businesses claim to have suffered as a result of strikes taking place. On the whole, IUR’s contributors report, the government and the judiciary facilitate continuing repression because strikes are still viewed with suspicion as radical and anti-social activities.

Also in this edition of IUR it is our pleasure to report a very significant development at the ILO, in which the Employers’ Group have largely backed down from their aggressive stance against the right to strike (muting also their criticism of the ILO supervisory systems). As if the Employers’ apparent change of heart were not news enough the story is yet more extraordinary as Government after Government stood with Workers to defend the right to strike as a key component of international law. In an equally welcome development from Canada, lawyer Peter Barmacle shares with us insights into a new perspective on labour rights that has emerged from a series of high profile cases at the Supreme Court of Canada, which has similarly shown greater levels of respect for core trade union rights, including the right to strike. We also hear from Frank Loveday of the foodworkers’ union BFAU about a campaign against precarious conditions for fast food workers, and ICTUR Researcher Ciaran Cross warns that the greatest danger of asking for a labour side agreement in the TTIP is that we might just get it.

Daniel Blackburn, Editor
The two crises and inequality in the labour market

The 1997 financial crisis exacerbated the rising trend in income inequality through neoliberal economic reforms, policy measures to resolve the financial-cum-economic crisis, being implemented by the Korean government under the guidance of the IMF. Another financial crisis in 2008, triggered by the subprime mortgage crisis in the US, made rolling back the increasing inequality more difficult. The Gini coefficients for household income inequality and individual wage inequality had both decreased steadily up until the early 1990s, but then rose rapidly from 1992 onward, five years before the financial crisis in 1997. Although South Korea has fully recovered from the economic crisis in terms of GDP per capita and dollar reserves, symptoms of social crisis such as the world’s highest rate of suicide and a rise in violent crime have been observed as aftermaths of the neoliberal economic reforms undertaken by both liberal and conservative governments. As a consequence, political discourses on inequality, called ‘discourses on social polarisation’ are now significant public issues.

The rise in inequality is an outcome of the complex economic, political, and social changes occurring in contemporary South Korea. In the following section, I will discuss the long-term trend in the Gini coefficient before and after the financial crises, with reference to the turning point in the U-shaped curve observed in the early 1990s. In the third section, the effects of the financial crisis and the subsequent neoliberal economic reforms on the distribution of income will be examined, including the rise of precarious work and the sharp increase in poverty resulting from deregulation of the labour market and increasing numbers of working poor. In the final section, I discuss the shortcomings of the government’s policies for preventing a worsening of income inequality in South Korea in the 2000s, as these continue to be based on old ideas relating to the redistribution effects of economic growth.

The first crisis in 1997

A year after Korea became a member of the OECD in 1996, the country experienced a financial crisis that began with a drastic plunge in the Korean won against the US dollar in the foreign exchange market. The Korean government requested help from the IMF’s rescue fund to avoid its economy becoming insolvent. The IMF provided rescue funding to the Korean government that was conditional on the immediate implementation of neoliberal economic reforms, including liberalisation of the financial market, privatisation of the public sector, labour market flexibility, and reform of the governance structure of chaebol companies, aimed at dismantling the economic institutions, norms, and culture that had developed in the period of rapid economic growth under the authoritarian regime. The IMF’s bailout package resulted in demolishing almost half of the 50 largest chaebols and creating more than one million newly unemployed in 1998. It was, in short, an attempt to abolish an economic system that was associated with crony capitalism, in which state intervention played a key role in the management of firms in the private sector, and to reinvigorate market forces that would be open to global financial capital.

Market liberalisation and deregulation of the labour market were introduced simultaneously, without consideration of their social effects on the distribution of income. The restructuring was accompanied by massive layoffs to downsize the companies. By 1998, there were more than 100 thousand newly unemployed each month, resulting in a total unemployed figure of almost two million. The rate of unemployment skyrocketed immediately following the financial crisis, rising from 2.1 percent in October 1997 to 8.8 percent in February 1998. The size of the labour force decreased by more than 2.5 million, from 21,373,000 in February 1997 to 18,873,000 in February 1999. Those who were not in the labour force, due to the failure to obtain a job, were not even included in the government’s unemployment rate calculations; if these people were to be included, the number of people who were out of work would exceed four million. Elderly workers and female workers were the main layoff targets. Under the seniority wage system, older workers with higher wages were most vulnerable to mass layoff as employers tried to reduce labour costs. Female workers were vulnerable because the male bread_winner model was strongly supported by employers.

One result of restructuring the economy was a freeze on the recruitment of new employees in the entire business sector and the public sector, generating massive numbers of young adults who failed to get jobs, including university graduates from February 1998. Consequently, unemployment among young adults also drastically increased. The rate of unemployment among adults under 25 years of age doubled from 7.7 percent to 15.9 percent between 1997 and 1998, a 21.4 percent reduction in employment compared with the previous year. The high unemployment rate of young adults has not changed significantly since 1998, as structural adjustment and restructuring has continued to occur. Young adults have been unable to avoid being squeezed out of employment. The number of people aged 18 to 29 years who were in employment decreased from 5,301,000 in 1997 to 3,856,000 in 2011; the...
employment rate dropped correspondingly from 58.0 percent in 1997 to 51.9 percent in 2011. Youth unemployment became a serious social issue when large numbers of young adults were unable to obtain employment even after passing the competitive university entrance exam and having expensive university tuition fees, the second highest among the OECD countries, paid by their parents for at least four years. Parents felt panicked when their children couldn’t find jobs, because they had devoted themselves to supporting their children through their university education. Only 59.5 percent of college graduates found jobs and 6.7 percent continued on to graduate school, while 34.3 percent could not find a job one month after graduating in 2011. This situation resulted in competition for shadow education, even among college students, aimed at gaining specific job qualifications such as proficiency in English or computing.

In addition, the deregulation of the labour market saw various types of precarious employment being introduced in the post-crisis period, facilitating an expansion in non-regular labour. Instead of regular workers, companies began to use non-standard labour such as dispatched workers, workers on fixed-term contracts, and part-time workers to increase labour flexibility. Employment of non-regular workers was also used to lower labour costs because their average wage was less than 60 percent of that of regular workers. Furthermore, employers could save on welfare costs because low-wage workers typically did not want to pay unemployment insurance and other welfare expenses. An immediate effect of this labour market flexibility was a dramatic rise in precarious workers who were marginalised in the labour market and not properly protected by the social security system. The proportion of non-regular workers greatly increased, from 27.4 percent in 2002 to 37.0 percent in 2004, stabilising at around 34 percent in the late 2000s. Within this group, the proportion of workers on fixed-term contracts grew dramatically between 2002 and 2004, revealing that regular workers were being replaced by those on fixed-term contracts. Although the proportion of atypical workers, such as subcontracted workers, independently contracted workers, dispatched workers, and daily workers, has been stable at around 12-13 percent, the proportion of part-time workers has consistently increased, from 5.8 percent in 2002 to 10.3 percent in 2012.

The second crisis in 2008

The 2008 financial crisis triggered by the US subprime mortgage crisis damaged the labour market further, due to defensive management measures to reduce the risk caused by the volatility in the global economy. After having already been hit by the financial crisis in 1997, companies now implemented managerial strategies to minimise the effects of contraction in the global market, reducing the numbers of their employees and placing a freeze on new recruitment. The labour market thus contracted, with the rate of employment dropping from 59.7 percent to 57.4 percent between the first quarter of 2008 and the first quarter of 2009. Although the nature of the subprime mortgage crisis was financial, its effects immediately spread to the labour market. The 2008 financial crisis caused much more damage to the labour market than the previous financial crises because it affected the weakest social group in the market, who were already experiencing hard times. The official unemployment rate was as low as 3.8 percent in the first half of 2009, but the modified unemployment rate, which included other groups such as those who had given up searching for a job but still wanted to be employed and those who were preparing for the examinations required to obtain a job in the public sector, was 8.5 percent. The financial crisis in 2008 thus appears to have exacerbated the condition of the labour market, which had already been affected by the previous financial crisis, further differentiating the insecure labour force from the secure one, the latter including, in particular, regular workers in chaebol companies in unionised sectors. The increase in part-time workers was most conspicuous, rising by 2.7 percentage points from 7.6 percent in 2008 to 10.3 percent in 2012. Like daily workers, part-time workers are an extremely flexible labour force, and are typically associated with the lowest wage and welfare costs. The average monthly wage for part-time workers was just under a third of that for regular workers and by 2012 it had reduced further, to a quarter. Employers were also able to save on welfare costs because part-time workers were reluctant to join insurance plans, to save on fees. For example, in 2012 only 11 percent of part-time workers joined the national pension scheme and 13.4 percent that for unemployment insurance.

Significant, but different, changes also took place in the high-income groups. People in these groups were able to increase their income due to a greater demand for knowledge-intensive jobs in sectors orientated toward international markets. Large chaebol companies that had survived the process of economic restructuring were able to become competitive in the global market and to increase their market share in both the domestic and the international markets. Job polarisation between large and small firms thus became a new aspect of the increasing inequality in the post-crisis period. The monthly wage gaps
between firms of different sizes were not particularly large until 1997. However, the wage gap gradually widened after 1998, segmenting the labour market by firm size. In 1998, the ratio of the monthly wage in large companies (more than 500 employees) to that in small companies (10-99 employees) was 1.41, gradually increasing to 1.47 in 1999 and 1.71 in 2005. The widening wage gap between workers in firms of different sizes appears to be a more important source of wage inequality than the type of employment.

Polarisation of the labour market was an outcome of the new management strategies of the large corporations. They aggressively pursued jobless growth, producing a steady expansion in sales without the creation of new jobs. By introducing labour-saving technologies, such as the automation and digitisation of administrative work, the increase in the number of jobs was less than the growth in gross national product or company profits. As a result, the business share of gross national income (GNI) increased by 7.5 percentage points from 16.6 percent in 1995 to 24.1 percent in 2011, while the household share of GNI reduced by 9 percentage points over the same period. The Gini coefficients for the hourly wage of casual wage earners (labourers) and full-time wage earners demonstrate increasing inequality for both types of wage earner, rising from 0.346 to 0.363 for casual wage earners and from 0.309 to 0.324 for full-time wage earners between 2002 and 2010. The gap in wages between high-income and low-income groups also widened over the same period. The ratio of the average wage of the highest-paid 20 percent to that of the lowest-paid 20 percent (P80/P20) also demonstrated a clear trend toward widening wage disparity, rising from 2.75 in 2002 to 3.20 in 2010 for casual wage earners and from 2.53 in 2002 to 3.00 in 2010 for full-time wage earners.

There was corresponding polarisation in the business sector in the 2000s. As market competition intensified and large corporations entered aggressively into retail and wholesale sectors, small-shop owners were not able to compete with these large firms in almost every business sector. Although there was a small gap between the rates of growth in profit achieved by the self-employed and corporations in the 1990s, the situation was markedly different in the 2000s. For example, the rate of growth in profit of the self-employed dropped sharply, from 10.2 percent in the 1990s to 1.5 percent in the 2000s, whereas that of corporations changed only slightly over the same period, from 12.8 percent to 10.2 percent. The gap in the rate of growth in profit thus increased, from 2.6 percentage points in the 1990s to 1.5 percent in the 2000s, whereas that of corporations changed only slightly over the same period, from 12.8 percent to 10.2 percent. The gap in the rate of growth in profit thus increased, from 2.6 percentage points in the 1990s to 8.7 percentage point in the 2000s. Through introducing advanced marketing methods and the super supermarket system, large chaebol companies entered the retail market for consumer goods.

Conclusion

Polarisation of the labour market has divided workers into two groups: protected workers and precarious workers. The rise of precarious workers has contributed to the rise of inequality in the labour market. Now one third of workers belongs to the category of precarious worker. In turn, it leads to the shortage of demand in the domestic market with the symptom of deflation in the past 5 years.
Industrial action and liability in Korea

A right that is nominally protected by the Constitution and by law is in practice limited by the action of government, by employers, and by the courts.

The Constitution of the Republic of Korea guarantees the right to organise and collective bargaining and the right to collective action together for workers. The term ‘collective action’ used here is understood in a wider context to also embrace collective actions taken by workers, including strikes. During labour disputes, trade unions employ various tactics, aside from strikes, such as slowdown, picketing or workplace occupation. Accordingly, the Trade Union and Labour Relations Adjustment Act (TULRA) defines the term ‘labour dispute’ very broadly to include various types of actions taken by the parties in the labour relations that hinder a normal operation. The TULRA also prohibits the State and employers from subjecting the participants in the industrial action to civil and criminal liabilities.

As such, ‘collective action’ or ‘industrial action’ are broader than ‘strike’ in concept, and are guaranteed by the Constitution. Moreover, the immunity clauses in the TULRA recognise industrial action as an extensive right of the workers. In reality, however, such is not the case. An intensely negative view prevails with regard to the functions and roles of industrial action - a form of collective communication and expression of opinion - and, as such, industrial action is rendered powerless and vulnerable by the government’s abuse of its punitive power as well as by employers’ claims for damages and retaliatory dismissals.

