Focus on
Severe repression of the right to strike

■ what have we learned from the Marikana Commission's report?
■ who is pursuing these cases in international forums?
Canada ushers in a new era of workers’ rights

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Editorial: responding to mass killing of strikers

The mass killing of workers in order to bring an end to a strike is fundamentally shocking, and so it is that the recent publication of the Report of the Marikana Commission of Inquiry dominates the theme of this edition of International Union Rights journal. We are joined by Kally Forrest, who worked as a Senior Researcher with the Commission, and who reports here on what she sees as a process delivering some useful outcomes, but troubled by ‘timidity’ and weighed down with many problems. We also report on a presentation that was delivered to a meeting of the ICTUR Administrative Council by Jim Nichols, a lawyer acting for the bereaved in the Inquiry process. And we include our own analysis of the 646-page report. All three welcome certain aspects of the Inquiry outcome, but all three raise serious questions about the outcomes in other respects, particularly emphasising the failure to establish accountability on the part of political leaders and the government.

The massacre of mineworkers at Marikana in 2012 is in and of itself a deeply troubling event. But here at the ICTUR office, where we monitor trade union rights violations on a global scale, it caused particular concern in part because it followed so closely on the heels of another extremely disturbing episode, the mass shooting of striking oilworkers in Zhanaozen, Kazakhstan, that occurred less than a year earlier, in 2011. A regional specialist for Human Rights Watch, Miha Rittmann, author of that organisation’s leading study on the Zhanaozen strike, joins us in this edition to provide some context and to explain how events there unfolded. These events, it must be noted, are extraordinary. Although IUR reports regularly on incidents of violence against trade unionists, it remains very rare for a single incident of repression to result in the mass killing of strikers. The fact that these two dreadful events had occurred within a few months of each other raised questions here at ICTUR about how such circumstances had arisen.

We observed a certain similarity in that in both cases the strikes were essentially ad hoc, organised by the workers themselves, and that in both cases the established national trade union centres stood at something of a distance from the strikers. This fact has had implications as to how the cases have been dealt with at the international level, as it is clear, on examination, that the cases have not received the attention – within the international supervisory mechanisms – that might have been expected, given the seriousness and nature of the repression that occurred. This question was discussed at a meeting of the ICTUR Administrative Council on 1 October in London. The issues are also explored in an article in this edition, which asks ‘how, when, and by whom’ the supervisory systems should be engaged when outrages such as the mass killing of strikers occur.

Also on the theme of severe violence against strikers we hear from Cambodian union leader Sokny Say, who talks about the killing of workers and the violent repression of strikes during a wave of protests against low pay in the garment sector. And we hear from professor Byoung-Hoon Lee of South Korea, who reports on the routine violent repression of strikes and anti-union activity that occurs in that country. Moving away from the core theme of this edition we present also articles from professor Ana Gomes on the union organising context of Brazil and its implications for domestic workers, and we set out in full the recent Statement of the Global Unions group on the economic policies of the International Financial Institutions in the context of the wave of ‘austerity’ policies and labour law ‘reforms’ that are harming the rights and opportunities of working people worldwide. Finally, reporting on a recent UK trade union workshop academic Steve French looks at what unions and activists have been saying in respect of the TTIP trade agreement.

Daniel Blackburn is Editor of IUR
British legal experts and trade unionists were joined by trade union and legal guests from around Europe, together with representatives of three global unions, International Trade Union Confederation, Public Services International, and IndustriALL, and by representatives of the human rights organisations Human Rights Watch and Amnesty International, for a discussion on key aspects of the right to strike. The discussions, held under the banner of ICTUR’s annual Administrative Council session, provided an opportunity to take stock, post-Marikana Commission of Inquiry, into the implications that two recent serious cases of mass killing of strikers have had against a backdrop of challenges to the right to strike in international bodies.

Professor Keith Ewing, ICTUR Vice President, gave the welcome, agenda and introductions before handing over to Daniel Blackburn, Director, who presented the organisation’s annual report, highlighting ICTUR’s core aims and activities, including publication of IUR journal, staffing arrangements and the work of the executive members and the editorial committee who provide a vital role within the organisation. In his review of the year, Blackburn noted that ICTUR had responded to 48 cases of violations of trade union rights, and four editions of the journal had been published, focussing on: the right to strike; trade agreements; South Korea; and austerity. Blackburn also reported that the organisation had supplied legal assistance to a number of trade unions, including an independent union in Iran, and that ICTUR had been contracted to carry out a research and report writing project with Public Services International. During the year ICTUR had also funded a trial observation in Thailand, sending Australian criminal law and regional expert Mark Plunkett to observe the trial of British human rights researcher Andy Hall who was being prosecuted for criminal defamation by a fruit canning company in respect of work he produced for a Finnish NGO on the rights of migrant workers in major fruit and fish canning operations in Thailand. The ICTUR Director reported that the observation had gone well and that the defendant had been acquitted, but noted that Hall continued to face a number of other serious charges, all arising from the same report.

The major upcoming project for ICTUR is the publication of the reference book Trade Unions of the World. Blackburn reported that Trade Unions of the World is now very substantially underway and that the book will be published in early 2016. The project has been a huge expense for ICTUR in terms of the sheer volume of research needed to update the book. ICTUR’s Director strongly encouraged unions to order copies of the book, noting that it was an essential publication that should be on the shelves at every trade union office. Among those who responded to the presentation were Sandra Vermuyten of PSI who thanked ICTUR for the quality of work, and for a fruitful cooperation earlier in the year. Closing the session Ewing noted that ICTUR has strong legal and technical capacity and that the organisation can provide future technical assistance on OECD and ILO complaints, as has been done in the past.

Marikana and Zhanaozen: accountability for serious mass killings of strikers

Jim Nichol, solicitor advising victims’ families and the AMCU trade union, opened the session by showing a film of the moments in which trade unionists were shot dead at the ‘first scene’ of the Marikana massacre on 16 August. The disturbing film included footage from multiple vantage points, which many of those present had not previously had an opportunity to view. Nichol gave a summary of events, and set the scene. Thousands of rock-drillers were on strike. When the police action commenced more than 200 of them were shot. Preparations for the conflict were made; ammunition and morgue trucks were ordered in advance of the police action; and there was a build up of weapons and police in the area. Nichol explained that this was an unofficial strike endorsed by neither the AMCU nor NUM unions. Nichol explained that in his view the interests of the NUM, Lonmin and the South African government had converged and that all three were determined to stop the strike: NUM was concerned by loss of membership to AMCU; Lonmin wanted to protect profits; and the government feared the opening of the ‘floodgates’ for widespread industrial action for living wage. Lonmin had called for state intervention. The NUM had also called for the state to deal with ‘criminal’ elements. Cyril Ramaphosa (now Deputy President, but at the time a non-executive Director of Lonmin) played a central role in changing the narrative of unofficial ‘industrial action’ into a ‘criminal’ strike. A legal aid battle for 292 victims who brought cases has recently been settled by courts in favour of awarding legal aid. That was strategically helped by a 6-week victim boycott of the Farlam Commission. Nichol argued that what we learned from the Farlam Commission report was:

- There was fabrication by police on a massive scale; 1,000 gigabytes of material still not disclosed; and perjury committed at the Commission
Evidence came out as a result of the Commission to show police fabrication, but no evidence on government ministers – no government material or official documents given as evidence

The first finding of the Commission was indicative: that the tragic events ‘arose’ from the actions of the strikers, who engaged in criminal activity

The Commission effectively bought the narrative of ‘violent, criminal’ strikers as justification for use of force

The Commission has made recommendations (on negligence claims against police, investigation of Lonmin) but no police officer has even faced a suspension over the shootings

Nichol concluded his presentation by arguing that the events originated in Lonmin’s actions in refusing to negotiate with the workers and instead calling for armed back-up.

Mihra Rittmann of Human Rights Watch gave her report about the mass shooting of strikers in Zhanaozen in 2011, beginning her presentation with a description of the strikes that had occurred at three oil and gas companies, part state-owned / joint ventures, in a region isolated from Kazakhstan’s main urban centres. Workers were protesting changes to payment system; their action started as a hunger strike, outside of trade union structures, on May 26, 2011, after the company refused workers’ demands and refused to engage with the workers. The following day a court ruled the action illegal. On 8 July the protest was broken by police. The strike moved to the town square; workers and families were harassed, detained, convicted; and the company fired 991 workers. These dismissals were in violation of national legislation. The Minister of Labour initiated tripartite dialogue but no success. 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raised one theory: that employers don’t like the proliferation of labour standards in international law and the momentum behind the transnational corporate responsibility debate under Ruggie, et al, and this may well have played a part. But Ewing preferred another theory, which in his view was more compelling, that corporations wanted to limit the influence of ILO jurisprudence on hard law. The dispute, he observed, occurred when the employers group was headed by representatives from the UK and Canada, and while major court cases were before the Canadian Supreme Court and the European Court of Human Rights (concerning the UK). Those cases are now concluded and the right to strike has been affirmed under the Canadian Charter of Rights and Freedoms and Article 11 of the European Convention on Human Rights. After these developments, Ewing observed, agreement was reached between the Employers and Workers in the ILO. There was agreement and affirmation of the right to strike, subsequently reinforced by government statements: the UK did not contribute, but the USA supported it strongly. Ultimately there is a need to stay prepared to continue to work in support of the ILO provisions: the authority of the ILO Committee of Experts to interpret Convention 87 must not be lost; and the right to strike in Convention 87, although not that strong, is worth defending.

Hannah Reed of the TUC reported that the right to strike in the UK is already one of the most restrictive in the industrialised world and is frequently criticized by international supervisory systems. The Trade Union Bill contains further wide-ranging restrictions on right to strike, picketing, and public sector union representation. The TUC has launched a broad-based campaign, including a complaint to the ILO CEACR, and is now building alliances to fight the bill. There is little evidence of why the Bill is needed. Many analysts have said the proposals are not fit for purpose. The measures include the introduction of thresholds for strike ballots – a minimum of 50 percent turnout of all entitled voters; and in ‘important public services’ an additional 40 percent yes vote of all entitled voters. Effectively, abstentions will be counted as ‘no’ votes. Picketing restrictions include an appointed picket supervisor who must report to police, raise the problem of potential surveillance and blacklisting. The law if passed is expected to massively reduce industrial action and to impact on a range of sectors, beyond just ‘essential services’. Even lawyers for employers have criticised the Bill. The TUC has put forward many objections, including the ‘business case’ in favour of unionisation and collective bargaining, and the problem of enforcement of picket restrictions, excessive monitoring; and the erosion of union rights for public sector workers.

Peter Barnacle concluded the day with an account of recent Canadian jurisprudence confirming the right to strike under the Canadian Charter of Rights and Freedoms. The Court referred to the principles of ‘dignity’, ‘autonomy’ and ‘liberty’, which need to be upheld in labour relations and which do not merely form part of an economic contract. Under the Charter, the right to strike has come to be understood as an essential part of collective bargaining, he said, as collective bargaining without the right to strike is viewed as meaningless. The employment contract is not simply economic. Compared to Canada’s neighbour, the US, very different interpretation has been placed on what are broadly similar rights coming out of the US Constitution and the Canadian Charter. Under the Charter it is now presumed that for these rights there now exists at least the same level of protection as international law. Although there are other arguments that are continuing in Canada around freedom of association and collective bargaining the recent result is a welcome high point. The latest decision, Barnacle said, constitutes a significant victory for union rights to collective bargaining and to strike, and gave us a positive note to end on.
The Inquiry demonstrated repeated police mendacity: evidence was withheld, doctored and planted and senior police lied in the witness box.

The South African President recently released the Marikana Commission of Inquiry findings. These relate to events between 9 - 16 August 2012 when 34 striking mine workers were gunned down by police and a further 78 seriously injured at Lonmin Plc’s Marikana mine in the North West province.

At Scene 1 where 17 people died the events were broadcast globally. Twenty minutes later, hidden from the media, a further 17 workers were killed as they attempted to hide, flee or surrender at Scene 2. In mop up operations over 200 workers were arrested and bizarrely charged with killing their co-workers. In the eight days prior to the massacre, a strike led by rock drill operators had resulted in the killings of ten others: two SAPS (South African Police Service) members, two Lonmin security guards, a Lonmin supervisor and five mineworkers. These were also investigated by the Commission.

The brutality of the events shocked post-apartheid South Africa and assumed a political face as the ANC government distanced itself from the events, including ANC national executive (now South Africa’s vice-president) and Lonmin board member, Cyril Ramaphosa. The events were further complicated by strikers shifting their allegiance before, during and after the strike from the National Union of Mineworkers (NUM) in alliance with the ANC to the non-aligned AMCU (Association of Mineworkers & Construction Union) claiming the NUM was a sweetheart union. A judicial inquiry in South Africa is appointed by, and submits findings and recommendations to the president who then decides how to respond. In the course of investigating the truth however, an inquiry often offers other benefits to society. These include exposing opaque government and business practices whilst at the same time informing and educating the government and public on a neglected issue. This is especially true because inquiries unlike court prosecutions which narrowly focus on individual justice have a broad reach and so allow for informed public debate which may contribute to policy change. As such inquiries can play a role in good governance.

