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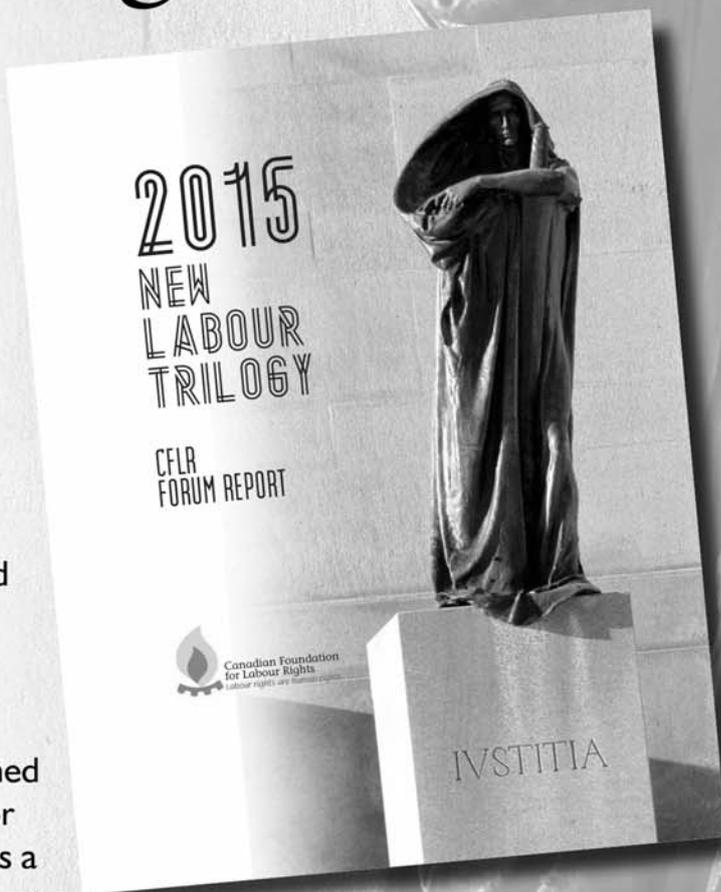
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Editorial: Trade Union Rights in Latin America

Latin American politics finds itself in 2016 in a state of flux, making the region a timely focus for this edition of the journal. In the last month, tens of thousands of Brazilians have taken to the streets in protests over a corruption scandal which has seen President Dilma Rousseff impeached and suspended while she faces trial. With over 350 members of Congress under investigation, many leading trade unionists in Brazil and beyond fear that trumped-up charges against Rousseff amount to a right-wing seizure of power. Former President Luiz Inácio 'Lula' da Silva, an ex-union leader who was dubbed the world's most popular politician when he left office in 2011, is similarly facing corruption charges concerning the state-run oil company Petrobras. Elsewhere in Argentina, the last months have witnessed tens of thousands of workers taking to the streets in support of national strikes over economic measures imposed by the new government led by President Mauricio Macri. In this issue, Natalia Delgado recounts how landmark decisions of Argentina's Supreme Court which extend freedom of association rights may be at risk in the anti-worker environment created by Macri's government, which has fired more than 50,000 public sector workers within its first one hundred days.

The shift to the right in Brazil and Argentina – two of the continent's most populous and wealthiest countries – will no doubt have massive rami-

fications across the region. More incremental – but nonetheless major – are the changes creating challenging times for Cuba, where this edition of IUR begins its survey of trade union rights in Latin America. Tamara Lee offers us an insightful account of how the members of Cuba's official trade union federation are facing up to the complexities of the union's dual role in implementing widespread labour reforms in that country. Lee presents research interviews with union leaders and workers' assemblies in Matanzas, Cuba's second largest province, to assess how the federation is coping with the labour restructuring process. What lies ahead for Cuban workers remains uncertain, but lessons may be drawn from Ilán Bizberg's analysis of the impact on trade union rights in Mexico of neoliberal economic policies, implemented following the 1982 Mexican debt crisis. In his account, the historical failure to ensure the democratisation of trade union laws while the country adopted an international outsourcing model, has led to a situation in which many workplaces have only yellow unions, or no union.