Due to labour-related laws that broadly limit and prohibit industrial action as well as the court’s arbitrary interpretation of these laws and indiscriminate execution of the law by the criminal justice system (i.e., prosecutor’s office, police), the scope of lawful industrial actions is extremely limited. Consequently, even peaceful strikes may lead to liability for damages as well as to punitive measures pursuant to labour-related provisions and criminal liability for interfering with business.

The situation regarding industrial action and liability is best embodied by the two Supreme Court rulings given only a week apart from each other, on March 17 and March 24, 2011. When the Korean Railway Workers’ Union held a four-day peaceful strike in 2006, the Court sentenced the union representatives to a fine for interfering with business pursuant to the Criminal Act, and also demanded that the union compensate for the revenue loss of seven billion KRW incurred by the interruption to business operations. These decisions show how far the Constitution, which guarantees the right to strike, is from the reality and how even the most peaceful strike can be suppressed by labour-related laws and by arbitrary interpretations given by the court. The reasoning cited by the Court for ruling that the peaceful railway strike was unlawful was quite simple: the strike was carried out during a period of ‘arbitration by authority’, which was forbidden in accordance with the TULRA. This system of arbitration by authority was later abolished after being fiercely criticised by various organisations both at home and abroad, including the ILO Committee of Freedom of Association, which argued that the system infringed on workers’ right to strike. The existing system was then replaced by a new minimum essential service system. However, this newly introduced system is significantly different from the ILO’s essential services. Nonetheless, the Constitutional Court of Korea and the Supreme Court did not change their ruling or views that the arbitration by authority system was constitutional. Since then, there have been some positive changes to the labour laws and some of the laws that previously breached basic labour rights were repealed. What is more important, however, is that, as seen in the aforementioned rulings, the law maintains that workers are subject to civil and criminal liabilities simply for their decision to not provide their labour, even during the most peaceful strikes that do not bring harm to others or cause active interference.

Criminal liability

The most common penalty imposed on an industrial action in Korea is ‘interference with business’ as stipulated by the Criminal Act. Conceptually, the industrial action in the TULRA is almost completely in line with the elements that constitute the penalty for interfering with business, except that the term ‘threat or force’ is open to interpretation. The Supreme Court upholds the view that an industrial action is an action where workers unite to apply pressure on the employer and by nature it includes an element of business interference by the usage of threat or force. In Korea, where the confrontation between labour and management takes place at the individual corporate level, one of the most widely employed methods is workplace occupation, used to directly hinder the exercise of the employer’s rights. For this reason, most industrial actions, regardless of what the individual union members and officials do specifically, are punished for interfering with business. Ironically, an industrial action on one hand is a basic right guaranteed by the Constitution while on the other hand it is classified as a crime under the Criminal Act. The legal reasoning used to help resolve such irony from a juridical approach is the justifiability of an industrial action; only when an industrial action as a whole is justifiable can its illegality be denied and can the union avoid penalty for interfering with business. Unusual

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INTERNATIONAL union rights
though it may be, law and order in Korea can deal out sentences to individuals based on the comprehensive evaluation on the illegality of an industrial action as a whole, no matter what such individuals have or have not specifically done. As a result, a simple refusal to provide labour collectively constitutes as an offence of interfering with business.

The interference with business clause broadly defines industrial action in principle and recognises the legality of industrial action only partially and in a limited scope; it is thus incompatible with the Constitution that guarantees basic labour rights. However, the Constitutional Court had not attached much attention to the matter until recently, when it expressed its somewhat critical opinion on the existing legal precedents set forth by the Supreme Court and decided that the protected scope of the right to collective action shall not be reduced inordinately. Following this, the Supreme Court also changed its former stance in some measure, stating that 'only when a strike is staged at a time unforeseeable by the employer, causing serious damage/loss or confusion to the operations of the employer, and is deemed to potentially suppress or confuse the free will of the employer on business continuity, in light of the surrounding circumstances, can the collective refusal to provide labour be considered a threat or use of force and therefore as having interfered with business'.

However, an industrial action usually accompanies a strike, picketing, workplace occupation or other tactics that involve the element of threat or force. It would be very unrealistic to only refuse to provide labour without suppressing or confusing the employer simply to avoid interfering with business and its penalty. Furthermore, in order for a strike to be recognised lawful, it must meet all other complicated requirements - legal subject, purpose, procedure, etc. - of the TULRA. It leaves much room for arbitrary execution of the law by both prosecutors and the police.

Civil liability

Under the Korean Civil Act, the scope in which an action is deemed unlawful is quite extensive. In determining the legality of an industrial action, it is vital to consider the spirit of the labour law or specific nature of an industrial action; otherwise, it becomes virtually impossible to exercise one’s right to strike because the assumption is that industrial action by nature causes harm to the employer. Nonetheless, current labour provisions and regulations as well as the Court do not take such notion into account.

With regard to the scope of civil immunity, the Supreme Court has ruled that civil immunity shall be interpreted such that the loss exempt from the civil liability in damages is confined to the loss incurred by justifiable industrial action. Any industrial action that is not justifiable is deemed unlawful, and any employer that has suffered loss due to such action may make a claim for damages against the trade union or individual worker. An industrial action that is protected by immunity from damages liability is limited to those that are only justified in their legal subject, purpose, procedure, means and methods. And scores of restrictive and prohibitive provisions in the TULRA with regard to those of an industrial action severely reduce the scope of lawful industrial action that can be protected by civil immunity.

The Constitution explicitly states that the strike and other collective actions taken by workers are guaranteed and lawful, but the Court's reasoning is just the opposite. Thus even a peaceful strike is exposed to extensive liability in damages. The Court does not even inquire into the specific reasoning that makes an action of the parties - the union, officials and members - involved in an industrial action unlawful. The Court sees the whole process of labour dispute as a single act, determines its justifiability and deals out joint responsibility for all losses incurred by the act to the involved parties, simply on the basis of their involvement. This narrow interpretation of lawful industrial action is what causes the frequent targeted dismissal of certain union officials/members or retaliatory lawsuits, resulting in astronomical damages and provisional seizure of property.

Disciplinary liability

In Korea, there are no legal provisions that explicitly acknowledge disciplinary action against workers. On the contrary, the law strictly limits dismissal, suspension and other disciplinary actions without a justifiable cause. This limit, however, can be interpreted to the contrary and become even broader. The Court sees that the employer's disciplinary action is inevitable in establishing and maintaining corporate order and recognises its necessity. Under current law, all industrial actions, including peaceful strike, in their concept and definition, cannot but interfere with business and disrupt workplace order, and it could well be cause for disciplinary action if it does not pass the stringently narrow test of legality.

Conclusion

The reality in Korea is that a lawful strike is near impossible. For this reason, it would be better to describe the current labour law as a police law for labour control rather than a labour law in a genuine sense, which guarantees the workers' labour rights. The reasons that it is difficult to set up reasonable law and order with regard to industrial action and liability are varied: numerous provisions that restrict and prohibit industrial action, established under policies which sought to control labour for a prolonged time in the past; a negative social awareness of the fundamental labour rights and court precedents grounded on such perception; and the unique organisational structure of enterprise-based unions in Korea. If there is no extensive and close examination of the fundamental causes, then endless detention, search, dismissal, exorbitant damages and provisional seizure will continue as they do today. For now, it is most important to realise that there will be no labour rights unless we all do not clean up the dark history in which the trade union has been oppressed.
Damage claims and provisional seizure as a means of union busting

Trade unions in Korea are currently facing damages claims for billions of Won (equivalent to millions of euros or US dollars) brought by employers

In early 2003, a worker joining the Korean Metal Workers’ Union (‘KMWU’) Doosan Heavy Industry Chapter set himself on fire. He had been despondent about a court decision of provisional seizure of the assets of workers who had participated in an ‘illegal’ strike called by the union chapter. His suicide note was full of anger and resentment against the conglomerate. In the same year, Lee, Hae-nam, a worker in Sewon Tech died leaving behind his colleagues. His co-workers reportedly found a dismissal notification letter, a written summons by the police, a debt statement and a notification of credit repair support in his left baggage. This clearly shows the reality of workers who are easily dismissed for union activity and face criminal sanction and damage claims and provisional seizure.

On December 21, 2012, Choi, Kang-seo (35), a union officer in Hanjin Heavy Industry hanged himself in the union office. His suicide note read ‘withdraw damage claims’. KRW 15.8 billion (approx. euro 13 million). I have never heard of such a big amount of money’. Hanjin claimed KRW 15.8 billion in compensation for damages against the union that had called a strike at the end of dispute over layoffs.

According to a survey by the Korean Confederation of Trade Unions (‘KCTU’), the total amount of damages claimed on grounds related to trade union activities, was, as of March, 2014, KRW 169,163 million in 17 workplaces, which is much larger than the KRW 57.5 billion claimed at 51 workplaces in October 2003, when claiming damages was known to be very widespread. When it is calculated by the amount per workplace, it was KRW 9.95 billion in 2014, a nine-fold increase from KRW 1.13 billion in 2003.

The dismissed workers in Ssangyong Motor and their union (‘KMWU’) are being sued for KRW 30.2 billion and the leaders of Korean Railway Workers Union (‘KRWU’) face a claim of KRW 31.3 billion. Both cases workers are also being sued. Union members in MBC, one of the major broadcasting companies, went on a strike over the question of fairness in broadcasting, and they now face around KRW 15.5 billion of damage claim.

The main reason for this soaring increase in damages claims and provisional seizures is that employers are using these legal actions as a means of union busting. When the employers sue for provisional seizure of assets of trade unions or its individual members, or their surety, they don’t have any other purpose but labour control, or, furthermore, incapacitation and collapse of the trade unions. Under this situation fundamental labour rights are severely violated. The only way out of the threat of damage claims and provisional seizure is for workers to give up their union activity or even their jobs. This makes unions weaker and union officers more intimidated. In many cases unions almost collapsed facing litigation. Moreover, a damages suit menaces workers’ right to life and violates their human rights: they deprives them of their wage, the only means of living, their housing, and in some cases, the assets of their sureties.

The damages claimed by the Hyundai Motor against the precarious workers in the company is a key example. After the company sued 313 members of KMWU Hyundai Motor Ulsan Irregular Workers’ Local, it dropped the case against 135 of them. It was found that 134 among them had withdrawn from the union and from the lawsuit for regularisation. The company also dropped the case against those who withdrew from the union. This is a typical case in which the company sued for compensation of ruinously large amount of money in one hand and used a good cop / bad cop method to the defendants to withdraw from their trade union.

The soaring number of damages claims are a product of the law and of institutions that create ‘unlawful’ strikes. Even though the three basic labour rights are guaranteed in the Constitution in Korea, the law and the courts’ interpretations make it almost impossible for workers to lawfully strike to put pressure on employer. This is not just my personal view, it also the conclusion of a meeting of labour lawyers’ organisations.

In Korea, almost of the strike are considered illegal and once a strike is found illegal damage claim, provisional seizure, disciplinary measure including dismissal and criminal punishment are automatically followed. It was the case when workers went on a strike against mass layoffs (Ssangyong Motor, Hanjin Heavy Industry, KEC, etc), against company’s managerial action such as establishment of subsidiary, which is influential in company’s implementation of the court ruling (Hyundai Motor), etc. For all the cases above mentioned, the government and the court illegalised the strikes based on the view that these strikes aimed violation of management rights.

In Korean society, it is regarded a common sense that workers’ strikes are rebellious, illegal or anti-social, and thus that they should be criminalised. In every news report regarding strikes the public security division of the prosecution or the police always appears and pours a series of
terrible words (they speak of ‘a stern legal action’, ‘arrest’, ‘search and seize’, ‘imprisonment’, etc). These scenes are naturally accepted by the audience. Lately, I myself was asked in a court by a chief judge ‘Mr. Barrister, are you insisting that an act patently illegal in terms of the aim cannot be criminalised by the Criminal Code Article 314 (Obstruction of Business)?’

Once a strike is found illegal, the police and the Public Security Division of the prosecution are mobilised. In the Public Security Division of the Supreme Prosecutors’ Office, there are three Departments: Department I, which deals with the cases related to the National Security Law; Department II, dealing with the cases related to the workplaces and campuses; and Department III, dealing with cases related to civil society organisations. They collect information about the respective sectors, supervise nationwide investigations, and analyse the situation of the public security. The Intelligence Department of each police station is their arms and legs. Information gathered by the police department is sorted by each District Prosecutors’ Office and collected, controlled and analysed by the Department concerned in the National Prosecutors’ Office. Why should information about organisations like KCTU, students’ organisation, and civil society organisations be collected, controlled and analysed in databases? It is impossible unless these organisations are sorted as ‘potential criminals’. The structure of the prosecution and the police mentioned above is stipulated in the Regulation on the Organisation of the Prosecutors’ Office (Article 8) and the Regulation on the Organisation of the National Police Agency and its Affiliates. When Article 8 is compared with Article 7(2), regarding the Narcotics and Organised Crime Division, it is easily found that the trade unions are treated as such organisations.