The production of a report, whose recommendations carry the gravitas of an inquiry, is also important for government or interested parties to act upon but it should be emphasised that commissions do not have executive powers.

The Marikana Commission did indeed enable substantial public debate and unlike many other inquiries in post-apartheid South Africa, was a transparent, impartial process which exposed myths and revealed a number of truths.

For example the narrative, promoted by Lonmin, that the violence was related to inter-union competition particularly perpetrated by AMCU’s poaching of NUM members was found to be inaccurate. The Inquiry discredited police witness Mr X, a striker claiming to be part of the strike committee, who accused AMCU president Joseph Mthunywa of planning violence against NUM members. In fact Mthunywa was cited in the report as the one person, who if people had listened to his advice, could have prevented the Marikana massacre.

The Commission also revealed how police leadership manufactured a narrative before the Inquiry to which all police witnesses adhered even if it meant committing perjury. The narrative was that muti (drug) crazed mineworkers attacked the police who had no option but to shoot. The Commission showed this narrative to be false.

The inquiry was also able to garner substantial information on what happened at Scene 2. In essence several police tactical units pursued the workers and in a chaotic operation, believing workers were armed, began shooting at each other whilst workers were caught in the cross fire. It also exposed that some workers were assassinated at point blank range whilst attempting to surrender.

Further, the Inquiry uncovered wider truths which a court case would not have revealed. It importantly exposed a chain of command from top politicians to senior police leadership down to armed tactical response teams in a plan to disperse and disarm strikers even if this meant bloodshed. However although this was uncovered the inquiry was not able to prove that direct orders were given by police minister Nathi Mthethwa so the report is ambivalent on his role.

The Inquiry was also able to prove repeated police mendacity. It exposed that evidence was withheld, doctored and planted and that senior police lied in the witness box.

So, for example, a year into the Commission, under cross examination, a senior policeman revealed that a hard drive submitted to the Inquiry had been doctored. The original contained a conversation between the provincial police commissioner and a Lonmin executive on how the strike must be immediately ended on Ramaphosa’s instructions. The reason being that a rival political party, the Economic Freedom Fighters, was gaining workers’ support which would impact on the ANC’s 2014 election results. Thus a hastily assembled police plan resulted in 34 deaths. The Inquiry also exposed the existence of a police National Management Forum meeting the night before the massacre where the decision to end the strike the next day was taken. Minutes of this meeting however mysteriously disappeared.

The Report includes detailed recommendations on the reform of public policing. These include that the national and provincial police commissions
sioners be investigated for perjury and their fitness to hold office; that R5 assault weapons be withdrawn; and that public policing units be restructured and members retrained.

The Report is strong on Lonmin's non-compliance with its Social Labour Plan which it must implement in order to obtain a mining licence. Lonmin had promised the delivery of 550 worker houses between 2007 - 2011 but only delivered three. Importantly the inquiry linked workers' poor, unsafe and unhealthy conditions and the Marikana violence (despite Lonmin protests) noting that Lonmin 'created an environment conducive to the creation of tension, labour unrest, disunity among its employees or other harmful conduct'. It recommended that Lonmin's failure to comply: 'should be drawn to the attention of the Department of Mineral Resources, which should take steps to enforce performance of these obligations by Lonmin'.

The Inquiry refused Lonmin's lack of affordability argument following the 2008 global financial meltdown. It showed that Lonmin continued to engage in profit shifting to the tune of R500 million a year to Bermuda and to a superfluous internal marketing company. Delivery on its housing obligation would have cost R605 million. Lonmin also paid US$607 million in shares to its black economic empowerment partner during this period.

The Inquiry however had its weaknesses. The report is poorly written, recommendations are often buried in a welter of detail, and there is no executive summary. Many keen to read its findings abandoned the attempt.

The Inquiry was not successful in creating an environment conducive to truth telling. From the start human rights lawyers were pitted against the police and Lonmin and the framing of the Terms of Reference (TOR) polarised parties as each was itemised for investigation for responsibility in the killings.

Further the Independent Police Investigative Directory (IPID) advised the police to engage legal counsel to protect them from later prosecution instead of insisting that they be witnesses to the truth. Thus the delay in Commission proceedings was largely due to time spent uncovering police deception. The truth at the inquiry was often overridden by personal/political concerns.

For example the provincial police commissioner, asked by an evidence leader why she didn't prevent Scene 2 killings after knowledge of killings at Scene 1, despite her presence at the Joint Operating Centre, claimed ignorance of either sets of killings. She maintained she was in the toilet, or could not hear the radio announcement. 'bodies down'. She lied in testimony to protect her political masters and her privileged position.

The report frequently mentions police mendacity but few are fingered for perjury. The Report is written like a judgement and its processes tend to focus on individual responsibility. Fundamental questions underpinning the inquiry were framed thus.

An example. Many were dismayed that the Inquiry did not recommend compensation for victims' families. The Commission asked: 'who fired the shots? This was difficult to prove as R5 munition disintegrates on impact. Thus individual criminal liability could not be established and no verdict of state/police responsibility could be delivered. The premise should rather have been: 'people were shot by police' and from this a recommendation to compensate could easily have followed.

Such legalism impacted on the Commission's ability to make strong findings and recommendations. The Inquiry swung between asserting the truth on a balance of probability and proving it beyond reasonable doubt. So, despite much empirical information, it had difficulty finding responsibility for police actions at Scene 2, the chain of command or the toxic relationship between police and Lonmin. The Report's tone is timid and cautious, and large amounts of detail is often not brought to a logical conclusion.

This legalism also lent a narrow perspective. Early on the report states: 'the tragic events …originated from the decision and conduct of the strikers in embarking on an unprotected strike and in enforcing the strike by violence and intimidation, using dangerous weapons for the purpose'. Much of the tragic events emanated from political and police leadership insisting workers were criminals. Workers' rights were weakly represented and a context of workers' constitutional right to strike was never established. An unprotected strike is not illegal although it may have consequences for workers.

Finally, a failing of the Commission was the excision of large parts of its Phase 2 Terms of Reference. The Inquiry comprised Phase 1 to establish the facts of the events and Phase 2 to explore 'Underlying Causes' to the violence. Phase 2 was mandated to investigate matters such as workers' living conditions and the failure of traditional, municipal and company authorities; indebtedness of miners; the migrant labour system; violence in strikes; collective bargaining on the platinum belt; and weak monitoring by state authorities. But Phase 2 was never conceived seriously in terms of time frames, budgets, and rules of evidence. Thus when the President altered the TOR excising investigation for responsibility of government institutions much of Phase 2 fell away with little protest (the Chair however ruled that investigations into Lonmin's obligations could continue). Thus few recommendations on how to address mine workers appalling socio-economic conditions emerged from the Inquiry. It apportioned blame but a strong forward looking opportunity to address workers' conditions was lost.

Government despite reluctance has taken tentative steps to act on some Commission recommendations but whether these will come to fruition is unsure. The national police commissioner has been asked to justify why she should retain her office; the minister of police has hinted at a willingness to negotiate compensation; indications are that R5 rifles will be banned in public policing; and the minister has announced the intention to create an independent panel to investigate a reform of public policing. However no police who participated in Marikana have been dismissed, suspended, prosecuted or relieved of their guns whereas 16 mine workers are currently appearing on charges of murder.

But the Report is poorly written, recommendations are buried in a welter of detail, and there is no executive summary. Many keen to read its findings abandoned the attempt.
n 16 December 2011, police used live ammunition on oil workers and others in response to an outbreak of violence at the site of an extended strike in Kazakhstan’s oil-rich western region, killing 12 people. Oil workers had been on strike for approximately seven months, peacefully demanding higher wages from OzenMunaiGas, their employer, an oil production company in western Kazakhstan, and wholly-owned subsidiary of KazMunaiGas Exploration Production JSC.

In the years since Kazakhstan gained independence, oil has fuelled the country’s vast economic growth. However, Human Rights Watch has found that repressive laws and abusive practices by the government and by some oil companies, both private and state-owned, have violated the labour rights of thousands of workers who do the difficult and often dangerous job of bringing Kazakhstan’s oil to market.

On 16 December 2011, Kazakhstan’s Independence Day, scuffles broke out between police and striking oil workers and others in the central square of Zhanaozen, an oil town in western Kazakhstan. Soon after scuffles broke out, unidentified men in oil company jackets charged a stage set up for the independence day celebration. A December 16 statement from Kazakhstan’s prosecutor general’s office said that the people involved in the clashes that day ‘overturned the New Year’s tree, tore down yurts and the stage, and set a police bus on fire’. Over the course of the day, multiple buildings in Zhanaozen were set on fire, including OzenMunaiGas offices, and shops and ATMs were looted.

In response, police and government forces were sent to Zhanaozen, and police used live ammunition on striking oil workers and others, killing at least 12 people and wounding others. According to government figures, three other people died on that day, and dozens of police were wounded.

In the period leading up to and during the peaceful labour strike that began in May 2011, Human Rights Watch documented repressive tactics employed by Kazakh authorities and OzenMunaiGas to restrict workers’ rights to freedom of assembly, association, and expression.

The rights to freedom of association, collective bargaining, and to strike are enshrined in International Labour Organisation (ILO) conventions to which Kazakhstan is party. Company interference in workers’ efforts to bargain collectively, the mass dismissals in retaliation for staging peaceful strikes, as well as attempts by the authorities to break the strike, and keeping broad prohibitions on strikes in Kazakhstan, all violate rights guaranteed under international law.

In interviews with Human Rights Watch, workers described human rights violations that occurred during the strike in 2011. OzenMunaiGas carried out mass dismissals of workers following the start of their peaceful strike, the workers said. The authorities tried in one instance to break the peaceful strike using force, and imprisoned worker representatives following proceedings that did not respect fair trial standards.

The labour dispute leading up to the strike at OzenMunaiGas began mid-May 2011 when approximately 22 OzenMunaiGas employees put forward demands to company management over calculation of their pay with a notice of intent to go on hunger strike in case their demands were not met. In response, OzenMunaiGas management informed the workers that their claims were ‘unfounded’. Ten days later, the workers began a hunger strike, and hundreds of other OzenMunaiGas employees downed their tools in support of their demands, launching a peaceful strike that would last the next seven months. In May, a local court found the strike illegal on grounds that workers had not adhered to regulations for holding a legal strike and because OzenMunaiGas is classified as a ‘hazardous production facility’.

The right to strike, while not absolute, is one of the principal ways workers and unions may promote and defend their interests. Yet, Kazakh authorities unlawfully interfered with the workers’ peaceful strike. In early July 2011, law enforcement officers forcefully dispersed striking OzenMunaiGas workers, including beating one oil worker in the legs with a nightstick. Despite this, workers at OzenMunaiGas persisted with their peaceful labour strike, relocating to the central square in Zhanaozen.

In August 2011, a Zhanaozen court convicted Akzhanat Aminov, an oil worker who played an active role in defending workers’ rights for ‘organising an illegal gathering’ on grounds that he had led the strike by giving orders to workers by phone. He was sentenced to a one-year suspended sentence with two years of probation. The same month, Natalia Sokolova, a union lawyer who briefly consulted OzenMunaiGas workers on the calculation of their pay, was sentenced to six years in prison on charges of ‘inciting social discord’ after speaking to oil workers about wage disparities. She was later released. Nearly one thousand OzenMunaiGas employees were dismissed during the strike.

There has been minimal accountability for the loss of life that occurred on 16 December, when the OzenMunaiGas strike was effectively brought to an end. While Human Rights Watch was not on the ground at the time to confirm independently how the unrest unfolded or who participated, in the immediate aftermath Human Rights
Watch followed official statements and media reports, and conducted several interviews with town residents, oil workers, and medical personnel in Zhanaozen.

According to government statements, police fired warning shots into the air before shooting at individuals. However, several individuals with whom Human Rights Watch spoke said that no attempt was made to use any other means to disperse the crowds before the police fired live ammunition. Law enforcement officers also did not use any such additional efforts at dispersal referred to in any official statements or media reports. All the individuals with whom we spoke at the time said that people on the central square were unarmed.

In late December 2011 the Prosecutor General’s office opened a criminal investigation into police use of force and abuse of power. In May 2012, five police officers were found guilty on charges of ‘abuse of power or official authority with grave consequences’. It was established that bullets from the weapons of three of the police officers caused the death of three civilians, one of whom was a minor. The officers were sentenced to between five and seven years in prison.

To date, the prosecution of these officers has been the sole response to the loss of civilian life which occurred that day.

In the aftermath of the violence, Kazakh authorities targeted the most outspoken oil workers and political opposition activists who supported them throughout their strikes, sentencing political opposition leader Vladimir Kozlov to seven and a half years in prison in August 2012 following an unfair trial. Two other activists tried along with him were given suspended sentences.

Human Rights Watch also documented how, in the immediate aftermath of the violence, between 16-19 December, several people witnessed or were subjected to physical abuse by police in custody. These individuals described how police variously kicked and beat detainees who had been brought into custody with truncheons, stripped them naked and walked on them, and subjected them to freezing temperatures.

Human Rights Watch also documented the death on 22 December of Bazarbai Kenzhebaev, 50, who died from wounds apparently sustained while he was in police custody between 16-18 December. Police arrested Kenzhebaev at about 5 p.m. while he was walking the short distance between his daughter’s house and the maternity hospital, where she had just given birth, and brought him to the Zhanaozen Main Police Department. He was released after he was repeatedly and severely beaten by law enforcement agents in custody.