We take a closer look at the recent report from the US Department of Labor on Peru's obligations under the US-Peru free trade agreement (FTA) to respect freedom of association rights. Many questions remain about the efficacy of using procedures under FTAs to enforce compliance with the obligations contained in their labour chapters – the only such dispute to date (against Guatemala) took over twice as long to proceed to arbitration (seven years) as the domestic judicial delays criticised in the report on Peru (and the Guatemala arbitration is still on-going). Justice for Colombia offer us a reminder that FTAs' inclusion of labour standards may merely amount to lip-service: anti-union violence remains rife in Colombia, rendering all the more apparent the fact that the labour commitments linked to Colombia's trade agreements are not providing workers with meaningful gains. Further in this edition, we report on labour reforms underway in Chile, which are set to be implemented in a highly volatile period for the country following the steady decline in copper industry profits in recent years and the tragic killing by police in 2015 of a striker at the state-owned copper company. Finally, ICTUR Director and IUR's regular Editor, Daniel Blackburn, provides us with an overview of the trade union rights situation across the region.

Ciaran Cross, Acting Editor

Next issue of IUR

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The Union's Dual Role in Cuban Labour Restructuring

In May 2011, the Cuban Communist Party adopted a set of socio-economic guidelines that emerged after a nationwide mass consultation between the State and workers. As the Cuban political economy took another swing toward market liberalisation, some of the reforms have been seen by outside commentators as an erosion of worker labour protections. Even on the island, there are concerns. For instance, one of the most worker-contested policies has been the state's workforce reduction plan, seeking to shift 20 percent of workers from guaranteed security of state employment to the growing non-state sector. Even as the CTC (Central de Trabajadores de Cuba), Cuba's official trade union federation, contends with worker concerns, it has continually supported the state's policy. This article focuses on early implementation of labour restructuring to examine the CTC's dual role as state mobilising agent and defender of workers' rights. I argue that notwithstanding active support for state-initiated reform that has contradicted workers' immediate interests, the CTC has asserted critical independence from the Cuban party-state in representing workers' rights.

It is well settled that traditional communist unions are tasked with dual roles arising from simultaneous obligations to support the party-state's economic policy and to represent workers' interests (Evenson 2003). Sometimes referred to as 'mediators' responsible for resolving contradictions between the party and civil society (Ashwin 1999), unions in most single-party states, including China (Kong 2006; Xiaoyang and Chan 2005) and Vietnam (Kong 2006), are most often viewed negatively as 'transmission belts' existing solely to promote state interests. The CTC has weathered the same criticism. For example, Fuller (1992) found that from 1960 through 1970, the CTC was a mere 'mobilising agent' for state economic policy, lacking commitment to workplace democracy (Fuller 1986; Alexander 2002).

There is no dispute that the CTC is constitutionally obligated to share a close relationship with the party-state (República de Cuba 2002), or that it fulfills that task. For example, it is common for CTC leaders to simultaneously hold high-level government offices, and there is at least some admitted Party influence in the election of CTC officers (Evenson 2003). However, there is no consensus on whether the CTC does more than play at its other role: defender of workers' rights. Some scholars question the CTC's independence (Fernandes 2003), while others point to the CTC's financial autonomy and lack of dues check-off rights as evidence of self-governance (Evenson 2003). Scholars who view the CTC as having at least some degree of independence assert that the it began to show 'critical distance' from the state as early as the 1990s (Dilla 1999). However, even researchers from this

camp acknowledge that recent labour law reform 'challenges the unions in their dual roles of developing the Revolution's 'socialist state of workers' in general, and of protecting workers rights in particular' (Ludlam 2013). Thus, this article's examination of the union's role in contemporary labour restructuring fills a gap in empirical data with respect to the CTC's status as a 'two-way transmission belt' responsible for resolving contradictions arising between the state and workers during reform.

Methodology

Because of its national economic importance and union density, Matanzas, the second largest province in Cuba, is ideal for examining the role of the CTC during labour restructuring. Comprised of 13 municipalities, Matanzas is responsible for 4.6 percent of total national production, and 45 percent of the income generated by the tourist industry, a sector to which most workers displaced in the state sector are expected to be redeployed. Moreover, 17 of the CTC's 19 affiliated trade unions have branches in Matanzas, servicing over 290,000 members through 5,828 local affiliates, with 23,000 leaders at the local level. Table 1 and Table 2 show state sector production by product and national trade unions under the CTC umbrella by industry, respectively.

This article presents qualitative data collected using three methods: semi-structured interviews with union leaders, participant observation of workers in their assemblies, and content analysis of union documents. Specifically, the author conducted a one-on-one interview with a key CTC official involved with the workforce reduction process at the national level. This semi-structured interview employed open-ended questions about the CTC's support for workforce reduction, workers' response, and the impact of restructuring on workers' rights. Additionally, a 3-hour panel interview with 9 of the 17 CTC affiliates in the region was conducted at the CTC's Matanzas office on the topic of implementation at the local level. To ground the interview data, the author attended worker assembly meetings at two state enterprises in the vital tourist sector: the Museum of Slavery and *Las Cuevas* restaurant, both chosen because workers were actively engaged in the restructuring of their enterprises.