Currently, the Prosecutors’ Office and the Police Agency are treating trade unions as potential criminal organisations like gangs or drug smuggling organisations, not independent organisations of workers that realise Article 33(3) - Basic Labour Rights - in the Constitution. These authorities are considering that the trade unions should be controlled and they are organised by law to do so. They are monitoring trade unions in ordinary time and carry out arrests and imprisonment of union officers, and search and seizure of union offices at the time of strike. These activities are aiming not only to threaten and to incapacitate union activists but also to criminalise trade union activities through the procedure of rapid criminal trial with detention. Once the court decides that a strike is illegal, then the damages claim and provisional seizure becomes easy and simple. When the criminal court finds that the trade union is (or individual leaders or members of it are) guilty, then the employers as plaintiffs don’t need to prove the strike is not justifiable. In a nutshell, the State takes the lead in illegalising workers’ strike action and in helping companies to sue workers for astronomical amounts of money. This is the picture of the procedure in the court regarding labour issues.

Nevertheless, the Supreme Court’s recent ruling on the Obstruction of Business shows that the Judiciary of Korea is feeling pressure by the recommendations and criticisms by the ILO and international society. Workers in Korea, KCTU and many labour lawyers always appreciate international solidarity and hope this attention and solidarity from the international society will continue.
FOCUS □ SOUTH KOREA

Labour rights under attack by Park Geun-Hye government

While successive Korean governments have been hostile to organised labour, and workers generally, the current government led by President Park, Guen-Hye has taken anti-union hostility to a new level. President Park, the daughter of Park, Chung-hee (the military strongman who took power in coup d’etat in 1961 and ruled Korea as President until assassinated in 1979), has moved quickly to crack down on militant unions upon assuming office on 25 February 2013. She has also moved to ban left-leaning political parties, such as the Unified Progressive Party. The Korean Confederation of Trade Unions (’KCTU’) has gone so far as to call for her to step down, and has organised general strikes opposing her government’s policies. It is now roughly two decades since Korea joined the ILO and the OECD, in both cases committing to bring its laws and practices into line with international standards on fundamental workers’ rights including on collective bargaining and freedom of association. Progress made in this direction is now being dramatically reversed. Four attacks in 2013 exemplify the administration’s hostility to labour.

**Four attacks in 2013 exemplify the administration’s hostility to labour**

On 24 October 2013, the Ministry of Employment and Labour (’MOEL’) unilaterally revoked the registration of the Korean Teachers and Education Workers Union (’KTU’). Its decision was based on the fact that the union’s constitution allowed dismissed and retired members to remain members and leaders. Around 40 members of KTU were dismissed during the previous administration for their activities including expressing their opinion on the governments’ education policy and/or for donations to progressive political parties. These workers, whose dismissals were also questioned by the ILO, are considered members of the KTU. Korean labour law provides that dismissed workers are not eligible to remain members or to be leaders – in direct contravention of international law and specifically criticised by the ILO. Though the union secured a temporary injunction, the court eventually upheld the government action in June 2014, ending collective agreements and forcing union officials to end all representational activity and return to the classroom. The KTU then appealed to the High Court seeking an injunction and challenged the constitutionality of the ban on dismissed teachers joining unions to the Constitutional Court. The High Court granted an injunction on 19 September 2014 and the constitutional complaint was accepted. The legal status of the KTU was immediately restored and the Education Ministry has refrained from further action awaiting the decision of the Constitutional Court.

For over a decade, the Korean Government Employees Union (’KGEU’) has attempted to register without success. Among the reasons was the fact that the union constitution, like that of the KTU, allows dismissed workers to remain as members of the union. The latest attempt at registration began on 27 May 2013, when the KGEU submitted a new application to the MOEL. The MOEL requested supplemental information by 22 July. In July, negotiations between the parties continued during which the KGEU proposed amendments to its Constitution. The KGEU believed that these amendments had been accepted by the government and convened a congress to revise the Constitution. On 22 July, the union submitted the supplementary materials to the MOEL. On 2 August, the MOEL returned the application and again denied the registration, stating that the constitution could still be interpreted to allow dismissed workers to retain membership. In November 2013, the government raided the KGEU headquarters and searched the union’s computer servers, alleging that the union violated Korean law requiring civil servants to remain politically neutral – a provision also criticised by the ILO. The union continues to function as an illegal organisation. In response to government plans to move forward with a rail privatisation plan, which was strongly opposed by the public, the members of the Korean Railway Workers Union (’KRWU’) voted in overwhelming numbers to strike starting December 2013. The last time the KRWU struck, in 2009, the government declared the strike illegal despite the union following the letter of the law – which in Korea places substantial limitations on the right to strike in the transportation sector. The government then moved to dismiss workers, imprison union leaders and sue the union for millions of dollars. The government even sent in troops as replacement workers during the strike. The ILO Committee on Freedom of Association strongly denounced the government’s actions in 2012 but the government has done nothing to comply with the ILO’s recommendations. The government responded according to the playbook when the current strike began.

Following the 2013-14 strike, the railway employer Korail announced disciplinary measures against 404 KRWU officers who played leading roles in the 23-day strike action. Of these, 130 were dismissed and 251 were suspended. Another 23 had their pay docked. In addition, Korail pressed charges against 138 officers thought to have been leaders in this strike and are planning additional penalties against 118. The four main leaders of the union were imprisoned following the December strike action, though later released on bail. Criminal charges against the 4 were dropped in December 2014 when the Court found that they had not engaged in acts deemed ‘obstruction of
business’. The prosecution appealed the decision insisting that the purpose of the strike was unjustified and the period of strike was too long. Korail has also filed a civil suit for compensation for damages related to the strike. To date, 56.5 billion KRW (approx. euro 47 million) have been claimed against the KRWU over seven strikes.

On 22 December 2013, the police raided the building where the KCTU is headquartered. Around 5000 riot police, including some 900 of SWAT Team members, were deployed on the assumption that six leaders of Korean Railway Workers’ Union who were on the police’s wanted list were staying in the office. Such a raid on the office of a national centre of trade unions is unprecedented - even under the military dictatorship. At 9am, the police cordoned off the building. From then on, members of the KCTU couldn’t enter or leave the building. Though the KCTU pointed out that the police didn’t have a warrant to search the building and that their actions would be illegal, the police pushed into the building. As the police were unable to get through the locked doors, they invited the fire services to smash down the glass doors in front of and on the sides of the building. While police were pushing into the building, other police arrested indiscriminately protestors outside. In total, 138 were arrested including Yoo, Ki-soo, Secretary General of the KCTU. All of those arrested were released after 48 hours in custody except Kim, Jeong-hun, President of the KCTU. All of them were charged with ‘obstruction of justice’.

While these four cases are exemplary, Korea is notable also for the high number of union leaders it imprisons, and the high percentage of workers under ‘precarious’ work arrangement.

**Trade union leaders imprisoned**

In Korea, labour leaders and activists are in imprisoned for engaging in industrial action that would be legal elsewhere in the world. The government does so despite repeated and clear direction from the International Labour Organisation to bring the law, particularly the obstruction of business clause of the Penal Code, into line immediately with principles of freedom of association. The arrests and imprisonments are often compounded by strike compensation lawsuits against unions and individuals with no purpose other than to bankrupt them. Right now, ten trade union leaders are behind bars today, and many more are out on bail pending trial.

**Precarious work is the norm**

The rise in precarious work worldwide (exemplified by short term contracts, subcontracting and worker misclassification) is the result of employment practices meant to maximise short-term profitability and flexibility at the expense of the worker by destabilising the employment relationship and undermining the exercise of labour rights. Precarious work is particularly acute in countries like Korea, where over a third of the workforce is now labouring under some form of precarious work arrangement. This has created a two-tiered labour market (and indeed society), with little mobility between these two. Precarious workers earn roughly 40 percent less than regular workers doing the same or similar work. Women workers are also disproportionately affected, making up a larger share of the precarious workforce.

Even when workers win legal battles, as in the case of Hyundai Motors, the company has refused to comply with the court order and has faced no sanction by the government.

**And what about trade?**

Korea entered into trade agreements with the United States in 2012 and with the European Union in 2011. Both agreements contain labour provisions that essentially require Korea to comply with the ILO’s core labour rights, including the right to freedom of association and collective bargaining. Despite extensive criticism of the Korea’s practices by the ILO over many years, neither the US nor the EU pressed Korea to make any changes in law or in practice prior to ratifying these agreements. While both the US and EU have engaged in informal talks on the matter, they have not produced any results to date.

On 13 January 2014, the EU Domestic Advisory Group, a civil society body established pursuant to the EU-Korea FTA, filed a letter with the Trade Commission DeGucht arguing that the Government of Korea was in serious breach of the labour provisions and called on the EU to initiate formal consultations - the first step in the dispute resolution process - to resolve the matter. On 20 February, Trade Commission DeGucht rejected the request and informed the DAG that it would continue engagement along normal channels and would seek to move forward the Committee on Trade and Sustainable Development from 2015 to 2014. The letter encouraged the continued use of the ILO supervisory mechanisms, though many of the violations raised by the domestic advisory group had already been the criticised by the ILO, all of which had been ignored by the Korean government. The Committee on Trade and Sustainable Development did meet, as well as a parallel civil society forum, in mid-December 2014. An ILO representative also participated and reported on Korea’s record on non-compliance. In the end, the Government of Korea accepted technical support from the ILO, which it has to that point refused, though it remains unclear the scope or the timing of such support. As a result, the EU is not now moving forward with consultations under the FTA.

In the US, the Labor Affairs Council, which is comprised of government representatives of both countries, met for the first time on 18-19 March 2013 in Washington, DC. According to a joint statement, the ‘Council reaffirmed the Parties’ commitments under the Labor Chapter, including the commitment to adopt and maintain in law and practice the rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work’. It does not appear that either made any commitment to actually addressing shortcomings in law or practice. The US has subsequently raised the same issues as those in the EU DAG letter, but on an informal basis only.

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1. See ILO CFA Case 1865
2. Since 2002 135 KGEU members have been dismissed and 2,900 disciplined for trade union activities
3. ILO CFA Case 1865, paras 44-53
May Day rally organisers prosecuted

Over the past decades, more often than not, Turkish authorities have banned annual May Day celebrations at Istanbul’s Taksim Square. Despite the fact that Article 34 of the Turkish Constitution protects the right to peaceably hold meetings and demonstrations, the Law on Demonstrations and Public Meetings (Law No. 2911) has been used to prohibit celebrations and to prosecute those who organise or participate in gatherings.

Five leaders of trade unions that represent a wide range of unionised workers from teachers to doctors, to architects and engineers were summoned to appear on Friday 6 February 2015 at the Istanbul Criminal Court of First Instance No. 28. Events at Taksim Square on 1 May 2014 were at the centre. Their case was heard before a packed courtroom.

The Judge began the proceedings by confirming the identities of each of the five leaders who appeared before her—by verifying each leader’s occupation and income. Mr. Lami Özgen, Co-President of the national trade union federation KESK; Mr. Kani Beko, President of the national trade union centre DISK; Mrs. Arzu Çerkezoglu, General Secretary of DISK; Mr. Mehmet Sağancı, President of the engineers and architects’ union, TMMOB; and Mr. Ahmet Özdemir Aktan, Chair of the Headquarters Council for the doctors’ union TTB, all confirmed the information. She then read the indictment in which it is alleged that the five trade union leaders violated Article 27 of the Law on Demonstrations and Public Meetings (Law No. 2911) for ‘inciting the public to illegally assemble and demonstrate’ in relation to events at Istanbul’s Taksim Square on 1 May 2014.

The five leaders, who sat on a bench directly in front of the judge, each stood up and took about 15 to 20 minutes to present their case. The arguments at this stage were not legal arguments, nor were they attempts to deny responsibility. In line with the strategy announced at a press conference held before the hearing on the courthouse steps—the leaders went on the offensive against the government in an effort to put the attitudes of the government on trial. The Judge was told key events in the history of May Day in Turkey including of the deaths in 1977 when gunmen opened fire on those gathered in the square killing 36 people. She was told of the ban the doctors union leaders violated Article 27 of the Law on Demonstrations and Public Meetings (Law No. 2911) for ‘inciting the public to illegally assemble and demonstrate’ in relation to events at Istanbul’s Taksim Square on 1 May 2014.

After each of the leaders made their oral submissions, the Judge summarised the main points which were taken down by the stenographer. She was also given a copy of the submission in hard copy. In some cases she asked follow up questions—in other cases she didn’t. When she did the questions were asked directly to the leaders who answered them directly—without seeking the guidance of counsel who were sitting in a panel on the right hand side of the courtroom.

For example, referring to a video included on a CD that was attached to the Indictment, the Judge noted that Mr. Kani Beko was shown speaking to security forces. She asked whether he succeeded in going to Taksim Square. Mr. Beko responded that he discussed going with security forces but was denied access. Everything was blocked—even the handful of people who wished to lay flowers to commemorate those who died in 1977 were blocked. He concluded that it was effectively a state of emergency.