The response of the authorities to Kenzhebaev’s death was inadequate. Charges were eventually brought against Zhenisbek Temirov, the head of the Zhanaozen temporary detention facility where Kenzhebaev was held, for ‘allowing illegal detention of Kenzhebaev and not arranging timely hospitalization’.

Temirov was sentenced on 17 May 2012 to five years in prison and ordered to pay 1 million tenge (at that time, approximately US$6,750) in damages to Kenzhebaev’s family, but to date, not a single law enforcement officer has been held accountable for ordering or carrying out the beatings that lead to Kenzhebaev’s death.

Authorities also brought charges against 37 oil workers and others on charges relating to the December 2011 violence, including participating in or organising mass riots. On 4 June 2012, an Aktau court convicted 34 of the defendants, imprisoning 13 of them, despite the use of testimony obtained by torture and ill-treatment. The three other defendants were acquitted.

Human Rights Watch documented how, at trial, defendants testified that they had suffered beatings, suffocation, psychological pressure, and other ill-treatment, apparently to coerce testimony against themselves or others.

For example, on 10 April 2012, Esengeldy Abdrakhmanov, one of the defendants, told the court he contracted tuberculosis after he was detained and mistrusted, according to the Zhanaozen 2011 Committee, a group of civil society activists who monitored the trial. Abdrakhmanov told the court that he was stripped naked, made to lie on the cold floor of the police station, and doused with cold water.

On 11 April 2012, Tanatar Kaliev, an oil worker charged with organising mass riots, testified that he was ill-treated during the investigation. According to media reports, Kaliev told the court that, after he was detained: ‘I literally stood there in blood—the whole floor was covered in blood.

According to the Zhanaozen 2011 Committee, Parakhhat Dyusenbaev testified in April that he was threatened with rape and humiliated sexually.

The Zhanaozen 2011 Committee reported that at least two others also testified they had been threatened with rape.

At least five of the defendants—Shabdol Utkilov, Rosa Tuletaeva, Zhanat Muryymbaev, Kairat Edilov, and Mels Sarybaev—told the court that during the investigation, officers or investigators attempted to coerce testimony from them by suffocating them using plastic bags. Maksat Dosmagambetov, an oil worker, said his kidneys were badly beaten and he suffered broken ribs.

The allegations of ill-treatment and torture by defendants in the trial of 37 were never investigated in a manner capable of bringing the perpetrators to justice, as is required by international law.

In April 2012, the Aktau City Court presiding judge forwarded information about the defendants’ allegations of torture and ill-treatment to the Mangistau regional prosecutor’s office for review. An Interior Ministry police agency conducted a preliminary investigation in April, but then issued a decision not to open an investigation, announcing, there was no evidence of a crime in the actions of the law enforcement agents that responded to the mass unrest on 16 December.

The Internal Security Department, the body that carried out the preliminary investigation, also claimed that defendants ‘who allege the police beat them, did not file complaints, and were not medically treated after that, are attempting to avoid criminal punishment’. However, at least one defendant, Dosmagambetov, had filed a claim on 30 December 2011, alleging he had been mistrusted following his detention. His lawyer told Human Rights Watch that a medical examination conducted in response concluded that several of Dosmagambetov’s ribs had been broken and that he had bruises but that the investigation did not lead to any disciplinary action.

All of the defendants who were imprisoned in 2012 in connection with the December 2011 violence have since been released or paroled, but no law enforcement officer was ever held accountable for the ill-treatment and torture which the defendants alleged they endured.

The authorities brought charges against 37 oil workers and others 34 of whom were convicted, and 13 of whom were imprisoned, despite the use of testimony obtained by torture and ill-treatment.
A Hungry Life: Protests, Violence, Killing, and Prison

In Cambodia’s garment sector the authorities have cracked down on trade union wages demands with heavy-handed repression.

From their response to protests outside a Puma supplier factory, to that which occurred outside a Nike supplier factory, their response to a nationwide protest, the employers and the government in Cambodia have chosen violence and court supervision in response to trade union demands for social dialogue. The aftermath was murder, arrest, jail, and injury, as well as death threats.

Governor Shot the protestors at Puma Supplier Factory

Nine years ago, in June 2003, riot police fired shot into the air to disperse the crowd of protestors and killed FTU’s activist Mr. Yim Ry in front of H&M supplier factory, Terratex Knitting & Garment (Int'l) factory Ltd. Twenty-six people were injured. In February 2012, there was another shooting at Kaoway Sports Ltd factory, located in the Manhattan Special Economic Zones in Bavet city. The gunman in this case was the Governor of this city, Chhouk Bandith. The shooting severely injured three women protestors who worked in a factory supplying products for the giant German sport shoe brand Puma. For three years these workers suffered without any proper compensation or justice either from the global brand, from the factory, from the gunman, or from any other related stakeholders. The gunman, former Governor Chhouk Bandith, was convicted in absentia in 2013, and was sent to jail in early August 2015 after evading justice for three years.

Murder, Detention, Court Tool on Living Wage Protest

In November 2013 a study on minimum livable wages for garment factory workers by the Ministry of Labour and Vocational Training found that between US$157 and $177 was an appropriate level. The following month the tripartite committee on minimum wages set a far different rate at only US$95. This was a root cause and led to a storm that brought the principle economy of Cambodia, the garment industry, to a standstill. On 24 December 2013, some workers held a protest in front of the Ministry of Labour. The rest of them nationwide were waiting anxiously for the result. The announcement of just a $95 wage started a disquieting calm that fell over the garment factory districts. On 31 December 2013, an extra US$5 added to new minimum wage unilaterally by the Ministry of Labour [not following the mechanism of minimum wage committee]. The new minimum wage would therefore be US$100 per month. But this offer still fell far short of the long-term demand for a doubling of the US$880 monthly wage. Of course workers claimed that it is not enough to cover the basic living expenses, which is exactly what the study of the Ministry of Labour found. Garment and footwear workers refused the offer of a slight increase to US$100 monthly wage, vowing to continue their protests. Demonstrators took to the streets, blocking traffic on major roads in the city, and leading to a halt at hundreds of factories across the country. Nearly all of the factories in Phnom Penh closed on 2 January after a break for New Year’s Day. After a few days of waiting the Ministry of Labour Ith Samheng came out to talk to them. Thousands of Phnom Penh, workers wanted to encourage fellow workers to join the protest rally. They tried to enter the factory zone at Phnom Penh Special
Economic zone as well as Canada Industrial Park but the workers were prevented to access the zones. At Yarkjin (Cambodia) Inc., a factory supplying the giant global brand Gap, the protest was heavily repressed by a flood of paramilitary elite commandos. The Indonesia-trained 911 airborne unit were deployed to clash with the demonstration and did not hesitate to hit the protesters with stick and batons, wounding more than twenty, arresting 15 people, included the Buddhist monks and activist leaders. Many were detained and beaten severely at the unit’s base nearby the factory’s zone. A protest was held at the Phnom Penh court to demand a release of all detainees. The bloodiest horrific assault turned out at around 9:40am on 3 January 2014 when hundreds of paramilitary forces stormed the area like going to war. The paramilitaries opened fired with pistols, killing six protestors and severely wounding more than twenty.

Public Gathering Ban and Rights Removing on Union Head
After six workers were killed and dozens were injured, the Government of Cambodia issued a ban on gatherings immediately. Even the gathering of two persons in the street was prohibited. Later on, in September 2014, charges were brought against five of the six union heads accused of alleged criminal acts in December and January. They are now under judicial supervision. The accused are prominent national level union president Chea Mony of the FTUWKC, Rong Chhun of the Cambodian Confederation of Unions, and the leaders of three other unions, who all face charges of intentional violence, destroying property, and obstruction of traffic, relating to the nationwide demonstration on the outskirts of the industrial area. They are banned from meeting with other union leaders or joining any public gathering.

Restriction, Repression and Trade Union Law
From the ban on public gatherings to banning to the re-enforcement of union registration requirements under the trade union law, severe restrictions on union rights and on peaceful protest have been growing on the upward trend year by year. 2014 is the worst year in recent history for the repression of trade union rights and freedoms. The Phnom Penh Court has removed trade union rights and freedoms from prominent union heads by crippling their role to function in the labour movement. For FTUWKC alone, one month prior to the national elections, there were 18 key national level leaders and area chiefs under judicial supervision, including national president Chea Mony, the union’s deputy secretary general, and other leaders, all facing this level of control of their activities.

The government re-enforced restrictions on union registrations and declared that the constitutional right to unionize has been suspended until a long-awaited trade union law is brought into force. In March 2014, the Ministry of Labour issued a statement that union leaders must submit a letter from the Ministry of Justice to prove a clean criminal record before they can register a new union. The Cambodian Labour Law, passed in 1997, included a stipulation that leaders of professional organisations, including workers unions, ‘shall … not have been convicted of any crime’, but the law has previously gone unenforced.

The dynamic movement of unions keeps the government worried and they have tried to weaken the movement. They are speeding up the laws such as the NGO law, cyber crime law, and especially the law on trade unions, which will give full control over union administration and democratic structures. The law is highly restrictive on the trade union registration process, it stipulates punitive action of fining union leaders US$250-US$1500 for any action considered to be disrupting the production process, and the requirement of a clean criminal record for union leaders. Further, local unions can be established only if they have been joined by at least 20 percent of workers at the workplace, and a federation level can be formed only by at least 15 unions and a confederation only by at least 10 federations. The government is entitled to dismiss all forms of organisation or trade unions and association if they are considered as a threat to national security, and the union must submit additional reports on foreign financial assistance, the Ministry of Labour or a single member of a professional organisation can initiate an independent audit of a union’s finances, and there is a requirement that union membership dues must be at least one percent of workers’ wages.

FTUWKC has suffered from assassinations, physical attacks, imprisonment, and death threats, as well as seeking for justice for the victims. We have lost many key leaders, they have gunned down workers, but nowadays they cripple our activity by the court’s supervision. Most of everybody at this union is in the fist of the court. No matter how it has come to this corner, we still keep fighting. Wherever there is oppression there is resistance.

Hundreds have been dismissed, dozens arrested and charged, and workers on picket lines have been shot at and killed and injured.

The latest 2015 developments in the minimum wage are discussed at p27.
Mass killings of strikers warrant international investigation

The ILO has a number of supervisory and complaints mechanisms that ought to be engaged when the worst labour rights outrages occur, such as the mass killing of strikers.

When martial law was declared in Poland in 1981, and the government suspended the activities of the Solidarność trade union, a group of miners at the Wujek mine called a strike that was fiercely repressed. Miners fought back against police who tried to evict them before armed paramilitary units entered the grounds of the mine, shooting dozens of miners, and killing nine of them. Even from the closed-off world of 1980s Poland under martial law the news emerged rapidly. And the international trade union movement responded rapidly. A complaint (Case No. 1097 (Poland), 14 December 1981) was lodged with the Committee on Freedom of Association (CFA) the day after martial law was declared. A further 17 letters of complaint were received by the CFA over the following two months, and these were added to the case. The ILO Director-General wrote to the Polish authorities, who responded, and a dialogue was opened at the highest levels within just a matter of weeks. Within six months, at the next session of the International Labour Conference, an Article 26 Complaint was presented, and accepted, and a Commission of Inquiry was launched. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) also discussed the case in its reports. Every possible mechanism of the ILO was engaged, and responded rapidly, and rapidly provided conclusions that were strongly critical not only of the totalitarian political repression that was implemented under martial law but also of the killing of the Wujek miners.

This is as it should be in the case of mass killings of strikers.

Following the events of 1981, ICTUR has no record of mass killings of strikers, until the horrific events of the Hacienda Luisita in Philippines in 2004, when 14 people, including two children, were killed when a composite team of police and military personnel mobilised to break up the picket line / campsite of an agricultural workers’ strike outside a vast sugar plantation. At least 35 others were injured by gunshots, some of them seriously. Seven years later, in 2011, came the use of lethal armed force against striking oilworkers in Marikana, South Africa, killing 34 and injuring as many as 200. The international response to these three cases has been quite different. While the international community and supervisory systems have been engaged to some extent in these cases the response has been far less immediate, less far-reaching, and less effective than in the case of Poland in 1982. An analysis of the parties involved and the processes engaged in these post-2000 cases reveals similarities and differences that go some way to explaining how and why different aspects of the supervisory systems have been used to a greater or lesser extent with regard to the other cases in this period and to the earlier case.

In all three post-2000 cases the workers involved in the strike were at something of a distance from the established national trade union centres in their respective countries. At Hacienda Luisita the small local union benefitted from links to an experienced national centre, the KMU, but lacked engagement with the international bodies (as KMU was not, at the time, a member of either ICFTU, WCL or WFTU). The national union centres of the Philippines that did have international connections and influence did little to support the Hacienda Luisita case, even, in the 2007 session of the ILO Conference Committee on the Application of Standards (CCAS), going so far as to deny a link between trade union activities and a spate of murders of trade unionists in the Philippines. In Kazakhstan and Marikana the strikes were organised by ad hoc groups that were not supported by the established national centres the FPRK and COSATU. While the workers did have some links with recently formed and under-resourced unions, these links were not clear membership connections, and these organisations lacked knowledge of or effective links into the international supervisory mechanisms. It appears that in no case did a national centre with an international affiliation to ITUC or its precessors or to WFTU submit a complaint to any ILO forum. The victims either were unaware of their options to present international complaints or perhaps believed that they were unable to make use of the supervisory systems. The ILO has examined levels of respect for freedom of association in each of the countries concerned since the events complained of occurred yet there has been almost no engagement with these specific cases of mass killings as such.