Finally, to understand existing worker protections, and the impact of on-going labour reform, the author participated in an educational exchange with Cuban jurists. In conjunction with the exchange, the CTC provided internal training materials, including paper and digital copies of the constantly evolving labour code up to that point, (Código de Trabajo 2011), as well as complementary labour law materials. All research occurred in March 2011, three months following the conclusion

Notwithstanding active support for State-initiated reform that has contradicted workers' immediate interests, the CTC has asserted critical independence



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of the national mass consultation and two months prior to the Party's adoption of national guidelines governing labour restructuring.

Results and Conclusion: 'It's an intense process for trade unions and lawyers'

Union responsibility for protecting workers during labour law reform is dictated by the Cuban constitution, labour code and complementary legislation (Martínez-Navarro 2009). Article 16 of the constitution restricts the state's unilateral imposition of economic policy by granting workers an affirmative right to play an 'active, conscious' role in economic decision-making. The most significant formal participatory mechanisms underlying that right are collective bargaining, enterprise-based worker assemblies and national mass consultations (Evenson 2003). Collective bargaining takes place largely at the enterprise level, while workers' assemblies are used for decision-making at both the enterprise and national level. The mass consultation is a process that allows the state and workers 16 years or older to negotiate issues of great national import (Fuller 1992), including the new guidelines framing restructuring in the state sector (Lee 2016, Ludlam 2009).

In addition to constitutionally-based participatory rights, since 1985, the labour code has established that any proposed terms to a collective agreement may not be implemented, and have no legal force, unless and until approved by worker assemblies (Ludlam 2009). Moreover, complementary legislation codifies extensive collective bargaining rights, requiring a collective agreement in every workplace. Broad subjects of bargaining include management of the enterprise, promotion and hiring procedures, work schedules, incentive distribution, and even methods for tip redistribution (Martínez-Navarro 2009). Given this extensive body of codified labour protections, including a constitutional right to work, what protections are afforded workers impacted by labour restructuring?

Lawyers explained that enterprise-level redeployments are governed by a socialist doctrine called the 'suitability principle'. Under it, determination of which workers have demonstrated 'suitability' (and thus, retain their jobs) and which are labelled redundant (and thus, made 'available' for redeployment) is considered a matter of constitutional law. Final decision-making authority rests with enterprise management. However, all suitability determinations are subject to recommendation by a tri-partite advisory committee (comité de expertos) in each enterprise comprised of 5 or 7 members: 1 appointed by the enterprise, 1 appointed by the local union, and the others selected by workers. One elected comité member described the honour as 'prestigious' and as reflecting a 'capacity for deep analysis'. Jurists described the suitability decision-making process in detail:

'Initially, management decides how many workers it needs to reduce. Heads of the enterprise are held to a standardised process; it is not arbitrary, but rather a process that must be transparent and duly fulfilled. Management's plan is taken to the worker assembly for consultation and a vote. The comité de expertos then decides which of the workers is 'suitable', and

remains in the job. The head of the enterprise is capable of determining which employees are 'suitable', but should not make the decision without the comité's recommendation. Notification is provided to affected workers in writing when they are made available, with reasons delineated by the enterprise manager. Implementation and control of the process is important, including at the grass roots level'.

Lawyers referenced other constitutional, statutory and procedural protections related to suitability determinations by management and/or *comités*. For example, the process must be preceded by payroll analysis and working mothers on maternity leave or other social benefit cannot be considered 'available'. There are also special protections for the disabled and aged workers with 35+ years of service. Additionally, a 'non-discrimination principle' prohibits gender or other forms discrimination in the determination of available workers.

This extensive collection of rights is enforced by an enterprise-based grievance mechanism. Article 5 of Decree-Law 176 (MTSS 1997) establishes the 'Grass Roots Labour Justice Board' (Organa de Justicia Laboral de Base, or 'OJLB'), which asserts jurisdiction over disciplinary actions, violations of collective bargaining agreements, discrimination claims under Article 40 of the constitution, as well as disputes over suitability determinations. Each OJLB has three permanent members: one representative of enterprise administration, one union representative and one rank- and-file member selected by the workers. OJLB hearings are open to the public, and its decisions are appealable to the municipal court system. Lawyers confirmed that workers adversely impacted by suitability determinations were filing claims before the OJLB and municipal courts; however, no records of the claims were readily available. Hence, for additional detail about worker disenfranchisement with restructuring, the author interviewed union and worker participants in Matanzas.