Mr. Ahmet Özdemir Aktan, who represented the doctors’ union, was asked what prompted the police to use the pepper spray. ‘Tradition’, he responded. In response to her question whether the pepper spray was used all of a sudden she was told that it was released without any prior notification—at a forbidden angle and at a forbidden distance.

After their oral submissions, the Judge then asked each of the leaders to enter a plea. They were each offered a five year suspended sentence, provided they do not violate any other laws, and they each rejected the offer and entered a plea of not guilty.

On several occasions the Judge referred to a video that contained footage of the events of 1 May 2014. After the hearing resumed following a short break, the Judge played the video. Everyone in the courtroom focussed their attention to the small screen sitting on the bench beside the Judge. Three of the five leaders—Mr. Kani Beko, Mr. Lami Özgen and Mrs. Arzu Çerkezoglu—could clearly be seen on the video. The footage also showed tear gas being released though it was unclear what prompted the authorities to do so as it seemed to have been fired quite suddenly. Once again the judge asked about Mr. Kani Beko about his discussion with the security forces and the attempts to lay flow-
ers to commemorate those who died in 1977. She queried whether he was going with the group he was with or whether he was waiting for others to join the group before proceeding. 'Just a small group', he responded. 'Union leaders'.

The Judge then invited the submissions of the Defence. The first of several defence counsel who would make submissions rose and informed the court that the video had been sent by the police. It was asserted that some parts of the footage had been cut from the video and that the missing segments could be found on social media. The Defence went on to present photographic evidence demonstrating the severity of the gas attack as well as copies of newspapers with stories covering the events in question. This submission was followed by extensive legal and factual arguments.

Several references were made to the 27 November 2012 decision of the European Court of Human Rights ('ECHR'). In this case that concerned the banning of a 2008 May Day rally, and was brought before the ECHR by KESK and DISK, the court held that Turkey had violated Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 11 of the ECHR guarantees the right to freedom of peaceful assembly and to freedom of association. It includes the right to form and to join trade unions for the protection of one's interests. It provides that '[n]o restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others'. Although the decision focused more on policing than on the banning of the rally, it is nevertheless an important precedent especially with respect to the chilling effect on the actions of the Turkish authorities have on the exercise of Article 11 rights.

It was emphasised that when one enjoys a right – one should not be prosecuted for the exercise of that right. Further, citing the fact that the authorities permitted gatherings at Taksim Square for religious holidays but placed restrictions on May Day celebrations, it was alleged that the government had failed in its duty to ensure equality before the law.

The Defence also contended that the Indictment was prepared by the police and that it contained allegations that were untrue – such as that those gathered failed to dispense when asked. They further alleged that, rather than review and revise the document as it is incumbent upon a prosecutor to do, the prosecutor simply signed it. Referring to the Turkish Criminal Procedure Code, they argued that allegations contained within the indictment lacked sufficient gravity to proceed with the prosecution.

After the Defence counsel representing the five leaders finished their submissions, additional arguments were put forward by ‘interveners’. The three rows behind the five leaders were filled with over 45 members of the Turkish bar. The procedure seems to grant these individuals, who registered before the hearing, leave to make submissions. Those who did registered similarly placed individuals, namely other unions, but apparently this was not a requirement.

Notably absent were submissions from the Prosecutor or the Government. The Prosecutor, who was said to have worked for the Istanbul branch of the Investigation Office for Terror and Organised Crime, was not present. Three lawyers, who were acting on behalf of the Government, were present, and could have addressed the court, but made no submissions.

Although the attention of those in the gallery waned as the extensive and detailed legal arguments advanced by the defence counsel, they seemed to have held the judge’s attention more than the more political submissions given by the five leaders. At the end of the afternoon, there was much anticipation in the Courtroom that the judge would render a verdict. Instead, noting the comprehensive written submissions presented to her the judge indicated that she would take the time to read them before rendering a judgement. It was unclear whether the case is ‘closed’, that no further submissions will be allowed, and that the judge will simply render her decision on 24 March 2015, or whether after reviewing the written arguments she will seek additional submissions.

The troubling aspect of this case lies not with the judicial process – but rather with the decision to proceed in the first place. On its face, the fair trial rights of the five leaders appear to have been respected both before and during the hearing. First, although the courtroom selected for the hearing could have had more seating in the gallery to accommodate all the members of the public who wanted to attend, the hearing was nevertheless public. Second, the hearing was held before a judge of the Criminal Court of First Instance No. 28, and although the judgement has yet to be rendered, neither the judge’s comments nor her behaviour raise questions about her independence and impartiality. Third, the hearing was held within a reasonable time, despite the fact that although the indictment was issued on 15 October 2014 several months after the events in question. Fourth, the five leaders were given adequate time and facilities to prepare their defence and were all represented by counsel. No witnesses were called during the case but that seems to have been the choice of the parties. The five leaders are all fluent in the language used by the Court and therefore not in need of the assistance of an interpreter. Ultimately, it is difficult to explain why the Prosecutor would choose to proceed with charges against the five leaders when the evidence supporting the allegations in the indictment is so weak – unless the goal was to send a message to discourage those who hope to exercise their right to freedom of peaceful assembly.
**Bangladesh**

On 16 February 2015, the General Secretary for the Akota Garment Workers Federation (‘AGWF’) was violently attacked during a visit with representatives of the Accord on Fire and Building Safety (the Accord) to the BEO Apparel Manufacturing Ltd. Factory. A number of other workers were harmed in the incident, as factory managers armed with wooden sticks and iron rods attacked them. The incident took place in the context of prolonged attempts by AGWF and the Accord to ensure that BEO honour its commitments towards health and safety and treatment of workers, following the dismissal in September 2014 of 48 union members after they submitted complaints to the factory management. BEO has delayed the workers’ reinstatement, and in December 2014 the President of the factory-level union body—who was also dismissed by BEO—was violently attacked and threatened by individuals believed to be associated with the factory.

**ICTUR** wrote to the government of Bangladesh to express concern over the treatment that the trade unionists had endured. **ICTUR** urged the authorities to ensure that fundamental rights relating to human life and personal safety are fully respected and guaranteed. **ICTUR** noted that the rights of workers can only be exercised in a climate that is free from violence and intimidation and asked that the incidents be fully investigated and those responsible held to account.

**Cameroon**

In January, three trade union leaders, including the presidents of transport workers’ unions SYNESTER and SYNACPROCAM, were arrested and detained by security forces. Both Presidents were released but the practice of SYNESTER was tried and sentenced to six months in prison for his organising activities in the lead up to planned strike action.

**ICTUR** has written to express its concern over the arrest and sentencing of trade union leaders for their trade union activities and to remind the government of Cameroon that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organising or participating in a peaceful strike. **ICTUR** noted that the arbitrary arrest and sentencing of trade unionists constitutes a serious interference with trade union rights, and a violation of the principles enshrined in the ILO Conventions that Cameroon has ratified, as well as the United Nations International Covenant on Civil and Political Rights. **ICTUR** asked that the government demonstrate that the arrests and sentencing are in no way occasioned by the trade union activities of the individuals concerned.

**Dominican Republic**

On 24 February, police opened fire at the car carrying the President and the Treasurer of the agricultural workers’ union SINTRAIMAGRO, Guillermo Rivera and Medarde Cuesta. The leaders were travelling to a meeting with union members in Cauca Valley when the attack took place. On 3 March 2015, members of SINTRAIMAGRO were attacked by the police and company security forces during a strike action at the Risaralda mill in Cauca Valley, leaving dozens injured, among them union leader Carlos Ossas Trejo, who was reported to have been seriously injured.

**ICTUR** has written to the Colombian government to express grave concern at the climate of violence, intimidation and harassment of trade unionists. **ICTUR** noted that fundamental rights relating to human life and personal safety must be fully respected and guaranteed in order for freedoms associated to trade union activities to be exercised, and that is for the government to ensure that these rights are respected. **ICTUR** asked for an independent judicial inquiry to be instituted to investigate the attacks on and treatment of workers, in order to determine responsibility, punish those responsible and prevent repetition.

**ICTUR** further took the opportunity to remind the authorities of the urgent need to review the case of Huber Ballesteros, the vice-president of the agricultural workers’ union FENSUAGRO, who remains in detention and awaiting trial following his arrest on 25 August 2013.

**Georgia**

In February 2015, workers at RMG Copper and RMG Gold complained that they have been pressured to leave the metal, mining and chemical workers’ union (‘TUMMICIWG’). According to the international industrial union Industriall, the company distributed union resignation letters and asked workers to sign them after the union called on the company to honour a collective bargaining agreement.

**ICTUR** wrote to both the authorities and the company to highlight its concern at the tactics used by employers in this case. **ICTUR** noted that workers enjoy a right to organise and collectively bargain that is protected under international legal instruments, ratified by Georgia, and called for the authorities to ensure that these rights are respected in practice. **ICTUR** further called on RMG to cease any anti-union activities and to implement the terms of its 2014 collective agreement with workers.

**Myanmar**

During February 2015 and again on 4 March, police violently broke up demonstrations held by workers from the garment factories in the Shwe Pyi Thar and Haing Thar Ya industrial zones. Fourteen workers, two trade union leaders, and two activists were arrested during these incidents and are facing criminal charges.

**ICTUR** wrote to the government of Myanmar to express its concern at the arrests of trade unionists, and to highlight that this is in contravention of the obligations of Myanmar under the ILO Convention 87. **ICTUR** noted that, under international law, the peaceful exercise of trade union rights through demonstrations and strikes must be protected.

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**INTERVENTIONS**

**ICTUR** has expressed concern at the arrest of workers during a peaceful demonstration. **ICTUR** asked that the Dominican Republic ensure that it take all necessary measures to ensure the fundamental freedoms of workers to take action in defence of their interests, without fear of arbitrary arrest and detention.
Palestine
Three trade unionists of the NGO the Workers’ Advice Centre (WAC-MAAN), including the head of the Workers’ Committee, were dismissed by the management of Zarfati Garage following their efforts to organise a trade union in their workplace in the Mishor Adumim settlement. WAC-MAAN has reported problems with the company since it began organising there in 2013. Zarfati has appealed to the National Labour Court to have WAC-MAAN banned from representing workers, on the grounds that WAC-MAAN is opposed to the Occupation of the Palestinian Territory — a position that the union freely admits.

ICTUR wrote to the authorities to express concern at the reports of anti-union discrimination, observing that these constitute violations of the principles of freedom of association. ICTUR called for the reinstatement of the union leaders, and urged the authorities to respect the fact that the principles of freedom of association are incompatible with prohibitions on unions from engaging in political activity or from making their political opinions public.

Philippines
On 29 November 2014, the trade union organiser Rolando Pango was assassinated in Binalbagan town in Negros Occidental. Pango had been involved in organising workers on the Hacienda Salud sugar plantation, where workers had filed a case to the National Labor Relations Commission complaining of the unlawful dismissal of 41 workers.

ICTUR wrote to the authorities to express their grave concern at this egregious violation of trade union and human rights. ICTUR highlighted the primacy of the right to life as a fundamental prerequisite for the exercise of other rights, and called for an independent judicial inquiry into the murder. ICTUR also highlighted that the government’s failure to hold guilty parties to account would add to a culture of impunity and reinforce a climate of violence and insecurity.

Poland
On 26 January 2015, the CEO of Jastrzębska Spółka Węglowa S.A. attempted to sack ten trade unionists from the company’s coal mine at Jastrzebie after they participated in solidarity actions in support of miners elsewhere in Poland. After the 10 miners were sacked protests and strike actions were held at the mine. The situation escalated dramatically when, in incidents on the 2 and 9 February 2015, more than twenty people were injured when police shot rubber bullets at striking miners. Unions called for the CEO to resign and, with the assistance of a mediator, an agreement has been reached, the CEO has resigned, and the strike has been called off.

ICTUR has written to the authorities to express its grave concern at the use of force against workers. ICTUR noted that the use of armed force against workers is a serious violation of the principles of freedom of association, enshrined in the International Labour Organisation Conventions 87 and 98, which concept, ICTUR noted, is further protected under Article 11 of the European Convention on Human Rights. Poland is bound as a signatory to these instruments. The ILO’s Committee on Freedom of Association has found that the use of force by the authorities should only be resorted to in due proportion to the danger to law and order that the authorities are attempting to control. During trade union demonstrations, this should be limited to cases of genuine necessity and, in cases of strike movements, to grave situations where law and order is seriously threatened (Case No 2949). ICTUR further noted that the government has a responsibility to show that the arrest, detention and sentencing of a trade union official are in no way occasioned by the trade union activities of the individual concerned.

Russia
On 15 December 2014, Leonid Tikhonov, chair of the local branch of the Dockers’ Union of Russia (DUR) at Vostochny Port in Primorsky Krai, was sentenced to three and a half years in prison and further barred from engaging in trade union activities for three years. The charges of misappropriation of union funds brought against Tikhonov were filed by the managing director of Vostochny Port JSC in June 2012, in the wake of an active campaign by the DUR and a public demonstration calling for better wages and contracts for port workers. Neither the union committee nor DUR members supported the allegations against him concerning union funds and have actively campaigned for his release. The international transport workers union ITF, to which the DUR is affiliated, say that Tikhonov is ‘falsely accused’.