Since the Zhanaozen shootings, the compliance of Kazakhstan with core trade union rights under Convention 87 has been examined twice in the CEACR, in 2012 and in 2015. In the 2012 CEACR report there was discussion of Kazakhstan, but this referred only to legal barriers to union organising, with no mention of the killing of strikers at Zhanaozen. Although the report was published in 2012, after the events at Zhanaozen, it may have been prepared too early for the case to be included. However, the next time Kazakhstan was discussed, in the 2015 CEACR report there appears extensive discussion of union organising laws but no mention of the mass shooting of
FOCUS • SEVERE REPRESSION OF THE RIGHT TO STRIKE

Strikers at Zhanaozen in 2011. Zhanaozen was very briefly mentioned in the discussions of the Conference Committee on the Application of Standards, in 2015. The Worker member of the United States recalled that 'the Government had started introducing changes to its legislation in 2011, following a seven-month strike that year by workers in the oil sector that had ended in the deaths of 17 of them, and injuries to dozens more'. The Worker member of Germany also made a reference to 'the serious events surrounding the strikes that had taken place in the oil sector'. The Government arrived late for the discussion and only made brief comments at the close of discussions. However, these two sentences are the sum total of all of engagement by all of the ILO supervisory mechanisms with the Zhanaozen violence. The Committee did not adopt any conclusions in relation to the violence. The last CFA case filed against Kazakhstan was closed in 2002, and there are no currently active cases. Zhanaozen has not been raised with the CFA. Similarly, no Complaints or Representations have been raised under Articles 24 or 26 of the ILO Constitution, and no forms of mission of inquiry have been proposed or established.

Since the Marikana massacre South Africa's compliance with Convention 87 has been examined just once, in 2013. In that report the issue of violence against trade unionists is mentioned, but bizarrely there is no clear or explicit reference to the Marikana killings, instead there is a reference to comments made by the International Trade Union Confederation (ITUC) in communications dated 4 August 2011 and 31 July 2012 (less than three weeks prior to the Marikana massacre), complaining of instances of violence, leading to injuries and death, and arrests of striking workers as well as the dismissal of strikers. Having established that these letters (and hence, pre-Marikana events) are the focus of its concern, the CEACR remarks that: ‘in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts’. Some take this language to hint at the Marikana case, but the massacre is not actually named or discussed. And there has been no discussion of Marikana in the CCAS. Although the CCAS has been disrupted in recent years the session did actually go ahead in 2013, the year after the massacre, at a time when South Africa was being assessed by the CEACR for compliance with Convention 87. Despite these conditions the question of South Africa’s compliance was not listed for CCAS discussion. The last CFA case filed against South Africa was closed in 2004, and there are no currently active cases. Marikana has not been raised with the CFA. Similarly, no Complaints or Representations have been raised under Articles 24 or 26 of the ILO Constitution, and no forms of mission of inquiry have been proposed or established.

The case of Hacienda Luisita is similar in some respects to the other cases but in other respects is rather different. The main difference is that Hacienda Luisita was taken up in a CFA case, which was filed by the KMU. In the CFA the case has been discussed over a number of years and important and meaningful criticisms have emerged from that process. So within the CFA route at least the Hacienda Luisita case has been effectively submitted to and engaged with by the ILO’s international supervisory mechanisms. It has also been mentioned in the CCAS, in 2007, where, again, rather oddly, the only person to refer to the case by name was the Government representative of the Philippines, though workers from various countries did also refer to the ongoing wider context of killings of trade unionists. However, the case has not been reported in any particular detail in the CEACR’s reports. In the 2007 CEACR report (three years after the event) there is a passing reference to the ‘non-arrest of the authors of the killings of seven strikers in November 2004’, which seems to hint at the case (which occurred in November 2004). But there is no further detail on what happened and otherwise no information at all in the CEACR’s reports about the Hacienda Luisita killings. This is rather problematic, because the CEACR’s reports are widely regarded as the key authoritative public record of labour rights around the world. If the reports fail to mention the massacre of strikers – while going into great detail about the technicalities of various amendments to labour law – this seems like quite a serious omission. And it is not something that can be explained due to the more technical / labour law / industrial relations remit of the CEACR excluding what might be termed ‘human rights’ or ‘criminal’ cases: CEACR can and does frequently report on and investigate killings of trade unionists.

The opening comparison with Poland is instructive for more reasons than the simple parallel of striking mine workers being shot down en masse by State forces. It is also interesting because it is a case in which the miners concerned were not formally linked to the international trade union movement (Solidarity was not affiliated to the ICFTU at that time). In formal terms the miners at the Wujek mine were in the same position as the oilworkers at Zhanaozen and the miners at Marikana, lacking affiliations to the international trade union movement and knowledge of and access to the international supervisory mechanisms. But what the Polish miners did have, however, was very strong political influence with their allies in the global unions. We are left with difficult questions about how, when, and by whom these supervisory systems should be engaged when such outrages occur and the victims lack these important political links to the global labour movement.

1 Case No. 10/97, Interim Report, March 1982
2 Discussed in Complaint (Article 26), 1982, Poland
3 In 2015 it was accepted into the ITUC
5 ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2012, p193
6 CCAS (2015), p104
7 CCAS (2015), p70
8 CEACR (2013), p168
9 CEACR (2013), p168
**Bangladesh**

In April 2015, workers at Chevron Bangladesh applied for registration of a new union, the Chevron Bangladesh Block 13, 14 Ltd Workers and Employees Union, which comprised more than 200 of their colleagues joined. At least half of the workforce have reportedly been employed on rolling temporary contracts, and this situation has continued, we are informed, for at least the past ten years. On 20 May cases were filed at the Labour Court concerning the workers’ rights to permanent employment status, arguing that this situation constituted a violation of Bangladeshi labour law, which limits probationary employment to a maximum of three months. Less than a week later, on 26 May, it is reported that police blocked the union office, and the following day the company fired the union’s President, Saiful Islam Shahid, and 16 other union members. Chevron has denied responsibility for the dismissals on the basis that the dismissed workers were employed by the service contractor, Property Care Services Bangladesh Pvt Ltd (PCS). The PCS manager is however reported to have told the Dhaka Tribune newspaper that the dismissals were requested by Chevron.

ICTUR has written to the authorities to remind them that anti-union discrimination constitutes a serious violation of the principles of freedom of association, enshrined in the International Labour Organisation (ILO) Conventions 87 and 98, which Bangladesh has ratified. The government is responsible for preventing all acts of anti-union discrimination, and for taking suitable measures to remedy any effects of anti-union discrimination brought to their attention, including the remedy of reinstatement to those who are victims of anti-union discrimination and the amendment of legislation where no such remedies are available (ILO Digest, paras. 817, 835, 837-8). ICTUR calls on the government to investigate the circumstances around these dismissals and to undertake all necessary measures to ensure the fundamental freedoms of workers to join and form unions and to take action in defence of their interests.

**Chile**

In July 2015, Nelson Quichillao López was shot dead by police while participating in a strike at the El Salvador copper mine run by the state-owned Codelco company. It is further understood that the incident took place in the context of the on-going struggle of the Confederación de Trabajadores del Cobre (CTC) union to negotiate with Codelco on behalf of contract workers on pay and conditions of employment. According to reports about the situation at the El Salvador mine, Codelco refused to negotiate with workers. Armed police then deployed live ammunition and tear gas under cover of night to violently disperse the peaceful protest of the workers, who were unarmed.

ICTUR has advised the authorities that the killing of Nelson Quichillao López is a highly serious incident, the circumstances of which must be promptly and effectively addressed. The use of lethal force against workers is the gravest of violations of the principles of freedom of association, enshrined in the International Labour Organisation Conventions 87 and 98. The ILO has recommended that states should investigate assaults on the physical or moral integrity of trade unionists through instituting an independent judicial inquiry immediately to investigate and determine responsibility (ILO Digest, paras. 46, 50, 184, 191).

ICTUR has written to the authorities to express its grave concern for this case and to observe that the murder of a trade unionist constitutes the most egregious violation of trade union and human rights. The killing of trade unionists requires the institution of an independent judicial inquiry at the earliest possible date. Failure to hold guilty parties to account creates a culture of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights’ (ILO Digest, para. 52).

**Guatemala**

In late September 2015 Mynor Rolando Ramos Castillo, a trade union activist and member of the Sindicato de Trabajadores de la Municipalidad de Jalapa (SITRAMAJ), was assassinated. Mr Ramos Castillo was one of 183 municipal workers involved in a dispute over unlawful dismissal who are awaiting reinstatement following a decision by the labour court in the workers’ favour. It has been reported that these dismissed workers are being subjected to a campaign of intimidation by city officials on account of their union membership. Mr Ramos Castillo is the sixth member of his union to be assassinated. An estimated 70 trade unionists have been reported killed in Guatemala since 2007, but the government of Guatemala has not taken adequate steps to bring the perpetrators of these murders to justice. ICTUR has written to the authorities to express its concern for the case and to observe that the murder of a trade unionist constitutes the most egregious violation of trade union and human rights. The killing of trade unionists requires the institution of an independent judicial inquiry at the earliest possible date. Failure to hold guilty parties to account creates a culture of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights’ (ILO Digest, paras. 42-45, 46, 48 and 52).

ICTUR has written to the authorities to express its concerns around these dismissals and to undertake all necessary measures to ensure the fundamental freedoms of workers to join and form unions and to take action in defence of their interests.

**Honduras**

Frequent incidents of violence and harassment against Honduran trade unionists have been reported in 2015 to date, including the following cases:

- On April 8, Donatilo Jiménez, President of the local Atlantic Coast section of SITRANAUN was reported kidnapped and disappeared.
- On 16 June 2015, Héctor Martínez Motiño, President of a local section of the Sindicato de Trabajadores de la Universidad Nacional Autónoma de Honduras (SITRANAUN) was assassinated by gunmen as he drove home from work. Motiño was a member of the Honduran Network Against Anti-Union Violence.
- In August, José Armando Flores Jimenez, President of the union of health workers in eastern Honduras, and a member of the Honduran Network Against Anti-Union Violence, received death threats.
- In September, Tomás Membreño Pérez, President of the Sindicato de Trabajadores de la Agroindustria (STAS) and Isela Juarez Jimenez, President of the public employees union SITRASEMCA also reportedly received death threats.
- In the same month, Heber Rolando Flores, a leader in the union representing workers of the National Agrarian Institute, was arrested and charged with sedition for taking part in a peaceful rally. ICTUR has written to the authorities to express its...
On 27 June, Esmail Abdi, **a leader of the Iranian Teachers’ Trade Association (ITTA)** was prevented from leaving the country to attend the 7th Education International World Congress in Canada, and was subsequently taken into detention on charges relating to national security and dissemination of propaganda.

On 31 August 2015, two more ITTA activists, Mohammed Reza Niknejad and Mehdi Bokhooili were arrested in their homes.

On 13 September 2015, Shahrokh Zamani, of the Tehran Paint Workers’ Union, died in prison, after having been sentenced to eleven years imprisonment in 2011. During his detention Zamani was reportedly subjected to harsh physical and psychological abuse.

**ICTUR wrote to the Iranian authorities to observe that, as a founding member of the International Labour Organisation (ILO), the Republic of Iran is obligated to treat workers and their rights with respect. The arrest and sentencing of trade unionists for activities related to the defence of the interests of those they represent is a serious violation of trade union rights. ICTUR called upon the government to fully investigate the circumstances of Shahrokh Zamani’s death and to ensure an end to the mistreatment and detention of trade unionists in gross violation of their rights, by securing their prompt release from prison.**

**Iran**

Independent trade unions suffer frequent and serious harassment and repression in Iran. A number of trade unionists are in detention, unions can only operate on the fringes of legality, and rallies and protests are regularly broken up. In recent weeks we learnt of the following cases:

- **On 27 June**, Esmail Abdi, a leader of the Iranian Teachers’ Trade Association (ITTA) was prevented from leaving the country to attend the 7th Education International World Congress in Canada, and was subsequently taken into detention on charges relating to national security and dissemination of propaganda.
- **On 31 August 2015**, two more ITTA activists, Mohammed Reza Niknejad and Mehdi Bokhooili were arrested in their homes.
- **On 13 September 2015**, Shahrokh Zamani, of the Tehran Paint Workers’ Union, died in prison, as well as under the UN Covenant on Social Economic and Cultural Rights, the European Convention on Human Rights (Article 11), and other important international instruments. Among its comments, ICTUR noted that services which qualify as ‘essential’ should be only those ‘in the strict sense of the term’, such as services ‘the interruption of which would endanger the life, personal safety or health of the whole or part of the population’ (See ILO, General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice and a Fair Globalisation, 2012, paras. 131 – 134).

**UK**

The UK Government is pushing through a new Trade Union Bill, which, if adopted, will create one of the most restrictive legal environments for trade union activities in continental Europe. The Bill contains new regulations on strike ballotting, replacement workers during strikes, picketing, and union representation for public sector employees. Multiple thresholds are to be applied to strike ballots, including particularly strict thresholds for a broadly defined category of ‘important public services’, which is far wider than the ILO’s definition of ‘essential services’. If implemented, these measures would amount to demonstrably disproportionate restrictions on workers’ freedoms of association and associated rights to collective bargaining and the right to strike.

**ICTUR has written to advise the authorities that the Bill contains numerous provisions that would constitute violations of the UK’s obligations under ILO Conventions 87, 98 and 151, as well as under the UN Covenant on Social Economic and Cultural Rights, the European Convention on Human Rights (Article 11), and other important international instruments. Among its comments, ICTUR noted that services which qualify as ‘essential’ should be only those ‘in the strict sense of the term’, such as services ‘the interruption of which would endanger the life, personal safety or health of the whole or part of the population’ (See ILO, General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice and a Fair Globalisation, 2012, paras. 131 – 134). Examples cited by the UK government include education and postal services, which clearly fall outside of this ILO definition of ‘essential’. Moreover, according to the ILO Committee on Freedom of Association (CFA), ‘the biring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term… constitutes a serious violation of freedom of association’ (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth Edition, 2006, para. 632). The proposals on hiring of agency workers to replace striking workers would therefore constitute a violation of the UK’s obligations under the ILO Conventions to which it is party. ICTUR calls on the government to address promptly and thoroughly all of the objections raised by the TUC with regards to the Trade Union Bill, and to ensure that the domestic law is in full compliance with the UK’s international legal obligations to protect the fundamental freedoms of workers to join and form unions and to take action in defence of their interests.**

**Israel**

In May 2015, during a strike held by dockworkers to protest job losses arising from privatisation, the Israeli Minister for Transport, Yisrael Katz threatened that strikers would be arrested as criminals and jailed. Although the dispute with workers has been subsequently resolved, the threat of criminal sanction in this matter raises significant concerns about the exercise of trade union rights in Israel.

**On 13 June 2015**, a delegate of the World Federation of Trade Unions (WFTU), Alexandra Liberi, who was visiting Ramallah to participate in a training seminar, was arrested and detained at Tel Aviv airport and subjected to intimidation, verbal abuse and confiscation of WFTU materials.

**ICTUR has written to remind the government of Israel that it has obligations under the eight fundamental conventions of the International Labour Organisation (ILO) which it has ratified. The arrest of trade unionists for activities related to the defence of the interests of those they represent poses a significant danger for the free exercise of trade union rights enshrined in ILO Convention 87. According to the ILO’s Committee on Freedom of Association, it is incumbent upon the government 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’ (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth Edition, 2006, para. 94).**
Many questions remain

On 16 August 2012 police deployed units armed with assault rifles and live ammunition with the stated intention of forcing an end to a mine workers’ strike at the Lonmin Marikana platinum mine in North West Province. Sixteen miners died at the scene. Fourteen others died at another location. Four other miners died later that day from their injuries. An unknown number – but certainly more than one hundred people – were wounded. Following the shootings police arrested 259 miners, an apparent mass case of arbitrary arrest and detention. The detainees were then charged with the murder of the 34 miners shot and killed by police, but the decision was widely criticised, the charges were dropped, and the miners were later released.

The dispute had erupted a week earlier when workers had demanded a pay increase after workers at a neighbouring mine (Implats) took unofficial strike action and were awarded very significant increases, substantially above the terms of their existing collective agreement. Marikana workers, many of whom were migrant workers, housed in awful conditions, and very unhappy with their pay rates, saw the Implats rise as a key opportunity to mobilise and to secure improvements to their own situation. In both cases the miners organised themselves into committees to petition management independently, having, for various reasons, lost confidence in either the capacity or willingness of the recognised NUM union to represent them.

Neither dispute was without incidents of violence, which often mar South African industrial relations, though the murders marked the Marikana case as particularly severe. While Implats did ultimately concede to the workers’ demands Lonmin steadfastly maintained a position under which it refused to negotiate with the workers. Lonmin was not without powerful allies during the dispute. From the second day one of its then non-Executive Directors, Cyril Ramaphosa (now South Africa’s Deputy President, previously a leader of the NUM trade union, and at the time a senior and influential figure in the ANC leadership) was in regular contact with the company, with political leaders, and with the police. A Commission of Inquiry was mandated to investigate matters of public, national and international concern ‘arising out of the events leading to the deaths of approximately 44 people’. The Commission was asked to look into conduct of various parties: Lonmin, the police, the unions, etc. Hearings concluded in November 2014 and the Commission’s report was submitted to the presidency on March 31 2015, being finally published to the public on 25 June, to a mixed response.

Timeline

The unfolding of events prior to 16 August has been less clear than it should have been. The Inquiry has shed some light on these events yet it failed to draw these together to provide a concise report of how key events that unfolded. In order to assist those wishing to understand how these events unfolded ICTUR lists below our understanding of the attempted bargaining process and of the unfolding of violence that preceded the events of 16 August.

11 August: two strikers were shot by armed officials of the NUM trade union after a crowd marched to the NUM offices.

12 August: Two Lonmin security guards were killed by strikers after their colleagues initiated an armed confrontation with a group of strikers. Two other guards were assaulted. That evening strikers also killed a miner who had remained at work and assaulted three others.

13 August: another miner was killed by strikers.
while on his way to work\(^{11}\). That afternoon a striker was killed in a large-scale confrontation with police\(^{12}\). Two police officers were also killed\(^{16}\). A striker was also found murdered at his home\(^{17}\).

\textbf{14 August}: a Lonmin supervisor was killed by strikers.

\textbf{16 August}: police commenced a disastrous operation to disperse the miners, shooting at least one hundred or more people with military-class automatic weapons in two separate mass shooting incidents. 34 of those who were shot died from the severity of their injuries\(^{20}\).

\section*{Response to the Commission’s findings}

ICTUR has studied the report of the Commission, and our view of the Commission’s work is outlined in summary form below. We note where the Commission has made findings which are, in our view, useful, but we also criticise a number of aspects of the Commission’s work and the style in which its report has been presented. We also outline our own recommendations for the most urgent next steps in this horrifying case.

The findings that Lonmin bears some culpability and that it failed to act appropriately in the circumstances are welcome. Domestic and international legal processes must now be taken forward to allow victims and families to seek redress.

The findings against the police – that they failed to plan appropriately, that the operation was best by numerous flaws, and that they subsequently were uncooperative with the investigation – are welcome and must be followed up.

The lack of any Government accountability coming out of the Inquiry is a glaring failure and is one that will rightly be criticised by international observers and human rights organisations. Engagement with international supervisory processes of the ILO and UN must now be part of a process of establishing accountability.

We agree that the role of the NUM trade union in physically assisting workers to cross a picket line in such a tense situation was rightly criticised. We agree also that NUM officials who fired on striking workers on 11 August should be referred to investigation.

The report makes only very general recommendations about prosecutions, in most cases offering no guidance to prosecutors. We question the value of merely advising that cases of murder and serious violence should be investigated, when this is patently obviously the case.

One of Commission’s main tasks was to make findings of fact of matters in dispute\(^{12}\). After the report, even President Jacob Zuma appeared uncertain of the figures, saying that ‘about 44 people lost their lives’ (emphasis added), while Lonmin’s post-report press statement referred to ‘the 46 people who died’\(^{20}\). The report also contains different sets of figures for the number of people injured. The failure to set out clear concrete figures for these basic issues is a serious failing of the Inquiry.

The report is too long, it has no index or contents listing, and the Commission’s findings are not clearly separated out from the dense discursive material. The report lacks an index, a contents page, and the loosely chronological order is not always consistent. These shortcomings present a considerable challenge to those seeking to analyse, critique and respond to the report.

Evidence in relation to the ‘intimidation’ said to have occurred on 10 August is vague and ICTUR is disappointed that the Commission preferred evidence given only by those who relied on it to excuse their own conduct (Lonmin guards and NUM officials) over and above compelling evidence to the contrary from several sources which indicated that the strikers on the 10 August were peaceful.

We also regret that the Commission did not make sufficiently clear findings as to exactly what the intimidation consisted of, nor did it identify specific victims of intimidation, yet it still managed to find that the use of rubber bullets in several cases was justified.

ICTUR is disappointed that the Commission did not instead take this opportunity to address the underlying principle that appears to normalise the use of rubber bullets by private security guards in crowd control situations.

We further believe that the decision to admit a great deal of evidence given by a person with a disguised identity - Mr X - was unhelpful. This was especially so given the context of the enormous extent of collusion and obfuscation that the Commission accepts that the police engaged in. This decision undermines the appearance of impartiality.

ICTUR regrets that the Commission interpreted its brief narrowly and did not avail itself of an opportunity to set out what would have been influential recommendations for a compensation scheme, which is clearly urgently needed by the families and victims.

ICTUR is disappointed by the Commission’s failure to make findings concerning the shooting of ‘bird shot’ during the massacre on 16 August, which ammunition the Commission has noted was available to Lonmin’s guards but should not have been carried by police officers\(^{22}\). At least seven people – four of whom died – suffered injuries from this type of ammunition\(^{23}\).

\begin{itemize}
  \item[3] Marikana Commission of Inquiry: Report on Matters of Public, National and International Concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West Province, pp45-47 and 52
  \item[4] Marikana Commission of Inquiry, pp2-4
  \item[5] Marikana Commission of Inquiry, p42
  \item[6] Marikana Commission of Inquiry, pp45-7
  \item[7] Marikana Commission of Inquiry, pp4-5
  \item[8] Marikana Commission of Inquiry, pp67-8, 70, 73
  \item[9] Marikana Commission of Inquiry, p77
  \item[10] Marikana Commission of Inquiry, p544
  \item[12] Marikana Commission of Inquiry, p544
  \item[13] Marikana Commission of Inquiry, p147
  \item[14] Marikana Commission of Inquiry, pp395, 401
  \item[15] Marikana Commission of Inquiry, p24
  \item[17] Marikana Commission of Inquiry, pp259-260
  \item[18] Marikana Commission of Inquiry, p259
\end{itemize}
Korean Railway Workers’ Union Rights under Attack from the Neoliberal State

When railworkers took strike action to protest against the privatisation and break-up of the railways the government declared that the strike was illegal, threatened thousands of dismissals, and ordered all strikers to return to work.

The railway system in South Korea has been a core target of neoliberal restructuring pursuing market competition and privatisation since the late 1990s. The Korean railway system was run by a governmental organisation named the Railway Office until 2003. The Railway Office, however, was divided and transformed into two public enterprises, respectively accountable for the operation (Korail) and construction (KRNetwork) of the railway system, in accordance with the government’s railway restructuring roadmap formulated in 2004. The conservative government (2008–2012), led by President Myung-bak Lee, took a public stance on the privatisation of the railway system, but did not produce the intended outcome, owing to the Korean Railway Workers Union (KRWU)’s strong opposition, including its seven-day strike action.

President Geun-hye Park, the eldest daughter of Jung-hee Park, who was the despotic president of the Korean developmental regime (1961-1979), was elected in December 2012, drumming up strong support from conservative political groups and elderly people. During the period of the presidential campaigns, in responding to the KRWU’s open inquiry concerning her policy plan for the railway system, President Park made clear that she opposed the privatisation of the Korea train express (KTX) lines, which were newly constructed in the Seoul metropolitan area. The government officially maintained that it was necessary to introduce market competition into the railway system in order to improve the Korail’s profitability and reduce its financial debt. The government’s announcement provoked widespread opposition from the KRWU and many civil society groups, which were concerned that this policy action would cause irreparable damage to the principle of public service in the railway system and result in privatisation as its following step. Against a backdrop of the union’s opposition and public concern, President Park’s government made an official decision to establish the independent enterprise Suseo Railways (SR), which separated from the Korail on 5 December 2013.

Korea Railway Workers’ Struggle against the Divestiture of KTX

In December 2013, the Korea Railway Workers Union (KRWU) engaged upon a 23-day general strike. This was the longest strike action launched by the KRWU, protesting against President Park government’s unilateral policy step to reshape the railway industry in the neoliberal direction. The KRWU came out on strike to protest against the government’s unilateral action on 9 December. The KRWU’s strike action was carried out in accordance with the legal process of labour dispute, including the National Labour Relations Commission’s mediation process, union members’ strike ballot (turnout rating 91.3 percent and approval rating 80.0 percent), and restriction of industrial action in essential public services. Park’s government, however, declared that the strike was illegal and took hard-line steps to break the KRWU’s strike. The government threatened to discharge 8,565 union members taking part in the strike action and ordered the striking workers to return to work. It also issued arrest warrants for 194 KRWU officials, including union leaders. The government and Korail management sent in strike breakers (including army forces) to replace strikers and filed a legal tort claim against the KRWU, requesting payment of a colossal amount of damages in compensation (16.2 billion Korean Won, approximately amounting to 13 million euro). The police raided the union offices and arrested union leaders, while the Korail management recruited 660 strike-breakers. Moreover, on 22 December a force of 5,500 police, without a warrant, attacked the headquarters of the Korean Confederation of Trade Unions (KCTU), a national centre of democratic Korean unions with which the KRWU is affiliated, in order to arrest KRWU leaders. The raid by the police troops failed to catch the union leaders, and instead resulted in the arrest of 135 KCTU members who attempted to block their entry. Despite the union’s strong opposition and growing public concern, the government granted business license to the SR for running KTX lines, as intended.