ICTUR has written to the authorities calling on them to investigate the circumstances around the Tikhonov’s conviction and reminding Russia of its obligations to guarantee trade union rights as a signatory to the ILO Conventions 87 and 98, and under the International Covenant on Civil and Political Rights.

ICTUR further noted that the government has a responsibility to show that the arrest, detention and sentencing of a trade union official are in no way occasioned by the trade union activities of the individual concerned.

Swaziland
On 26 February 2015 the TUCOSWA trade union centre intended to hold a meeting of its members to discuss the decision taken by the Minister of Labour and Social Security on 8 October 2014 to dissolve both TUCOSWA and the industrial workers’ union ATUSWA. On the day of the meeting, police intimidated union members and obstructed the event, mounting roadblocks to prevent supporters from reaching the meeting.

ICTUR has written to the authorities to express its concern over the decision to dissolve the TUCOSWA and the ATUSWA. ICTUR noted that the decision has been strongly condemned internationally and recalled that, following a complaint filed to the ILO Committee on Freedom of Association by TUCOSWA and the ITUC in May 2012 (Case No 2949), the Committee has specifically recommended that measures be taken to ensure that TUCOSWA be allowed to effectively exercise all its trade union rights without interference or reprisal.
The dynamics have changed: the right to strike at the ILO

At the ILO in February 2015 Government after Government took the floor to insist that the right to strike is a fundamental right, protected within the ILO system. The meeting, ostensibly a discussion on ‘the right to strike and the modalities and practices of strike action at national level’, was widely tipped as a last-ditch attempt for Employers and Workers to reach agreement without the requirement for a formal reference to be made to the International Court of Justice. Although Workers had been lobbying hard for Government support for many months, and were expressing quiet confidence about the growing levels of support for their position (which was in favour of such a reference to the ICJ), no-one seems to have noticed the levels of jitteriness that the Employers lobby was experiencing, prior to their surprise announcement on the opening morning. Although it must be noted that the Employers do still formally insist that the central argument remains open enough nails seem to have been hammered into its coffin by Governments over the course of the tripartite session that the argument is now thoroughly laid to rest for all practical purposes. And so, this extraordinary move now seems effectively to end the debate just as unexpectedly as it appeared, when Employers crudely halted the work of a key committee of the International Labour Conference in June 2012. We now find ourselves in a position in which the Employers have delivered major concessions, and in which the fundamental principle of the right to strike, its essential status as both a core human rights principle, and its centrality as a component of ILO Convention 87, has received the most extraordinary support from Governments of every political persuasion.

The Joint Statement of Workers and Employers’ Groups

In a dazzling about turn, Employers representatives at a specially convened meeting of the ILO in Geneva last month threw in the towel after 32 months of argument with Workers over the existence of the right to strike within the ILO system. The meeting, ostensibly a discussion on ‘the right to strike and the modalities and practices of strike action at national level’, was widely tipped as a last-ditch attempt for Employers and Workers to reach agreement without the requirement for a formal reference to be made to the International Court of Justice. Although Workers had been lobbying hard for Government support for many months, and were expressing quiet confidence about the growing levels of support for their position (which was in favour of such a reference to the ICJ), no-one seems to have noticed the levels of jitteriness that the Employers lobby was experiencing, prior to their surprise announcement on the opening morning. Although it must be noted that the Employers do still formally insist that the central argument remains open enough nails seem to have been hammered into its coffin by Governments over the course of the tripartite session that the argument is now thoroughly laid to rest for all practical purposes. And so, this extraordinary move now seems effectively to end the debate just as unexpectedly as it appeared, when Employers crudely halted the work of a key committee of the International Labour Conference in June 2012. We now find ourselves in a position in which the Employers have delivered major concessions, and in which the fundamental principle of the right to strike, its essential status as both a core human rights principle, and its centrality as a component of ILO Convention 87, has received the most extraordinary support from Governments of every political persuasion.

The Joint Statement of Workers and Employers’ Groups

In a document negotiated between Workers and Employers a number of key points of agreement were outlined, including the following key statement: ‘the right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation’. This recognition, the agreement notes, ‘requires’ the Workers and Employers’ groups to address four outstanding issues, which are: the mandate of the Committee of Experts on the Application of Conventions and Recommendations; the process for selection of cases before the Committee on the Application of Standards (‘CAS’) to be discussed, and the role for workers and employers in drafting conclusions of the CAS to be examined; ‘improve-ment’ in the operations of the supervisory procedures, namely the procedures of the Committee on Freedom of Association, and on Articles 24 and 26 of the ILO Constitution; and the Standards Review Mechanism, which is a process already underway concerning coherence and relevance of ILO standards. The Joint Statement was signed off by both parties, and is in force until November 2016, with provision for its renewal or cancellation, depending on its implementation. In practice, this should mean that Employers have signed up to a peace agreement that ought to allow the next two sessions of the ILO Conference (June 2015 and 2016) to proceed without interruption. But above and beyond this formality we have such a widespread sense of relief that it now seems unthinkable that the Employers could be taken seriously in any attempt to resurrect their main earlier lines of argument.

The contribution of Governments to the debate

Prior to the issue of the Joint Statement it had been widely believed that Governments would be key to deciding how the long-running saga would play out, holding, as they did, the balance of voting power on the question of whether or not any reference ought to be made to the ICJ. This deciding role was to some extent taken away from Governments when the Joint Statement emerged, but it would by no means be accurate to say that Governments were thus sidelined from the meeting. Rather they took the opportunity to expound, at some length, on the broad theme of the fundamental importance of the right to strike. In a move that was almost as unexpected as had been the about-turn the Employers had just engaged in, Governments now stood in turn and clearly announced their commitment to the fundamental nature of the right to strike. One after another, Government speakers affirmed the centrality of the right to strike under international law, insisted on the vitality of the right under various national and regional legal systems, firmly located the right within the ILO system, and even directly affirmed that the right to strike is a core component of ILO Convention 87. Workers had asked Governments to come to their aid to protect a fundamental principle but the response was just stunning. Only a handful of Government speakers couched their language in polite diplomatic phrases that affirmed relatively little, but even they did not speak out against the Workers’ position. And the great majority of Government speakers gave a stunning endorsement to the right to strike, quite beyond what Workers had hoped to imagine they might deliver. Just a handful of extracts from...
the Tripartite Meeting give an insight into how extraordinarily strong – if unexpected - this outpouring of Government support was:

- Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), a Government representative of the Bolivarian Republic of Venezuela noted that … the group understood that the right to strike existed in international law: it was an essential component of freedom of association and the right to organise. Countries in the region attached considerable importance to the International Covenant on Economic, Social and Cultural Rights and the Additional Protocol of the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the “Protocol of San Salvador”, both of which were legally binding documents that made specific reference to the right to strike. The right of a trade union to freely organise its activities and to formulate its programme of action, set out in Article 3 of Convention No. 87, would be limited if the trade union did not have the right to strike, to be exercised in conformity with the laws of the country’ (para 11)

- Speaking on behalf of the European Union (EU) and its Member States, a Government representative of Latvia said that… Convention No. 87 had been supervised by the CEACR, the CAS and the CFA, without persistent objections from governments, but only some disagreement on specific findings. Article 19 of the ILO Constitution contained a minimum standard provision whereby ratified Conventions should not be deemed to affect any law, award, custom or agreement which ensured more favourable conditions for the workers concerned than those provided for in ILO Conventions. The United Nations International Covenant on Economic, Social and Cultural Rights, 1966, in its Article 8(d), protected the right to strike. Some 140 countries had ratified both the Covenant and Convention No. 87. The right to strike was thus a corollary of freedom of association, even though it was not mentioned explicitly in Convention No. 87’ (para 13)

- A Government representative of the United States regretted that the CEACR’s function had been called into question as it was an essential part of the ILO and had been supported by every United States Administration over the past 60 years. It was vital to address this issue in a way that would strengthen the ILO supervisory system. In the decades since the adoption of Convention No. 87, the CEACR and the CFA had provided observations and recommendations with regard to the right to strike. Working within their mandates through the examination of specific cases they had observed that freedom of association and particularly the right of workers to organise their activities for the purpose of promoting and protecting their interests could not be fully realised without protecting the right to strike. The same logic prevailed in the United States. Convention No. 87 was meant to protect freedom of association rights of workers and employers, and the right to organise activities and formulate programmes. The National Labor Relations Act in the United States protected workers’ rights, and the Supreme Court of the United States deemed strikes to be a protected activity. The CFA had confirmed and applied the relationship between the right to strike and the right to freedom of association in almost 3,000 cases without dissent. The United States concurred that the right to strike was protected under Convention No. 87, even though the right was not explicitly mentioned in the Convention’ (para 16)

- The US also … lent its full support to the dedicated work of the CEACR and the CFA, which for more than 60 years had provided non-binding observations and recommendations addressing the protection, scope and parameters of the right to strike. The United States also welcomed the opportunity to discuss how countries could promote this right and hoped that interference with ILO supervisory organs would not continue’ (para 16).

- ‘A Government representative of India believed that the supervisory system was an integral part of the ILO, and that the ILO Constitution should govern every decision related to the functioning of the Organisation. The International Labour Conference was the supreme forum for deciding the course of action for world of work matters. The right to strike was essential, and should be guided by national laws’ (para 19)

- A Government representative of Mexico said that Mexico placed great importance on freedom of association and the right to strike, which were protected under its Constitution since 1917. While the right to strike was not explicitly mentioned in Convention No. 87, it was protected under international law and should therefore be protected under the Convention’ (para 22)

- ‘Speaking on behalf of the Africa group, a Government representative of Zimbabwe observed that the dynamics had changed and that the joint statement provided a basis for resolving issues. His group wished to be part of an agreement, in the spirit of tripartism’ (para 32).

- It must be noted that in almost all cases these Government representatives qualified the above statements with variations on the argument that the right to strike is not an ‘absolute’ right, by which they were insisting on the possibility that the right might be limited or restricted in certain circumstances. The Government positions set out above must be understood within this context. And yet this, of course, is a position that is completely in accordance with how the right to strike was understood prior to the 2012 action by the

Employers insist that the key argument remains live but after these staggering developments it is unimaginable that the attack could be resurrected

This article discusses the outcome of events at the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, 23-25 February 2015
Employers Group. Workers are now – as they were then - content to accept at least some limitations to be set around the right to strike, so long as the fundamental principle is affirmed in practice. Such a position is well established in the decisions of the CEACR and other ILO bodies.

The mandate of the CEACR

The question of the mandate of the CEACR and a whole bunch of reform proposals around ILO standards and supervisory processes are given a renewed urgency by the commitment to address them set out in the Joint Statement. But although these demands are largely emanating from the Employer benches they seem eminently more manageable than did the key pillars of disagreement that were in play until the February meeting. There is also an explicit reference in the Joint Statement to the question of the mandate of the CEACR, in which the parties state that the Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognisant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise. The Committee’s technical role and moral authority is well recognised, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers’ and workers’ organisations. This has been reflected in the incorporation of the Committee’s opinions and recommendations in national legislation, international instruments and court decisions. While Employers clearly intend to pursue a reform agenda around the CEACR the language they have agreed to in this document seems largely to chime with the position that Workers have been arguing since 2012, and so here too real progress appears to have been made.

Where are we now?

On the surface level the situation is quite remarkable, there has been an almost total climb down from the Employer position, and the status quo is returned to something like it was prior to the Employer bombshell dropped in June 2012. It may even be that Workers are in a rather stronger position than they were then. Who, after all, could back then have imagined that so many Governments would queue up like that to issue statements in support of the fundamental nature of the right to strike? But some closer analysis flags up that there are, of course, one or two potential problems ahead. The first observation worth looking at is that the Joint Statement studiously uses the language of ‘industrial action’ rather than ‘strikes’. It is an odd position, and in some ways a reversal of their earlier Cold War position, when Employers supported the right to strike as a civil and political right to be wielded against repressive States, but shied away from its social and economic rights reading, which would site it as a weapon to be wielded in economic battles against employers… But clearly it is the Employer intention to place some limit on the ‘political’ element of strike action, and we must be alert to how this might unfold, and conscious of the fact that we are not privy to exactly where Employers are going with this line of argument. Secondly, the battle around the demarcation of the role and procedures of the CEACR is by no means over. The Employers clearly mean to continue with an agenda in this area, though the outpouring of support that both the Experts and the hitherto established ‘jurisprudence’ of the ILO has received from Governments, will no doubt weaken the Employer hand here too. But, weak or not, its an area we must remain alert to. Perhaps the most uncertain position is that around some aspects of the ILO system that have so far escaped the main focus of Employer dissatisfaction, notably the Representation and Complaints systems under Articles 24 and 26 of the ILO Constitution, and the role of the CFA. There are other areas in which problems may yet emerge, but for the moment these three sites of possible future conflict are key for trade unionists to watch.

Although it is to some extent depressing to realise that this essentially is only a defence of the pre-2012 status quo we can at least take some comfort in the fact that Workers have, for now, won a key battle. And we should recognise that we have, in addition, secured some extraordinary statements of support for the protected status of the right to strike. We have also discovered that there are reserves of support among the Governments of the world that we might not previously have recognised. And so on balance it is appropriate to see the outcome of this meeting as essentially positive and as a step forward from the Workers’ perspective. Summing up the current situation, Sharan Burrow, ITUC General Secretary, said, ‘having created the crisis, employer groups and some governments were refusing to allow the issue to be taken to the International Court of Justice even though the ILO Constitution says it should be. We’ve now managed to negotiate a solution which protects the fundamental right of workers to take strike action, and allows the ILO to resume fully its work to supervise how governments respect their international labour standards obligations’.

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1 Joint Statement of Workers and Employers’ Groups (ILO document - TMFAPROC/2015/2)
2 Draft Report (ILO document - TMFAPROC/2015/3)
3 Joint Statement of Workers and Employers’ Groups (ILO document - TMFAPROC/2015/2)

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It is vital that Workers remain alert to the direction of future negotiations: the text of the agreed Joint Statement makes it clear that Employers intend to push for further change within the ILO system.

INTRODUCTION: Union Rights
Fast food campaign: hungry for justice

The UK employs around 168,000 workers in the take-away and fast food industry, with a revenue of £5 billion in a sector dominated by multinational corporates delivering vast profits to shareholders. Outlets like McDonalds, Burger King, KFC and Costa Coffee. Take McDonalds they employ around 90 percent of their staff on zero hour contracts, with an hourly rate barely above the minimum hourly rate. Zero hour contracts are a major problem and need to be abolished. These contracts deny the worker from being able to have a life with a living standard fit for a human being. Zero hours is a throw back in time teasing and tormenting workers many on the edge of poverty feeding them crumbs. Workers on zero hour contracts are often unable to obtain simple things like enough wholesome food, pay for heating or rent, obtain a rent contract or a mobile phone contract. They need to claim benefits to top up their income others have to frequently visit food banks.

The BFAWU national officers Ian Hodson and Ronnie Draper who are part of a trade union parliamentary group, which is chaired by Labour MP John McDonnell agreed that something had to be done to help these workers in this sector. MPs like John McDonnell, Ian Mearns, Ian Lavery and Jeremy Corbyn are all fighting to see the abolition of the zero contract hours. There are 114,000 workers said to be on zero hour contracts it is the government’s way of hiding the true unemployment figures by allowing worthless contracts to disguise the Conservative government’s ever failing inability to help and protect young workers. Workers should be able to join a trade union without fear or recrimination from their employer. After calls for management of these multinational groups to enter into meaningful discussions over contract and pay with the trade union they declined.

In the US, campaigners and workers took to the streets and used strike action to successfully achieve an hourly rate most would think impossible. They showed how collectively with trade union support and similar groups that people power and social justice can overcome and win a rise to $15 an hour.

So in the beginning of 2014 the BFAWU along with other activists and socialist groups and trade unions set out to seek the support of MPs and started their campaign against major fast food outlets who are exploiting vulnerable workers and especially young workers in zero hour contracts with low pay and a lack of job security.

Ian Hodson the national president of the BFAWU has said that it is immoral and wrong that a company refuses to pay a wage that its workers can live on, and that it is wrong that workers are being forced to take strike action in order to obtain a living wage. The BFAWU is demanding that we are given £10 per hour for workers in Britain. If we were to obtain £10 per hour this would take 5 million people out of poverty. The BFAWU have supported days of action with the US. They have campaigned for workers in the UK by demonstrating on the same days as the US along with extra days for the UK. The BFAWU have introduced a special zero hours membership for £1.09. We are part of a global group that has gained support in over 30 Countries and continues to grow.

Global Day of Action

We now are planning a Global Day of Action for 15 April 2015 at 6pm demonstrating outside as many McDonalds in as many Cities as possible in the UK under the slogan ‘join the union day’. We aim to leaflet before the event to explain why we demonstrating so they know the day of action. That it is about improving terms and conditions and their working lives. We also aim to return afterwards to talk with the workers and give them an opportunity to join our union and help take ownership of the Fast Food Campaign. This will be well publicised and we hope that all political and socialist groups along with workers come out and support us in every city.

Workers who are supressed with low pay zero hours contracts are forced into such poverty low esteem and a life of misery and depression with no way out. Austerity does not work or help the majority it destroys live and communities, leaving people in misery while the rich fat cats of society hide in their home abroad avoiding paying their taxes criticising those on benefits because they will not pay them a living wage. When a worker is given a zero hour contract many of them cannot obtain simple things like a place to rent and live or a mobile phone contract, because they have no guaranteed income.

The Labour party have said that if they win the general election in May they will see to it that zero hour contracts will be abolished. I know they look to raise the minimum wage to £6 by 2020 that’s not enough and to slow in coming. One of the greatest men in recent times said ‘to deny people their human rights is to challenge their very humanity’ and ‘it always seems impossible until its done’ - Nelson Mandela. Let us get £10 per hour, remove poverty, and give workers a living wage.
The Canadian Supreme Court has greatly expanded the recognition and protection of freedom of association concepts under the Canadian Charter of Rights and Freedoms. In reaching this profound conclusion, the Supreme Court has completed a move from a restricted interpretation of freedom of association that was set out in the 1987 Labour Trilogy and a subsequent 1990 case, Professional Institute of the Public Services of Canada (‘PIPSC’). In those cases, the constitutional protection of worker freedom of association was found to be limited to activities that could be performed by individuals and not those collective activities, which could only be performed as a result of association.

The remarkable shift that has occurred from this earlier case law began in 2001 with the Dunmore case. In Dunmore, the Court held that the Charter guarantee of freedom of association included the right of farm workers in the Province of Ontario to at least make collective representations to their employers (see ‘Scope for Optimism in Canada’, IUR 9.1 2002). The outcome reflected the Court’s adoption of a ‘purposive’ approach in the interpretation of the rights set out under the Charter. This included consideration of international labour law in giving meaning to freedom of association. In Dunmore, the Court applied the purposive approach to navigate around the earlier restrictive interpretation, but did not overturn that case law.

That changed in the next case, Health Services, where the purposive approach led the Court to overturn its earlier case law in finding s. 2(d) freedom of association under the Charter provided constitutional protection for the process of collective bargaining. As a result, legislation by the Government of British Columbia tripping away collective bargaining rights for health care workers (and later teachers) was found unconstitutional. The significance of Health Services is also reflected in the Court’s extensive review of international law (‘Supreme Court Applies International Labour Law’, IUR 12.2 2007). Canadian labour lawyers were subsequently concerned that the Supreme Court may have been backtracking in its seeming progression to recognition of fundamental collective rights. That is, the 2011 Fraser decision where Ontario farm workers were held to the minimal representation rights set out in Dunmore. However, the Supreme Court has now emphatically confirmed constitutional protection for a meaningful process of collective bargaining that includes, as we will see below, the right to organise independent associations for the purpose of collective bargaining and, in overturning the final piece of its earlier case law in SFL, incorporates the right to strike.

The Saskatchewan Public Services Essential Services Act permitted a broad range of public sector employers to unilaterally ‘designate’ employees (as essential workers) and hence to require them to continue to perform their duties in the event of a work stoppage (‘Saskatchewan challenge to workers’ rights’, IUR 15.3 2008). The Saskatchewan Court went far beyond essential services legislation in any other Canadian jurisdiction. It provided the broadest definition of essential services, covered the greatest number of public sector employers, all without any effective means to challenge whether the services were in fact essential, let alone the designation of employees themselves, and with no alternative dispute resolution process to otherwise resolve a workplace dispute. The effect was to so drastically interfere with the right to strike as to make its exercise meaningless. The Saskatchewan labour movement claimed the Act was in violation of what should be a constitutional protection of the right to strike. In 2010, the ILO Committee on Freedom of Association found the situation violated the right to strike, but this had no impact on the Saskatchewan Government. The Government refused to make the requested revisions and the SFL action proceeded to trial.

The path to the Supreme Court began with the 2012 trial judge’s decision that the right to strike was constitutionally protected under the Charter. That decision was overturned on appeal by the Government of Saskatchewan in early 2013 and the matter moved to the Supreme Court of Canada where it was heard in May 2014. In a great display of effective solidarity, the Canadian Labour Congress co-ordinated the efforts of the diverse trade unions and labour organisations, along with the CLC itself, that intervened in support of the Saskatchewan Federation of Labour.

In reaching its conclusion, the Supreme Court majority found support in its previous caselaw, in the application of Charter values promoting dignity in the workplace, in the role of strikes in labour history, international treaties, and in the acceptance of a constitutional right to strike in other states as well under the European Convention on Human Rights (‘ECHR’). The majority also relied on expert evidence admitted at trial on the content of international law from Canadian professors Michael Lynk, Patrick Macklem and Roy Adams. The Court referenced many published articles and, while this included respected Canadians such as Judy Fudge, Eric Tucker and Paul Weiler, this also included others familiar to IUR readers as Sir Bob Hepple, John...
Hendy QC, Keith Ewing, Jean-Michel Servais and Manfred Weisse.

As part of the international law analysis, the majority considered the Charter of the Organisation of American States, the ECHR, the European Social Charter, ILO Convention 87, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The majority reviewed the commentary and decisions pursuant to the two UN Covenants and the ILO Committee on Freedom of Association and Committee of Experts. In doing so, the Court ignored the claim that the dispute generated by the Employers’ Group at the ILO Committee on the Applications of Standards undermined the Committee of Experts support of a right to strike (this dispute is also discussed in this edition of IUR, at pp16-18).

In the opening segment of the SFL decision, writing for the majority, Madam Justice Abella makes a powerful observation when she states that the Court’s recent case law recognised that freedom of association under the Canadian Charter protects a meaningful process of collective bargaining and, as such, the ‘arc bends increasingly towards workplace justice’. Justice Abella then went immediately to the majority’s conclusion that the right to strike is an indispensable component of that meaningful process of collective bargaining and the time has come to ‘give this conclusion constitutional bencdiction’.

In support, the majority decision then went on to find that labour history in England and Canada established the right to strike as an essential component – the ‘powerhouse’ - of collective bargaining. It promotes equality in that bargaining process. Further, in considering Charter values, at the point of impasse in collective bargaining the right to strike is the affirmation of the dignity and autonomy of employees in their working lives.

Canada’s international human rights obligations also ‘mandate protecting the right to strike as part of a meaningful process of collective bargaining’. The Charter, the majority stated, relying on previous Supreme Court case law, should be interpreted to provide at least as great a level of protection as found in international human rights documents Canada has ratified. The majority points to the ECHR case law, in finding an emerging international consensus that, if it is to be meaningful, collective bargaining requires a right to strike. This is also supported by the express constitutional protection of the right to strike in other States1.

The test for constitutional infringement is then held to be where legislative interference with the right to strike substantially interferes with collective bargaining. Where it does, then the analysis moves to whether the nature and scope of such interference can be justified. The justification provision of the Charter under s. 1 is worded and applied in much the same way as Article 11(2) of the ECHR. The Government fails the s.1 justification test in SFL. The legislation was accordingly declared invalid, with one year’s grace to the Government to come up with alternatives if it wished, and court costs at all levels were awarded to the Saskatchewan Federation of Labour.

The SFL case must also be read with another significant decision released by the Supreme Court of Canada two weeks earlier, Mounted Police Association of Ontario (‘MPAO’). In a revisit of its 1999 Delisle decision, the Court held that the right to organise is also protected as part of a meaningful process of collective bargaining under s. 2(d) of the Charter. In doing so it confirmed Health Services and ‘clarified’ Fraser. As such, the right provides employees a degree of choice and independence in selecting their associations that is sufficient to allow RCMP officers to determine and pursue their collective interests. The associational system imposed by Government regulation for members of the RCMP was not free from management influence and hence unconstitutional. The Court then overturned Delisle in finding that a provision of the public service labour relations legislation that excluded RCMP members from collective bargaining was also unconstitutional.

SFL and MPAO together illustrate that the turn-about in the Court’s interpretation of freedom of association was accomplished by centring both the right to organise and the right to strike as necessary to protect a meaningful process of collective bargaining. The progression in case law (Dunmore, Health Services) thus removed the barriers arising from the Court’s earlier case law to providing meaningful recognition to worker freedom of association under the Canadian constitution.

Observers of the European Court of Human Rights (‘ECHHR’) case law will note a parallel to that Court’s own progression in giving meaning to worker freedom of association pursuant to Article 11 of the ECHR (see, for example, ‘Freedom of Association in Canadian and European Human Rights Law’, IUR 16,3, and the more recent ECHHR case of RMT v UK). However, Canadian labour lawyers may hope that the recent setback in RMT will not be repeated in Canada. The ECHHR’s decision that secondary action banned under the UK labour legislation was justified under the saving provision of Article 11(2) of the ECHR, rather contrasts with the finding of the Supreme Court of Canada in the 2002 Pepsi-Cola case that secondary picketing is a protected Charter activity under s. 2(b) freedom of expression.

Be that as it may, the SFL decision is a proud victory for the Canadian labour movement and hopefully it will play its own part in cementing the recognition in the wider international community that the right to strike as an essential component of worker freedom of association.