The police attack on the KCTU headquarters as well as the government’s unilateral restructuring action triggered rage amongst the organised labour community and widespread criticism from civil society movements. On 28 December, the KCTU and its affiliates waged anti-Park demonstrations as a means to protest against the government’s union suppression and railway privatisation, in which many civil NGOs and opposing parties participated. The Federation of Korean Trade Unions (FKTU), another national centre, announced its decision to stop policy dialogue with Park’s government and joined the KCTU-led demonstrations. Around 100,000 people gathered at the KCTU-led anti-Park demonstrations on December 28th. International Transport Workers’ Federation (ITF) and many national centres of foreign countries, such as TUC (UK), CUT (Brazil), ACTU (Australia), and TCTU (Taiwan), sent their strong solidarity support for the struggle of the KCTU and KRWU against Park’s government. Amnesty International also criticised Park’s gov-
government’s police attack on the KCTU office and said that the brutal suppression of the KRWU’s strike action violated global labour standards.

As confrontation between the KRWU and the government escalated into a protracted impasse, the leading politicians of the ruling party (Saenuri) and the major opposition party (Minjoo) made a joint attempt to have dialogue with union leaders. The KRWU reached an agreement with those political party representatives and called off its strike on 31 December. The agreement includes the establishment of a tripartite subcommittee in the Congress to discuss how to develop the railway system. The Subcommittee of Railway Development was formed in Congress in January 2014 and operated until mid-April. The Subcommittee adopted a final resolution to urge the government to implement a policy scheme for preventing the SR from being sold to private enterprises, but was unable to produce any legislative action to fulfill what the KRWU demanded for prohibiting the privatisation of the railway system, owing to the ruling party’s opposition.

Although the KRWU ended strike action, the KCTU continued its anti-Park struggles to protest against the government’s union suppression and railway privatisation. In January 2014, former presidents and senior advisors of the KCTU engaged in one-week hunger strike, and workers and citizens participated in a series of KCTU-led protest rallies.

**President Park’s Government’s Retaliatory Oppression of KRWU**

After the KRWU’s strike action was over, Park’s government and Korail management continued imposing retaliatory punishments on striking workers and union officials, including police arrests and company-level disciplinary action. In February 2014, the Korail announced a unilateral notice of the first disciplinary action giving severe penalties to 404 union members. The first disciplinary action included dismissal (150 members), suspension from duty for one month (15 members); two months (219 members); three months (17 members), and punitive wage cuts (23 members). In June, the management took disciplinary action against additional 198 union members, comprised of 50 dismissals and 148 suspensions. The union members who were given the severe penalties called on the Labour Relations Commission to find that Korail’s disciplinary action was unfair and should be cancelled. Besides, the Korail management also ordered forced job rotations to those striking members in a unilateral manner, which was intended to strengthen management’s shopfloor control and break the union’s organisational power.

The police arrested 36 KRWU officials, who turned themselves in to the authorities. The police requested a grant from the court to imprison those self-surrendered union leaders prior to the trial. However, the court accepted this request for only two officials, so that 34 union officials were released from the police’s detention. The public prosecution office prosecute only four union leaders, including the KRWU president (Myung-Whan Kim), for initiating illegal strike action, and the trial court gave a judicial decision that these leaders were not guilty in December 2014. The prosecutors didn’t accept the decision and brought an appeal to the appellate court.

Moreover, Park’s government requested the seizure of the KRWU’s assets and bank accounts, amounting to 11.6 billion Korean Won, and filed a law suit to demand payment of compensation of 16.2 billion Korean Won, for the reason that the union’s strike action inflicted business damages and loss of brand values, caused by railway stoppages, on the Korail. The government adopted the very union-busting tactic that private companies in South Korea have often used for destroying labour unions engaging upon strike action. Unlike the criminal trial, which found union leaders guiltless in their strike action, the court granted the asset seizure and damages claim against the KRWU, which resulted in severe financial damage to the union and paralysed its normal operation to a large extent.

**Neoliberal State’s Attack on Union Rights of Korean Railway Workers**

In South Korea, workers of public service sectors, including the railway, are primarily constrained from going upon their industrial action within the legal framework of the existing Trade Union and Labour Relations Adjustment Act, stipulating that the labour union should maintain essential public service operations in its strike action. The conservative government, led by President Park, attempted to enforce the neo-liberal restructuring of the railway system by divesture and privatisation. It mobilised police troops to suppress the KRWU, which got into strike action protesting against such neoliberal railway reforms. In addition, Park’s government undertook a variety of retaliatory steps to chastise the KRWU’s strike action and to break its counter power, by imposing financial damages on the union via asset seizure and damage compensation as well as giving disciplinary penalties to a large number of striking union members, including the massive dismissal of union leaders and officials.

The neoliberal state has taken the direction in which to weaken the universal public railway service and worsen the employment quality of railway workers by driving the market-driven restructuring of the railway system. For such neoliberal moves toward railway reforms, the government did to a large extent deny Korean railway workers’ collective action rights and destroyed their union’s righteous protest action against the unilateral restructuring. As such, the neoliberal restructuring of the railway system, illustrated in South Korea, is not just likely to impair its public service, but it will also hollow out railway workers’ union rights.
Association and bargaining rights for domestic workers

Braz is an important case in the regulation of domestic work. Not only is it one of the largest employers of domestic workers in the world with six million workers, Brazil has also developed one of the most comprehensive labour rights regimes for the regulation of domestic work in the last two decades. But even Brazil faces tough challenges ahead in ensuring that rights already granted by law such as recognition of freedom of association and collective bargaining (FA/CB) are effectively exercised. In this article, I analyse the compatibilities and incompatibilities of the Brazilian trade union system with domestic workers' collective organisation and to draw inferences for future policy.

The Brazilian case

The first domestic workers' trade union in Brazil was created in 1936 in São Paulo – the Santos Professional Association of Domestic Workers – organising a campaign against live-in domestic workers. The campaign sought to allow domestic workers to live in their own homes. Their argument was that in order to emancipate domestic workers it was essential to deny the prevalent notion that domestic workers were a part of employers' families. Domestic workers' trade unions in Brazil have played an essential role over the decades in the movement for advancing domestic workers' rights, even though they were legally recognised as trade unions only in 1988 with the promulgation of the Federal Constitution. Before 1988, they acted as private associations and they could not negotiate nor receive trade union's dues. The domestic workers' trade unions fought against the lack of legal recognition with little support from other labour groups. They were very effective in publicising cases of labour rights' violations, sexual harassments, and work-related accidents. In the 1980s, domestic workers' trade unions became affiliated with the trade union centre Central Única dos Trabalhadores (CUT) and, in 1997, the national federation of domestic workers was created, Federação Nacional das Trabalhadoras Domésticas (Fenatrad).

After the new Federal Constitution recognised freedom of association for domestic workers, the Ministry of Labour gradually started to accept the registration of domestic workers' trade unions. The Campinas Domestic Workers' trade union, one of the most active in the country, was officially registered in 2008. Being registered, however, did not give them the prerogative to negotiate, since the Federal Constitution did not guarantee the right to collective bargaining. A decision of the Superior Labour Court in 1994 confirmed this restriction on domestic workers' rights: 'the Constitution does not recognise collective agreements of domestic workers (Article 7, line XXVI), therefore there is a logical obstacle to recognise the right of collective bargaining for these workers.'

In 2013, the Federal Constitution was amended giving domestic workers all of the same fundamental rights as other workers, including the right to collective bargaining. This guarantee opens a whole new world of possibilities for these workers, since there is no legal doubt about their right to register as trade unions, nor their right to collective bargaining.

An immediate consequence of the constitutional change was an increase in the number of registered trade unions and applications for registration. In 2015, there were 21 domestic workers' trade unions and 3 employers' trade unions registered at the Ministry of Labour. In the context of the Brazilian corporatist system, however, this increase does not entirely reflect an effective organisation and representation of domestic workers. The same is valid for employers' trade unions, because in Brazil, employers' associations are also considered trade unions and have the same legal treatment as workers' trade unions. To better understand the challenges, it is important to briefly explain the Brazilian system of defining a professional category, the unicity rule and mandatory trade union dues that flow from it.

Brazilian corporatist trade union law

In Brazil, workers and employers can only organise themselves by professional and economic categories, respectively, and there is no pre-definition by law of the professional categories. The trade union proposes the category it will represent. Each category can only be represented by one trade union within a minimal territory of a municipality, that is, there is no enterprise level trade union. This exclusivity of representation by the trade union (called unicity) is achieved in a first-come, first-served basis, that is, the first trade union that applies for certification of a certain category will hold that representation without having to demonstrate that they enjoy the support of the majority of workers they propose to represent. Different from a voluntarist trade union regime, there is no certification vote or signing of membership cards by workers. The whole process is done through the Ministry of Labour or decided by the Labour courts (in the case where two trade unions dispute the representation of the same category of workers). The chronological criteria is used in both cases: the first trade union that applies for certification of a certain category will be granted the exclusivity of representation. The one trade union that holds the representation...
receives a mandatory trade union fee (equivalent to one day of work a year) from all workers in the sector and to be collected by the employer from wages and paid to the union via the government.

There are two very dysfunctional consequences of these corporatist rules: a low level of representativeness of trade unions in general; and the fragmentation of labour movement. Due to the unicity rule, trade unions have no incentives from the system to increase their membership. The mandatory fee and the ability to register new unions by proposing new professional categories create strong incentives for the labor movement to keep creating new trade unions. The result is that these rules have led to an excessive number of trade unions (around 10,509 workers' trade unions in 2014), many of them with very low representativeness.

Corporatism might be effective to domestic workers’ trade unions

The corporatist trade union system is the target of much criticism for not promoting worker’s affiliation and increasing the risk of non-representative trade unions. In the case of typical workers, the excessive interference of the corporatist law might generate more dysfunctional consequences than in the case of domestic workers. Typical workers do not face the same obstacles to unionisation as domestic workers. In the case of domestic workers, they work in a private household and are isolated from other workers. These two conditions by themselves already pose strong obstacles to their unionisation and collective bargaining. The fact that they work in a private household makes it harder for the trade union to contact the domestic worker. Since they work isolated from each other, it is hard to get domestic workers to get together with others to organise a reunion. The isolation of domestic workers also compromises an important feature of collective action. The trade union to a certain degree depersonalises worker’s voice and action. This feature makes it possible for workers to expose and try to resolve workplace conflicts without being individually exposed to a retaliatory measure from the employer. For domestic workers, the decision to organise a trade union, to affiliate, or to file any complaint, will always be personal. The lack of employers’ associations poses another obstacle to the exercise of the right to collective bargaining. In sum, it is much harder for domestic workers to organise a trade union than it is for a typical worker.

As the corporatist system facilitates the creation of domestic workers’ and their employers’ trade unions, it might help domestic workers’ trade unions to overcome these difficulties and to organise and negotiate. According to the law, trade unions, once registered, can negotiate. When an agreement is reached, it applies to the entire professional and economic category that is to say that all workers are covered by this agreement and all employers are obliged to accept it. In case of violation, workers can complain to the labour court. Since the constitutional amendment, three categories of domestic workers’ collective agreements were negotiated in São Paulo in since 2013. The agreements deal with wages, payment of wages, vacation, hours of work, night shift, travels, room and board, transportation, dismissal, unemployment insurance, maternity sta-

bility and trade union dues. Mostly the agreements reaffirm what is already established in the Labour Code (CLT) and in the Constitution, adding new conditions specially, on minimum wage and compensation of hours.

The downside of the corporatist regulation is that trade unions on both sides might be unrepresentative which would pose a problem for the worker. Therefore, the next challenge for the domestic workers’ trade unions that have been recognised so far is effectively be able to negotiate collective agreements.

Conclusion

The Brazilian corporatist system imposes a model of unionisation by professional and economic categories, the legal exclusivity of representation in each category and mandatory trade union dues. All these rights have been guaranteed by the law but at the cost of the low representativeness of trade unions, since membership involvement in the creation of the trade union is not required. For typical employees, these rules mean a strong restriction of their individual freedom to create their own organisations. For domestic workers, these rules create the much-needed protection that makes it easier for them to organise trade unions. These unions also suffer from low representativeness but they have the potential to mobilise and involve the membership in due course. For now, the ease of organising a trade union gives these workers a realistic chance to engage in collective action that could improve their working lives. If these unions can find enough employers’ organisations to negotiate with, they could transform domestic work from drudgery to decent work.

Policies to Counter Renewed Threats of Recession

Several downward revisions of the international financial institutions' growth forecasts, especially for emerging-market economies, mean that the current year is projected to have the lowest annual rate of economic growth since the recession year 2009. Further corrections are likely in light of recent developments. As a result, the global jobs gap that developed during the Great Recession will not only persist but will grow unless substantial policy changes take place. The IFIs need to end their approach of supporting austerity measures and labour market deregulation while largely ignoring problems of insufficient aggregate demand and not adequately addressing the continued drag created by a broken financial system. These detrimental policies should be replaced by a serious institution-wide focus on the creation of quality jobs, achieving the transition to a low-carbon future and reducing inequality.