1 The ILO background paper to the meeting of the Applications of Standards in February 2015 notes that the right to strike is included in the constitutions of 97 countries and has been interpreted as being protected under the constitution of four others, including Canada following the SFL case.
For whom does a labour chapter work?

What does the CAFTA-DR labour dispute tell us about the potential to protect labour standards in TTIP?

The case against Guatemala under CAFTA-DR (the Dominican Republic-Central America Free Trade Agreement), initiated in September 2014, is the first labour dispute under a trade agreement to proceed to arbitration. Guatemalan unions, in cooperation with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), lodged their first complaints through the CAFTA-DR mechanism in 2009, alleging gross violations of labour rights in Guatemala. It has taken more than six years from that date for the US Government to initiate the proceedings, following repeated delays, extensions, and abandoned attempts at consultations with the Guatemalan government.

This landmark moment provides a useful opportunity to consider the potential for including labour rights provisions in free trade agreements. The allegations against Guatemala have been widely reported: unions have long highlighted widespread anti-union discrimination and the murder of trade unionists, and in 2014 the ITUC ranked Guatemala one of the worst places in the world for workers. For workers in the EU, such horrors might seem far removed, but with the race under way to create the mega-regional Transatlantic Trade and Investment Partnership (TTIP) – and with it, a new and expansive world trade agreement – for whom do they work? Is it worthy of some critical reflection?

The action and inaction of Guatemala (and the US)

The US has negotiated labour provisions into 13 FTAs – with 19 partner countries – over 22 years, each with some degree of enforceability. The United States Trade Representative (USTR) has received complaints concerning violations in Bahrain, Honduras, the Dominican Republic, Mexico, and Peru. In 2013, consultations were initiated concerning a complaint against Bahrain. Of the 37 complaints submitted under the North American Agreement on Labour Cooperation (NAALC) – the NAFTA side-agreement – not one has got beyond consultations and public hearings, and penalties have never been implemented. So, Guatemala is not the only country accused of violating the labour provisions of a US trade agreement, but the step to arbitration is a highly significant one: the arbitral panel is mandated to issue an initial report with findings and recommendations that if Guatemala fails to implement could result in fines or potentially trade sanctions.

Written submissions to the arbitral panel from the US and Guatemalan governments have now been published. Guatemala’s defence hopes to establish that the alleged violations (which it insists are unsubstantiated) cannot amount to a breach of CAFTA-DR Article 16.2.1(a), namely ‘a failure to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties’.

The Guatemalan government argues, inter alia: (i) that the action or inaction of the relevant bodies (including labour courts) is outside of the scope of the provision, which covers only the executive branch of government (para. 181); (ii) that in order to qualify as ‘sustained or recurring’ a course of action or inaction must ‘have formed part of a deliberate policy of neglect… with the intended consequence of having an effect on the exchange of goods or services among all of the States that are part of CAFTA-DR’ (para. 273); and (iii) that trade between the Parties has, in any case, not been affected (para. 472).

Whatever the merits or otherwise of these interpretations, what is abundantly clear is that the labour provision in CAFTA-DR is by no means a juridical panacea for the enforcement of labour standards among its members. The panel is chaired by Canadian labour law professor Kevin Banks, but as Guatemala has been keen to point out, CAFTA-DR is a trade agreement, not a labour agreement. And the language of the provision reflects this.

However, there are limits to this case that do not derive from the legalese of the text alone. The systematic use of violence against trade unionists has been – somewhat dubiously – omitted from the US submission. Seven members of the Guatemalan Izabal Banana Workers’ Union (SITRABI) have been murdered since 2008 when SITRABI co-signed the CAFTA-DR complaint, and a total of sixty-four union leaders have been killed in Guatemala since 2007. Apparently, the USTR does not consider such matters as violations of the CAFTA-DR labour chapter. As a result, the failures of the Guatemalan authorities to investigate these deaths or prosecute those responsible for them will not feature in the current dispute.

Trade agreements are for trade, labour chapters are for…?

During the negotiations and signing of CAFTA-DR, national unions across all of its member countries opposed the agreement. Between 2002 and 2005, numerous mass demonstrations took place in Guatemala demonstrating against its potential impacts. The ITUC joined this opposition! Even Barack Obama opposed CAFTA. Opposition focused not only on labour standards, but also on the effects of trade liberalisa-
tion on the development of domestic industry, widespread privatisations and the destruction of small-scale agriculture, and the subsequent loss of employment opportunities.

A three-year study on the impact of CAFTA-DR on labour rights, completed by the Washington Office on Latin America in 2009, concluded that labour conditions in the CAFTA-DR countries had not improved nor had labour rights violations diminished, despite millions of dollars invested by the US to meet this objective. The Stop-CAFTA Coalition further reported that the agreement exacerbated ‘patterns of growing inequality and ongoing poverty within the signatory countries’. CAFTA-DR has been the launch-pad for at least 16 investor-state dispute settlement proceedings, including the Pacific Rim arbitration, in which the Canadian mining company is attempting to sue El Salvador for hundreds of millions of dollars following widespread public opposition to its gold mining operations. The USTR nonetheless heralds CAFTA-DR as a success: trade between the US and its partners has grown by 71 percent since entry into force.

That the (edited) experiences of Guatemalan workers have now been submitted for arbitration does little to detract from the thrust of CAFTA-DR’s impact. Nor would it be fair to criticise the Guatemalan trade unions for the submission of a complaint under CAFTA-DR, having once opposed the signing of the agreement. As detailed in the worker delegates’ request of 2012 for the establishment of an ILO Commission of Inquiry into the situation in Guatemala, despite almost constant scrutiny of the ILO supervisory machinery for almost 25 years – including 19 observations of CEACR (Committee of Experts on the Application of Conventions and Recommendations), 88 cases filed with the CFA (Committee on Freedom of Association), 14 reviews by the CAS (Committee on the Application of Standards), and numerous technical assistance missions – this had failed to generate sufficient political will to compel the government to meaningfully fulfil its obligations under ILO Convention 87. Recourse to the CAFTA-DR mechanism by Guatemalan workers comes after having practically exhausted all other avenues for international pressure and with scant prospects of effectively challenging these abuses by other means.

But the move to arbitration may also raise false hopes that free trade agreements really can deliver something in favour of labour rights, a particularly attractive prospect given the general inefficacy of other international mechanisms. Whatever else one might say about international trade law, it is characterised by some potent, politically and economically effective counter-measures and sanctions. And so one might be forgiven for hoping that these may be harnessed for the benefit of labour rights.

**TTIP, labour and legitimacy**

The EU-US TTIP, it is promised, will produce a new generation of mega-regional trade agreements. The future of the EU will be transformed into an all-singing, all-dancing paradise by TTIP – with more business opportunities, more growth and more jobs, lower prices – if the EU Commission is to be believed. Many don’t believe.

The negotiations have generated a widespread public backlash from civil society in Europe and the US. However, the European Trade Union Confederation (ETUC) and the AFL-CIO came out in July 2014 with a declaration demanding that TTIP ‘must work for the people, or it won’t work at all’. Their position contrasts with that of many campaigning against TTIP, most of whom seem to believe that TTIP simply won’t work for the people, at all. According to the EU Commission’s January 2015 report on the public consultation on investor-state dispute settlement (ISDS) provisions in TTIP, a majority of the 149,399 respondents were not only opposed to ISDS, but to TTIP generally.

The ETUC/AFL-CIO proposal calls for an approach that ‘puts shared prosperity and sustainable social and economic development at the centre of the agreement; for a “gold standard” of “people- and planet-centred” trade agreements which will improve living and working conditions and “create a system for continuous improvement”. And the proposal insists that TTIP must enshrine labour rights and make them “subject to dispute settlement and trade sanctions” - in other words, contain a labour chapter.

In its checklist of demands, it is worth noting that the ETUC/AFL-CIO declaration has more concerns about what TTIP should not do, than what it should do. Among its positive demands is that ‘greater resources should be allocated to support workers subject to structural change’. How could this ever be translated into a meaningful, binding commitment which the other party to the agreement would have any interest in enforcing? It is difficult to envisage how a labour chapter in a trade agreement could ever avail any meaningful recourse to workers who lose their jobs as a result of retrenchments ensuing from the privatisation of public services engendered by the very same agreement.

More importantly, experience shows that commitments to labour (or other social) standards in trade agreements do not provide any guarantee of either implementation by one state, or enforce-
The architecture of TTIP will fatally undermine whatever leverage potential developing and emerging economies still have in the WTO.

Careful what we wish for

The problem of asking for a labour chapter in TTIP is that we might get it. The problem with getting it is that it will be attached to TTIP.

For the negotiators, the inclusion of labour provisions in TTIP is a small price to pay for the perceived legitimacy that it will lend to the agreement itself. Following the comprehensive failure of the EU Commission to respond to the widespread demands to exclude ISDS provisions, the request to include labour provisions (if they prove as useful as those in CAFTA-DR) is doubtless one it will happily accommodate. In its agenda for the November 2014 ‘Roundtable on labour rights and civil society participation in TTIP’, the Commission only elliptically alluded to ISDS, but showed a broad willingness to accept contributions on the content of labour provisions.

For workers, finding out that such labour provisions do not actually do anything – or waiting six years for a complaint to reach arbitration – may come too late. The damage to hard-won social protections, to the environment, and to the democratic process will already have been done.

Many anti-TTIP campaigners have argued that raising, or even maintaining, labour, social or environmental standards through the treaty is fundamentally irreconcilable with the agreement’s primary purpose, which is primarily the promotion of corporate interests. Indeed, the ETUC/AFL-CIO’s optimistic support for free trade as a general principle is not universally shared, and the Commission’s predictions for post-TTIP growth and employment have been comprehensively rubbish’d. The UK Trades Union Congress have adopted a position of ‘outright opposition’ to the agreement, albeit with the somewhat self-defeating caveat that they will continue to press for improvements in alliance with the ETUC/AFL-CIO. Meanwhile, a strong, co-ordinated, transnational opposition to TTIP has served to expose a massive democratic deficit in the negotiations and seems highly determined to bury the deal.

So it would seem prudent for the trade union movement to not simply provide negotiators with a shopping list of lip-servicing and inconsequential bullet points with which to resurrect the agreement. All the more so, when the shopping list itself reads like a pipedream.

The anti-TTIP campaign has demonstrated that such effort may be better directed at standing strong with those trying to shut down the negotiations. This is not only a matter of jobs and growth, but also of international solidarity: the very architecture of TTIP is designed to fatally undermine whatever leverage potential still exists for developing and emerging economies under the auspices of the WTO negotiations. TTIP’s proponents proclaim that it will set new standards for developing and emerging economies under the auspices of the WTO negotiations. TTIP’s proponents proclaim that it will set new standards for developing and emerging economies under the auspices of the WTO negotiations. TTIP’s proponents proclaim that it will set new standards for developing and emerging economies under the auspices of the WTO negotiations.

And that is essentially, at the core of the dilemma of trying to enforce labour standards through trade agreements: that no matter what their content, the drafting, negotiation and enforcement of such agreements are largely driven by relative market power.

US policy in Honduras causes migration

Trade, Violence and Migration: The Broken Promises to Honduran Workers

In the wake of the political crisis in the United States last year, caused by the migration of large numbers of children from Central America to the US/Mexico border, the AFL-CIO in November sent a delegation to Honduras, the country that sent the greatest number of unaccompanied minors. ‘What we witnessed’, reported Tefere Gebre AFL-CIO Executive Vice President, ‘was the intersection of our corporate-dominated trade policies with our broken immigration system, contributing to a state that fails workers and their families and forces them to live in fear.’

The report, in fact, contains a frank assessment of the history of US foreign policy in Honduras, and draws out the disastrous consequences it has created in that country today. ‘The fate of Honduras long has been tied to that of the United States’, it charges. ‘Throughout the 20th century, Honduras was key to maintaining US military and economic interests on the isthmus. The US military intervened in Honduran politics throughout the early 20th century to protect the foreign investments of large US corporations like the United Fruit Co. Later, Honduras served as a base of operations during the US-supported 1954 coup in Guatemala, as well as the 1961 Bay of Pigs invasion, and during the years of civil war and Cold War proxy wars in Central America in the 1970s and 80s, the government provided support for the ‘Contra’ counter-revolutionary war against the Sandinista government in Nicaragua.

More recently the US raised only pro-forma objections to the 2009 coup that overthrew Honduras’ elected president Manuel Zelaya, and then quickly restarted military aid to the junta that seized power. ‘Under the left-leaning Zelaya administration, the minimum wage was raised by 80 percent, direct assistance was provided to the poorest Hondurans, and poverty and inequality declined’, the report says. After the coup, however, ‘numerous trade unionists and community activists who participated in resistance were killed, beaten, threatened and jailed’, it declares.