The IFIs' recent attention to the damaging consequences of income and wealth inequality in analyses and public pronouncements is welcome, but it must be followed by actions on an operational level. Current IFI practice on the issue can only be characterised as highly inconsistent. Analyses blaming the increase of inequality on diminished redistribution in fiscal policies and weaker labour market regulations and institutions co-exist with country-level policy recommendations and loan conditions to cut benefits to the unemployed, increase regressive taxes, reduce minimum wages and limit the scope of collective bargaining. The IFIs should support more progressive tax regimes, broader social protection coverage, strengthened collective bargaining and robust minimum wages as part of a coherent approach to achieve more equal income distribution.

Global Unions' statement urges the World Bank to correct remaining weakness in the revised draft labour safeguard that it made public in August and to work with its private-sector lending arm to implement a report released earlier this year by IFC's ombudsman for improving the application of its performance requirement on labour. It urges the IMF

The 'two-speed recovery' plan, previously presented by the IMF as the scenario through which rapid growth in emerging-market economies would pull along the rest of the global economy, has come to an abrupt stop. Following several downward corrections of growth forecasts for large emerging economies, the Fund's most recent prediction is that 2015 will be the year with the slowest rate of global economic growth since the recession year 2009. Manifestly, the Brisbane Action Plan of November 2014, which announced a series of measures whose impact according to IMF calculations would boost G20 countries' collective growth rate by 2.1 percent by 2018, has been a failure. Economic growth has been falling rather than increasing.

Lower commodity prices and possible interest rate increases in the US are likely to hasten the flow of capital out of emerging and developing economies and affect economic growth in those regions. Higher interest rates in the US could lead to higher rates in other regions as well, accentuating the negative impact on growth. Although increased global growth rates will not automatically resolve the high levels of unemployment and under-employment existing in many countries, a steady and sustained period of economic growth is a necessary ingredient for eliminating the jobs gap that developed following the global financial crisis and recession of 2008-2009.

In early 2015, a report co-produced by the IMF that relied on projections from partial unemployment data proclaimed the jobs crisis to be over, but serious analyses such as those produced by the International Labour Organisation show that the global jobs gap remains. These analyses take into account the lower labour force participation rates (due in part to long-term unemployed who have ceased active job search) and show that the current global employment-to-population ratio is substantially lower than it was prior to the 2008-2009 crisis. In fact, the ILO’s estimated employment-to-population ratio was at the same level in 2014, 59.7 percent, as it was in the global recession year 2009 (World Employment and Social Outlook – Trends 2015). Indications of higher levels of under-employment, which are not reflected in measures of open unemployment, further demonstrate the continued gravity of the jobs crisis.

While publications of both the IMF in its series on Jobs and Growth and the World Bank in its World Development Report 2013: Jobs (WDR 2013) have undertaken analyses of the causes of unemployment, a priority focus on the creation of decent work has not been put in place throughout the institutions’ operations. In most high-unemployment countries, the IMF has blamed ‘over-regulated’ labour markets for economic stagnation and has focused policy recommendations and loan conditions on weakening collective bargaining and reducing minimum wages and other protections. This, in spite of the fact that studies produced by the Fund’s own research department have been unable to justify such measures as being growth enhancing. For example, a chapter in the IMF’s April 2015 World Economic Outlook on potential output growth identified product market reforms and increased investment in information technology as among the factors that could significantly increase poten-
tial growth. ‘In contrast’, according to the WEO, ‘labour market regulation is not found to have statistically significant effects on total factor productivity’.

Recent IMF reports on Spain, which at the behest of the Fund has applied measures to reduce minimum wages and the scope of collective bargaining, have lauded the country’s success in reducing the unemployment rate to 22 percent, supposedly resulting from its so-called internal devaluation policy, i.e. wage reductions. Fund reports claim that lower wages have made the tradable sector more competitive vis-a-vis other euro-zone countries. In reality, Spain’s trade balance with the rest of the euro-zone fell by 8 percent between the first six months of 2014 and the first six months of 2015 (from €2.8 billion to €2.5 billion); with the entire European Union, Spain’s trade balance turned from a €2.5 billion surplus to a €0.7 billion deficit over the same period. It is unfortunate that IMF reports present explanations unsubstantiated by evidence to justify controversial internal devaluation measures, when the most plausible reason for Spain’s return to economic growth since 2014 has been easier credit conditions that have allowed enterprises and consumers to borrow for investments and purchases of durable goods.

Both the World Bank and IMF must follow through on their pro-employment rhetoric with concrete actions. In 2014, the Bank created a Jobs Group, following up on its WDR 2103, whose central recommendation was for Bank-financed activities to be assessed through a ‘jobs lens’ to ensure they contribute to creating good jobs for development that respect fundamental workers’ rights. The Bank should proceed with rapid implementation of that recommendation. The IMF similarly needs to incorporate an explicit employment impact assessment in its policy recommendations, which should lead it to reject the kind of austerity and deregulation conditions and advice that contributed to more than a quarter of the workforce being out of work in some European countries.

### Developing a consistent approach on inequality within the IFIs

Ever since the theme of income and wealth inequality began receiving broad attention through the ‘Occupy’ and other popular movements in 2011, the IMF and World Bank have paid greater heed to the issue in public pronouncements and publications. For instance, the Bank adopted a new organisational strategy in 2013 that made reduction of inequality – specifically ‘boosting the bottom 40 percent’ – one of its stated priority goals. On an analytical level, that year’s WDR determined that higher minimum wages, some employment protection regulations and increased trade union membership are associated with lower inequality.

The causes of and problems created by increased inequality have also been addressed by several recent IMF research papers, leading to findings such as the following:

- Countries with lower inequality have higher and more durable growth, justifying more redistributive economic and social policies

(The IFIs need to end their approach of supporting austerity and labour market deregulation)

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### Implementation of a robust World Bank labour safeguard

Global Unions have urged the World Bank to require that its projects are in compliance with the International Labour Organisation’s core...
labour standards (CLS) starting in 1998, when it became a de facto condition of ILO membership for countries to adhere to the standards. Other multilateral development banks preceded the World Bank by requiring that the activities they finance comply with the CLS, as well as minimum

However, both IFIs have been weak and highly inconsistent in following through on occupational health and safety requirements, obligations to provide information to workers and some other working conditions. Trade unions, other civil society organisations and many governments urged the World Bank to adopt labour standard requirements as part of the review and update of its Environmental and Social Framework, commonly known as safeguards, that it began in 2012. A first draft of the new framework was made public in July 2014.

In August 2015, the Bank released a second draft of its proposed new safeguards policy that followed extensive consultations on the first proposal. The new draft of the labour safeguard contains many improvements on the version released a year earlier, which those who had supported the adoption of a labour safeguard criticised for its serious flaws. For example, the first draft had excluded contract or sub-contracted workers from any protection, even though this category of workers may be particularly subject to abuse and often constitutes the vast majority of workers in Bank-financed infrastructure projects. The new draft of August 2015 includes coverage of these workers.

However, some important weaknesses remain in the most recent draft labour safeguard. Chief among these are the lack of any reference to the ILO standards upon which the CLS are based and insufficient protection of workers who exercise their freedom of association against acts of discrimination or reprisal. In both these areas, the latest draft does not meet the standards of the labour safeguards adopted by other development banks. The ITUC and its Global Unions partners have submitted written suggestions to the World Bank for correcting the remaining flaws. They also call on the Bank to adopt effective means and procedures for implementing the new safeguard and monitoring its application.

Global Unions have urged IFC, which has applied ‘Performance Standard 2: Labor and Working Conditions’ (PS 2) as a borrowing requirement since 2006, to implement the recommendations of a May 2015 investigation report issued by its Compliance Advisor Ombudsman. The CAO report, which concerned a loan made to a Colombian borrower, found fault with IFC for proceeding with loan disbursements despite having corroborated information it received more than a year before from trade unions and the ILO showing that the firm’s labour practices were in clear violation of PS 2. The CAO also criticised IFC for not compelling the firm to divulge assessments and action plans concerning its labour practices, thus contravening disclosure obligations that are part of IFC’s social and environmental standards policy.

Global Unions call on IFC to improve its loan approval, monitoring, disclosure and disbursement procedures as recommended by the CAO in order to achieve full compliance with its labour standards requirement.

IMF should support an independent debt restructuring process

In September 2015, the United Nations General Assembly voted in favour of a set of principles to guide sovereign debt restructuring processes for countries with unsustainable debts. Only six countries opposed the resolution and did so largely on the basis of arguments that debt restructuring is a responsibility of the IMF, not the UN. While the Fund’s interest in debt restructuring issues is evident, nothing indicates that the IMF is in a position to act as the agency that can facilitate or enforce binding agreements on all creditors, which is one of the key principles of the UN resolution. That principle is intended to encourage strong creditor participation in debt workouts and to prevent so-called vulture funds from undermining or even completely blocking restructuring agreements.

The severe limits of the current regime, where binding agreements cannot be imposed on all creditors, has been demonstrated in several recent examples, including the following high-profile cases:

- Greece in 2012, when a limited debt restructuring agreement with private creditors arrived too late and with too little relief to prevent Greece’s sovereign debt from soon reaching unsustainable levels
- Argentina in 2014, when US courts decided in favour of a small group of vulture funds and forced the government to cease payments on loan restructuring agreements that it had concluded with 93 percent of creditors several years earlier Ukraine in August 2015, when a voluntary debt restructuring agreement between the government and some private creditors fell far short of the target the IMF had fixed for private creditor ‘buy-in’ as part of the financial assistance package for the country

The IMF endorsed the creation of a Sovereign Debt Restructuring Mechanism in the early 2000s, shortly after Argentina was obliged to default on its sovereign debt while in the midst of a severe recession. The SDRM would have included a procedure for making binding for all creditors restructuring agreements endorsed by the debtor country and a super-majority of creditors. However, the IMF dropped the proposal in early 2003 largely because of opposition originating in the private financial sector and has not reconsidered it since. The Fund has given no indication that the private financial sector will no longer seek to undermine the creation of such a mechanism, even if the sector has demonstrated a clear lack of responsibility in resisting attempts to adequately regulate its activities, both before the 2008 financial collapse and after.

In addition to its lack of independence vis-à-vis private financial institutions, the IMF has the additional problem of being itself an important creditor. The Fund’s policy on financial standards, for example, is lagging far behind that of other international institutions in financial difficulty. In a few cases, the Fund has appealed to private creditors, governments and other international institutions to write down their loans to countries with unsustainable debts. But by simultaneously insisting that its own loans
to those countries must be repaid in full and without delay, the IMF seriously hampers its capacity to act as a credible arbitrator in debt restructuring negotiations. The IMF should, in conformity with the recent UN resolution, agree with a statutory approach to restructuring of unsustainable debts and support the creation of a sovereign debt workout institution either as an independent entity or under the auspices of the United Nations.

The IMF endorsed the creation of a Sovereign Debt Restructuring Mechanism in Global Unions’ recommendations.

**Measures to support economic recovery**

The IMF and World Bank should:
- Support and help implement a global recovery strategy consisting of a policy mix of public investment stimulus and coordinated wage increases, and reverse recommended measures such as lower minimum wages, weakened collective bargaining institutions and reduced social protection.
- Contribute, as part of this strategy, to public investments in energy-efficient infrastructure and in education and other quality public services including the care economy to improve long-term productive potential, and support the transition to a low-carbon economy including through the adoption of carbon taxes.
- Oppose austerity measures and corresponding cuts in public spending in areas that provide social support, facilitate productive economic activity and provide the basis for stable government services, and support stabilising public finances through greater tax revenues from higher incomes.

**Measures for creating decent work and reducing inequality**

The IMF and World Bank should:
- Ensure that the activities they finance comply with fundamental workers’ rights, provide safe working conditions and adequate wages, and in particular the World Bank should adopt a comprehensive labour safeguard that requires compliance with the ILO’s core labour standards.
- Implement the recommendations made by the Compliance Advisor Ombudsman of IFC, the World Bank’s private-sector lending arm, in a May 2015 investigation report concerning deficiencies in the application of IFC Performance Standard 2: Labor and Working Conditions.
- End the promotion of labour market deregulation and, instead, help to reverse the rise in income inequality by supporting social dialogue, strengthened collective bargaining and robust minimum wages as part of a coherent set of labour market policies for more inclusive growth.
- Ensure that women benefit from these policy actions to avoid a further deterioration of gender gaps in employment and income levels.
- Help countries restore or establish fiscal policies that reduce inequality through more progressive tax regimes and increased coverage of social protection programmes.
- Develop action plans to support the implementation of a global social protection floor as developed by the ILO, endorsed by the United Nations, agreed at G20 meetings and included in IMF and World Bank strategies.