Based on extensive interviews with unionists, it details current abuses of labour and human rights. The government has built an apparatus to put down dissent, while the Secretariat of Labor and Social Security has passed laws to reduce permanent work, protections and freedom of association. Teachers face news laws limiting their right to strike. Farm worker unionists face an increase in violent attacks and threats against their lives in the sugar cane fields. Five union executive councils have been fired by the partnership of the Kyungshin Corp. of South Korea and the Lear Corp. of Michigan.

In the port of Puerto Cortez, the delegation reports deteriorating conditions due to the privatisation of docks, with over 1000 workers fired. Although the report doesn’t mention it, the head of the dockers’ union, Victor Crespo, was forced to flee Honduras after his father was killed and mother injured, and he himself received threats to his life. A support campaign by the US International Longshore and Warehouse Union helped save his life, and eventually won guarantees that allowed his safe return to Honduras.

The AFL-CIO report condemns a plan to ‘reduce the wage bill’ in the public sector by cutting jobs and privatising public services, especially in electricity. It points out that this reflects the policies of the International Monetary Fund, which called for cutting the public sector from 7.5 percent of GDP to 2 percent in four years. The resulting job loss has a clear impact on increasing poverty, forcing many Hondurans to migrate in search of survival.

The report makes the case that poverty in Honduras has been deepened by the impact of the Central American Free Trade Agreement: ‘today, Honduras is the most unequal country in Latin America’. Poverty rose from 60 to 64.5 percent from 2006 to 2013. By emphasising a policy that deregulated business and used low wages as an incentive to attract foreign investment, ‘CAFTA only exacerbated the desperation and instability in Honduras’, it charges. ‘Honduran workers identified the 2009 Honduran coup d’état and the subsequent militarisation of Honduran society, and the implementation of CAFTA and its impact on decent work and labour rights, as two essential elements to understanding the current crisis’.

Backing up the increasing militarisation of Honduran society is US military aid, which reached $27 million in 2012. The report notes that both Assistant Secretary of State William Brownfield and Commander John Kelly of the United States Southern Command praised Honduran ‘advances in security’. In the US media, General Kelly has demonised migration from Central America, calling the movement of families and children a national security threat and a ‘crime-terror convergence’.

That migration, described in the AFL-CIO report, has grown sharply. More than 18,000 unaccompanied Honduran children arrived in the United States in 2014 alone. ‘In 1990, there were approximately 109,000 Honduran migrants in the world. In 2010, that number grew close to 523,000, with the vast majority living in the United States’, it says. ‘Today, migration is seen by many families as a means to escape violence or seek employment opportunity or reunite with family, while the government has embraced the remittances from migrants as a major economic resource’.

Three quarters of those migrants, arriving in the... Continued on page 28...
Bangladesh
The ITUC and ETUC, along with Global Union Federations UNI and Industriall, have jointly written to the European Commission calling on it to renew its commitment to take action to improve working lives and union rights in Bangladesh. The unions say that anti-union repression is increasing, not getting better, and they complain that several multinational companies in the garment sector have failed to contribute to the post Rana Plaza disaster fund, leaving families of victims destitute. Sharan Burrow, ITUC General Secretary, said 'Europe has considerable influence through its trade ties with Bangladesh, and it needs to put that influence to good use, with Bangladesh and also with European companies. It also needs to go beyond old and failed corporate-led codes of conduct and monitoring schemes, and recognise that the solutions lie in industrial relations based on ILO standards, such as the landmark Bangladesh Accord on Fire and Building Safety'.

Canada
The Supreme Court of Canada has, in two key decisions released in January this year, further strengthened freedom of association and collective bargaining rights as established under the Canadian Charter of Rights and Freedoms. As on previous occasions, the Court has looked to the international body of rights established under the ILO system as a key reference point for developing the protection of freedom of association principles under national law. In Mounted Police Association of Ontario v. Canada the Court has found that the rights of a group of workers excluded from the public sector bargaining framework were not sufficiently respected under a consultative pay setting scheme. And in Saskatchewan Federation of Labour v. Saskatchewan the Court has declared that the concept of freedom of association, as protected under the Charter, includes a right to strike, and that extensive interference with this right which declared large numbers of sectors to be ‘essential services’ failed to respect Charter rights. The Canadian developments are discussed further in this edition of IUR at pp20-21.

China
A special edition of the International Labour Review, the ILO’s journal ‘on labour market institutions and economics’, covers the topic of ‘Labour regulations and Labour standards in China’. Five articles examine different aspects of the labour regulatory regime in China, covering the collective consultation system, the influence of overseas agencies and foreign business lobbies on local collective bargaining laws, labour conflict and regulation, and the Chinese labour inspection model.

Europe
In January 2015, the tripartite EU Agency on work and social issues, Eurofound, issued the latest in its annual series of studies, Industrial relations and working conditions developments in Europe 2013. The report describes the main developments in industrial relations and working conditions throughout the 28 EU Member States and in Norway, from both a national and EU-level perspective. Beginning with an overview of the current economic and political context in these countries, the report then focuses on trends in industrial relations, key developments affected unions and employers’ organisations, and new legislation impacting on the world of work. The main areas covered are: industrial action, pay and wage-setting, working time, health and safety at work, conditions of employment, job security, contractual arrangements, job mobility and transition, gender equality and discrimination, entry into and exit from employment, and skills development.

Freedom of Association: Special Rapporteur
As Maina Kiai reaches the end of his fourth year in the inaugural mandate of the UN Special Rapporteur on Freedom of Assembly and Association, his office has issued an invitation for comments and opinions to be submitted concerning the effectiveness, the priorities, the outputs, and the overall broad focus on the work that the Rapporteur has been engaged with. The bulk of Kiai’s work has not been directly focused on trade union rights, but has covered a number of trade union cases directly, amongst a more general focus on the rights for associations of all kinds to carry out their work and for people and their organisations to demonstrate. His recent mission to Kazakhstan (the full report of which has not yet been published) includes an example of his concern for trade union cases, and saw the Rapporteur inquiring into the shooting of dozens of striking oilworkers at Zhanadozhan in December 2014. The Rapporteur’s official visit to the UK also saw him raise concerns around the blacklisting of construction industry trade unionists.

Comments can be emailed to info@freeassembly.net or they may be posted publicly on the Rapporteur’s website, where a range of information resources is available summarizing the work of the Rapporteur to date, discussing the range of tools available under the mandate, and the planned range of activities that are scheduled for the two years which remain before the completion of the six-year mandate. All of the relevant information can be accessed at: www.freeassembly.net.

Health and safety graphic design
A new publication from the European Trade Union Institute The art of preventive health and safety in Europe pulls together historical and vintage posters from various European countries showing how graphic design has been used to promote health and safety prevention in more than 20 different cultural environments. Rather different from ETUI’s usual text-heavy output the book, which grew out of an exhibition of the artworks, shows how workplace health and safety messages and slogans have evolved over time. The changing message is catalogued over sequences moving from a paternalistic tone warning individual workers against making mistakes towards a gradually more proactive approach to prevention and minimization of risk. The publication is also of interest to visual artists and design-
ers and sees the styles of various iconic 20th century graphic movements appearing in these very varied approaches to workplace safety posters. The print book can be ordered for €20 or a .pdf copy accessed at no charge via www.etui.org.

ILO / right to strike

On 18 February the ITUC promoted a global day of action to support the right to strike. ITUC hailed the event as ‘a huge success’ and reported that more than 100 activities took place around the world. ITUC General Secretary Sharan Burrow said that the event put governments on notice that ‘voters won’t tolerate stripping away this most basic of rights, which is a foundation of democracy’.

The following week the Employers Group at ILO agreed to back down from the argument they raised in June 2012, signing a Joint Statement peace deal with the Workers Group, in which the two sides agree to shelve the dispute and in which they guarantee that at least the next two ILO Conferences will pass without disruption, with further cooperation to follow if the two groups can work together constructively around a programme of discussions and proposals for reform of various ILO systems that have been set out in the Joint Statement.

But eclipsing even the Joint Statement was another extraordinary development: the emphatic endorsement by numerous governments of the right to strike. Over the course of a two-day meeting various Government Group representatives stood one after another to support the view espoused by the Workers’ Group that the right to strike is a fundamental principle protected within the concept of freedom of association (discussed further in this edition of IUR at pp16-18).

ILO / unemployment

The ILO has issued its Global Employment Trends report, warning that the global economy is expanding at rates well below the pre-2008 financial crisis period. The employment outlook over the next five years will, the report says, ‘deteriorate’. Unemployment has risen by 31 million, globally, since the crisis started, and that figure is set to raise by a further 3 million this year alone, and by a further 8 million over the following four years. Unemployment levels in Japan, the US and in some European countries is falling, and in some cases achieving pre-crisis levels, though in Southern Europe this fall is happening more slowly, and from already overly high rates. The situation is said to be deteriorating in middle income and developing countries. Income inequalities, the report finds, have widened. The online version of the report features a data graphic in the form of a global map that illustrates unemployment rates across the globe. The map can be reset using different years and provides a clear visual insight into trends in unemployment levels over time. The report and the online map tool can be found at: www.iilo.org

Maquila Solidarity Network

The Maquila Solidarity Network, a Canada-based NGO, respected around the world for its work on working conditions in the global garment, electronics and toy industries, has closed at the end of its 20th year.

Peru

Trade unions and civil society partners welcomed the repeal in January by Congress of a new youth labour law adopted just a month earlier, that had been intended to ‘reactivate the economy’ by limiting pay and holiday entitlements and by removing severance pay entitlements from young workers aged 18-24. Unions and their partners had organised five demonstrations in protest at the law, and have called for an end to discrimination against young workers.

South Korea

In late 2014 Amnesty International released a report looking into what the human rights NGO described as a situation of ‘serious exploitation of migrant agricultural workers’, involving ‘widespread use of forced labour’, and a farming industry ‘rife with abuse’. The 89-page report Bitter Harvest inquires into the working conditions of the approximately 20,000 migrant agricultural workers in South Korea, many of them arrivals from Cambodia, Nepal and Vietnam. The report finds that ‘significant numbers’ of these workers have been trafficked for exploitation and forced labour, and that ‘migrants are compelled to work in conditions that they did not agree to, under threat of some form of punishment’. The report notes ‘excessive’ working hours, ‘inadequate protection from harmful pesticides’, poor accommodation arrangements, and even cases of physical violence against workers by employers. The report calls for the authorities to take specific steps, including the ratification of international laws applicable to these areas, specifically ILO Convention 29 on forced labour, Convention 87 and 98 on trade union rights, Convention 120 on labour inspection in agriculture, and Conventions 97 and 143 on migrant workers. Although Korea has not ratified these key ILO instruments, the report notes that the State is bound as a signatory to the International Covenant on Economic, Social and Cultural Rights, which sets out a regime of protection for key aspects of rights at work.

Supply chain wages

The development charity Oxfam has issued a briefing paper Steps towards a living wage in global supply chains, which takes one of the founding principles of the ILO, that ‘peace and harmony in the world requires an adequate living wage’, and examines how this might be implemented in modern supply chains, which reference to the UN Guiding Principles on Business and Human Rights, and Asia Floor Wage, the World Banana Forum, and other forms of stakeholder engagement that seek to move ‘beyond’ discredited forms of auditing.
US after the immigration amnesty of 1986, have been undocumented. As a result, Hondurans, even children, have felt the impact of the US policy of mass deportations - about 400,000 per year for six years. In 2013 alone, the US deported 37,049 Hondurans.

The report, however, pointedly differs with the immigration reform policies proposed by the US administration and the Democratic Party in Congress, which call for vast expansions in temporary, guest worker programmes, in which workers labour for low wages and have few labour or civil rights. ‘Temporary visa programmes are not a safe alternative to undocumented migration’, it declares, noting the history of rights violations in the US, and abuses in recruitment, including extortion, fraud and the confiscation of documents.

The report ends with a series of recommendations for both the US and Honduran governments. It demands that the US extend refugee status to people, especially children, fleeing violence and persecution, and end the mass detention of migrants. Instead of CAFTA, it calls for ‘trade policies that lead to the creation of decent work’, and instead of support for repression, ‘ending all aid to the military’.

‘The Honduran government must turn away from militarisation’, it asserts. It recommends longer-term sustainable development policies and investment in public services. The report even urges the Honduran government to refuse to accept deportees from the US unless they are given due process before deportation.

Ultimately, the AFL-CIO concludes, the US government must move away from policies that ‘criminalise migrant children and their families, while pursuing trade deals that simultaneously displace subsistence farmers and lower wages and standards across other sectors, and eliminate good jobs, intensifying the economic conditions that drive migration’.
Public Services International

PSI is a global trade union federation representing 20 million working women and men who deliver vital public services in more than 150 countries.

PSI works with our members and allies to campaign for social and economic justice, and efficient, accessible public services around the world. We believe these services play a vital role in supporting families, creating healthy communities, and building strong, equitable democracies.

Our priorities include global campaigns for water, energy and health services. PSI promotes gender equality, workers’ rights, trade union capacity-building, equity and diversity. PSI is also active in trade and development debates.

PSI welcomes the opportunity to work cooperatively with those who share these concerns.

Visit our website www.world-psi.org
Also in this edition:
- Trial observation report, Turkey
- Honduras labour migration
- Trade agreements

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