**Measures for effective financial regulation and taxation**

The IMF should:
- Redirect its attention to its core mandate of contributing to a financial sector that is stable and supports growth by focusing country-level advice on issues of unregulated shadow banking systems, ‘too-big-to-fail’ financial groups, under-taxation of the financial industry and lack of affordable finance to small and medium enterprises.
- Support the creation of a multilateral framework for negotiating binding international debt restructuring agreements when countries face unsustainable sovereign debt.
- Promote stronger actions to counter the erosion of tax bases and achieve reform of taxation systems in order to move towards broader-based and more progressive taxes and to shift taxation from employment to environmentally damaging and non-productive activities.
- Support stronger measures to ensure that fiscal revenue is not lost through tax havens by requiring automatic exchange of information and action to stop base erosion and profit shifting by multinational enterprises.
- Support the introduction of financial transactions taxes to discourage speculative behaviour and create new sources of finance, including by offering assistance for the coordinated implementation of the euro-zone initiative for a comprehensive FTT in eleven countries.

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1. The African Development Bank, European Bank for Reconstruction and Development and International Finance Corporation (IFC) have adopted comprehensive labour safeguards. They include the requirement that borrowers comply with the core labour standards, which are internationally-agreed fundamental human rights for all workers irrespective of countries’ level of development that are defined by ILO conventions covering freedom of association and right to collective bargaining, elimination of discrimination in respect of employment and occupation, elimination of forced or compulsory labour, and effective abolition of child labour.

2. ‘Revised draft of World Bank’s proposed labour safeguard: Improved but flaws remains’, August 2015: http://www.ituc-csi.org/revised-draft-of-world-bank-s
Cambodia

The garment sector minimum wage for next year was announced in October at US$140, up from the current US$128 but significantly short of the US$160 unions were demanding and the higher US$177 that was the campaign target set by global unions. In late 2013 and early 2014, when the minimum stood at US$100, the sector was the site of strikes and protests that were violently repressed (discussed at pp10-11 in this edition of IURO.

China: new resources

The Hong Kong-based NGO China Labour Bulletin has ‘revised, updated and streamlined’ its online Resource Centre, which they first introduced in 2008, so that it now lists five key sections grouping its information, statistics, research and analysis: Wages and employment; China’s social security system; Workplace discrimination; Migrant workers and their children; and China’s labour dispute resolution system.

Collective bargaining

New research from the ILO, Issue Brief No. 1, Trends in Collective Bargaining Coverage: Stability, Erosion or Decline? shows the alarming deterioration of collective bargaining globally in the wake of the global financial crisis of 2008. While the report notes that some countries have experienced increased coverage, it concludes that most have seen declines, which have in some cases been substantial. The research has also revealed that bargaining coverage is dropping faster than union density. Considering a sample of 48 countries, the research found that, on average, there was a 4.6 per cent drop in collective bargaining coverage between 2008 and 2013, compared with an average decline in union density for the same group of countries of 2.3 per cent. The report notes that ‘where coverage declined, this was mainly due to the cessation of national general agreements, a roll-back in policy support for multi-employer bargaining and policy induced decentralisation (e.g. legislative changes that prioritised company over multi-employer agreements; introduced the possibility for companies in trouble to opt out of sectoral agreements; and allowed for the recognition of non-union bargaining representatives at the enterprise). The sharpest declines (by an average of 21 per cent) were seen in countries hardest hit by the crisis, such as Cyprus, Greece, Ireland, Latvia, Portugal and Romania.

A link to the research appears on http://www.ilo.org/newsroom.

Colombia / US

From October 1 – 6 the US labour group the Coalition of Black Trade Unionists (CBTU) visited Colombia to study the current labour rights situation in the country and to explore in particular the human rights situation of Afro-Colombian communities. The team visited with the support of labour and human rights professionals with knowledge of the Colombian labour rights context over the years, including the Washington Office on Latin American. The report finds that four years after the US-Colombia Labor Action Plan (LAP) was signed in 2011, violence and death threats against trade unionists continue at a steady pace and impunity for these crimes remains the norm. Subcontracting as an anti-union measure remains uncurbed in Colombia Afro-Colombians are particularly affected by labour and other violence and abuses, particularly in the agricultural and extractive industries in the Departments of Choc, Valle del Cauca and Cauca. The report also finds that there are more than two million Afro-Colombians displaced in the country, and it examines the situation of Afro-Colombian women and youths, poverty, lack of services and infrastructure, unemployment, racism, and the situation of indigenous communities. Paramilitary groups, the report notes, remain active in Afro-Colombian areas and are a threat to trade unionists, human rights defenders and ethnic minorities. The report is available via the Steelworkers website on www.usw.org

Education

In July this year the ILO workers’ bureau ACTRAV published a handbook emphasising the importance of training educators and focusing on ‘educating the union educator’ to implement education activities that are learner focused and based on the principles of solidarity and collectivism. It recognises that education is a vital part of a union strategy and action plans because it encourages the involvement and confidence of workers to play a role in the union strengthening negotiations, representation and campaigns. July 2015.

Available from: http://www.ilo.org/actrav/info/pubs

ILO standards: new compilation

A new book compiling all up to date ILO labour standards, the Compendium of International Labour Conventions and Recommendations has been published, in October 2015. As it might be expected this is quite a substantial volume, running to 1047 pages, but the update is most welcome as the previous compilation of all standards (so far as your editor is aware) was the 1982 edition.

Available from: http://www.ilo.org/global/publications

India

A major labour law reform process is underway in India but the proposed changes have met strong opposition from unions. The government argues that it wants to modernise India’s aging, complex, and fragmented labour law system into five codes covering wages, conditions, social security, industrial relations and training. So, for example, the Trade Unions Act, the Industrial Disputes Act, and the Industrial Employment (Standing Orders) Act, would be merged into a single code for industrial relations. The process has included a number of reforms which unions have strongly objected to, including, most prominently, a proposal to pull many medium size enterprises out of the existing system for employment protection, under which
government permission is needed before dismissals can be made, by raising the threshold so that this provision applies only to workplaces employing more than 300 workers, up from the current level of 100. A new law for small workplaces will provide some employment protection, but unions argue that the process will remove far more rights than it bestows on these workers. Other proposals include raising the membership threshold needed to gain registration for a workplace union from 10 percent to 30 percent of workers.

The government has claimed that it needs to improve flexibility of hire and fire procedures to promote a more dynamic economy. But unions have questioned whether this claim has any evidential basis, protested because many of their members will be affected, and further argued that the changes have been proposed without consultation. In their Charter of Demands the unions have made clear that the terms of their dispute go much deeper than the mere detail of the proposed laws and that they are seeking to challenge what they see as flawed economic policies and the overall rationale and justification for the project. All of India’s major trade union centres (other than the BMS, although it too has raised criticisms of the reform proposals) united in a day of strike action to oppose the reforms. Tens of millions of workers participated. The strike day was described by the unions as a ‘landmark’ day of struggle against liberalisation and flexibilisation.

Iraq: new labour law

In August the project to update Iraq’s 1987 labour law finally saw the new Labour Law of 2015 introduced. Civil servants are excluded from the law under Article 3. Article 6 establishes qualified rights to freedom of association. Chapter 15 sets out the framework for collective bargaining and agreements, and leaves the parties free to decide the level of bargaining, noting that this may be at the enterprise or sector level or any part of it, or at the regional, governorate, or national level (Article 147(2)). The framework for higher-level bargaining and the status of higher level agreements appear to be entirely voluntary and are not defined in the law, although a principle is established that undermining the terms of higher-level agreements is prohibited unless that intention is clearly by specific agreement (Article 147(3).

There is more detail on enterprise bargaining: here an employer must negotiate if a request is received from a registered union representing more than 20 percent of the workers in the enterprise. Article 148(4) opens the door to multi-union bargaining. Enterprise agreements are legally binding for all workers where membership is above 50 percent or for members only where membership is below that level, however extension to all workers is possible by ballot (Article 151). A dispute arbitration and a strike regime are established (Articles 157-164), with strikes conceptualised as a vehicle to support interest disputes during bargaining, with industrial peace required during the lifetime of the agreement. Strikes may only occur in this context, but are quite well protected (Article 165).

A serious absence in the new law is the lack of any clear rules on establishing or registering trade unions, which regulations are apparently forthcoming, but which will do little to change the current situation in which a number of unions are not officially registered and therefore will not be able to avail themselves of the rights established under the new law.

Sweden

The trade union framework of Sweden has traditionally promoted very high levels of membership but new research has revealed a substantial decline in membership levels over the course of the last decade, from 80 percent in 2005 to 70 percent in 2015. While 70 percent membership density remains globally very high the decline is substantial. The research, from the Swedish National Mediation Office, also reveals that unionisation rates for white-collar workers are now nine percentage points higher than for blue-collar workers (in Sweden these groups are organised into distinct unions represented by their own national level centres).

US: Minimum Wage Win

The decision by city authorities in the small city of SeaTac to raise the minimum wage to US$15 – approved by voters in a 2013 ballot – has won out against a legal challenge from Alaska Airlines, which had argued that the city authorities did not have the legal power to apply the wage in the airport. The SeaTac $15 wage will now apply to airport workers as it does already to others working throughout the city. The SeaTac wage has inspired other city authorities to introduce similar wage laws. The SeaTac campaign was discussed in IUR 21.2, pp8-9).

Trade agreements: Uruguay

Uruguay has withdrawn from the on-going talks for a controversial Trade in Services Agreement (TiSA) aimed at dramatically opening up the global services ‘market’ to private companies. The talks are being conducted in secret, however, unions have been strongly critical of the TiSA’s implications for public services and for public service workers. In 2014 Uruguay’s PIT-CNT trade union centre, together with civil society organisations, held strikes and demonstrations against participation in the trade talks.

Myanmar

The government of Myanmar has officially registered the Confederation of Trade Unions of Myanmar (CTUM). The trade union operated for many years as an exile group under the leadership of Maung Maung, who accepted the registration papers as CTUM President. The CTUM is recognised as the national level trade union centre for the country. CTUM says it is working across ten states in the country and the official registration would greatly help its work.
New Generation Trade Treaties – The Transatlantic Trade and Investment Partnership

This is a brief report of a three-day seminar organised by Unite the union in July 2015, focusing upon the growth of free trade agreements and trade union responses. Opening the seminar Adrian Weir (Assistant Chief of Staff, Unite) placed the seminar into context, outlining how Unite had adopted a position of opposing TTIP in its entirety at its policy conference in July 2014 and how this position had been adopted in relation to the proposed TTIP, CETA, TPP and TISA trade agreements at the 2014 TUC Congress. Finally, the steering group of Workers Uniting (Unite-USW partnering) had committed to full opposition to these new trade agreements.

The seminar was then addressed by Peter Rossman (IUF) who outlined how the development of the new generation trade agreements, starting with NAFTA in 1994, was little to do with removing trade barriers, and focused upon protecting the investment rights of transnational corporations. One example was the attempt to extend trade deals to services, affecting those services associated with manufacturing as well as public services traditionally supplied by the state. Crucially, one aim of the new agreements was to apply a principle of ‘negative listing’, so that governments could only exclude services from a trade agreement at the time of signature, meaning that returning these to the public sector and excluding new emergent sectors would become impossible, locking in privatisation. This would be secured through Investor State Dispute Settlement (ISDS) clauses in agreements which allowed corporations to take governments to secret courts for loss, or even the potential loss, of profits.

John Hilary (War on Want) then provided an update in recent negotiations between the EU Commission and US government on TTIP, information sourced via leaks from secret negotiations. Despite significant opposition, mobilised by the US unions, the Obama administration has secured a fast-track authority to negotiate on TTIP (and TTP), while despite similar opposition in Europe, the EU parliament had also voted in favour of the TTIP negotiations in the light of the proposed referendum on EU membership in the UK and the US state has not responded to the assassination of trade unionists in Guatemala, despite complaints filed under the bilateral trade agreement over 7 years ago. Despite the challenges, the USW continued to campaign and lobby actively against these new generation trade agreements and stressed the importance of building support against TTIP and CETA from among the European trade union movement.

Discussions surrounding the position in Europe included contributions from Penny Clarke (EPSU) who stressed the federation’s opposition to ISDS and the liberalisation of public services, Steve French (Keele University) who examined the TTIP negotiations in the light of the proposed referendum on EU membership in the UK and Ben Richards (Unite) who examined the issues in building a coalition across European trade unions to oppose free trade agreements. He highlighted the contrasting positions of CO Industri (Denmark) and CGT-FTM (France) within IndustriALL-Europe and how agreement was being forged around key principles which had to be applied in any new generation agreement. The final speaker was Labour MEP, Judith Kirton-Darling, who stressed the opportunity that the new generation trade agreements might play in re-regulating international trade, and the role of Labour MEPs within the social democratic bloc within the European Parliament in trying to secure opposition to TTIP if it did not exclude ISDS, public services and secure binding labour rights. She highlighted the difficulties in building a coalition to oppose TTIP in the Parliament, and the difficulties in gaining access to information about the treaty.

In summary, the seminar was an excellent event to promote debate and understanding around the complex and apparently remote topic of international trade agreements for many trade unionists.
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- Organising domestic workers in Brazil
- Global Unions deliver anti-austerity message to the IFIs
- Unions discuss implications of TTIP

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Cover: Main Image: The Marikana killings, South Africa. Insert Images: Zhanaozen, Kazakhstan - Peaceful protest in the week of the strike. Armed police continue to patrol the streets in the immediate period after the killings.