The process is complicated, but we are looking for social protection for all

During an interview, one Cuban jurist stressed, 'Active participation at all levels of the trade union is needed to represent workers in contradictions that arise during the process'. When asked about constitutional requirements to consult workers before reform implementation, the CTC national official stated:

'Workers were consulted on the need for change before the labour restructuring process began. The national rollout of the process began on 4 January, 2011. The original plan was to do it in stages, starting with 5 different state entities in the first stage. The process is going to be permanently monitored by the trade union and the state'.

Explaining the impact of the restructuring process on workers' protections under enterprise collective agreements, the official acknowledged substantial challenges:

'Many protective labour laws are difficult to keep during the transition, so many of the

There have been some problems with implementation, and as a result, the process is being rescheduled... the delay could mean the entire process will take up to 5 years

collective agreements are under review. While individual interests of workers will be impacted by the restructuring process, under the 'principle of need' [another doctrine of Cuban socialist ideology], the state is obliged to keep social, rather than individual interests in mind'.

Moreover, when asked to respond to reports that workers had been bringing suitability claims to the OJLB and municipal courts, both the official and Cuban jurists acknowledged the existence of substantial worker fears:

'There are many doubts and concerns, but top leadership says it's a process that should not be hasty, but must be done. We expect the non-state sector to grow in a controlled manner. Workers can join cooperatives, work in agriculture, rent homes in addition to being self-employed. In other words, additional non-state opportunities exist'.

The union expects a lot of workers to use the OJLBs in the workplace. I've personally witnessed workers crying throughout the process.

Despite the CTC's continued support for state policy in the face of worker dissatisfaction, there was also evidence of defence of workers' rights. Specifically, it is widely believed that substantial delay in plan implementation was the result of union appeals to slow the process. When asked about this perceived break with the state, the CTC official carefully stated:

'There have been some problems with implementation, and as a result, the process is being rescheduled. By original design, it would have been a one-year process, but now the delay could mean the entire process will take up to 5 years. In cases where the process was not implemented correctly, the parties have to return to a place where they can restore legality'.

The CTC's appeal to the state on the workers' behalf was substantiated in an interview with a CTC lawyer:

'[W]orker concerns had been collected during monthly worker meetings held at the end of 2010, and those have been forwarded to top leaders. The worker opinions and subsequent proposals will be debated at the Party Congress'.

Indeed, in his address to the Communist Party Congress just one month later, Cuban President Raúl Castro expressly acknowledged worker disenfranchisement and promised that the restructuring process going forward would be gradual in nature, and at a pace determined by 'the State's] capacity to create the necessary conditions for its full implementation' (Castro 2011). Other scholars similarly assert that the state's change to the pace of reform occurred 'when unions flagged up real obstacles or failures to protect workers' rights' (Ludlam 2013). Moreover, hastening a 5-year slowdown of the state's restructuring plan in support of workers' interest is a compelling, but not the sole, evidence of the CTC's commitment to defence of workers' rights. The CTC is also

actively involved in training workers with respect to their procedural rights in the reform process. Specifically, during worksite visits to the Museum of Slavery and restaurant Las Cuevas, workers at both enterprises reported receiving fully funded formal union training administered by the CTC on the procedural requirements of the restructuring process.

In conclusion, the defence of labour rights during market liberalisation has been difficult for unions in most political economies. But, for those in systems with high levels of labour protection and constitutionally-mandated dual identities, managing the contradictions of state and worker interests during reform can be as complicated as the roles themselves. After decades as a perceived mouthpiece for state interests, the CTC has since demonstrated crucial independence allowing it to simultaneously support tough state reform policy while defending workers' rights. Although the 2013 labour law reform is expected to bring even greater challenges for the union in its dual role in the engine of Cuban industrial relations system, there is growing evidence that its two-way transmission belt functions securely enough to carry it through impending rough terrain.

Works Cited

- Alexander, Robert J. 2002. *A History of Organized Labor in Cuba*. Westport, CT: Greenwood Publishing Group.
- Ashwin, Sarah. 1999. *Russian Workers: the Anatomy of Patience*. Manchester: Manchester University Press.
- Castro, Raúl. 2011. *Central Report to the 6th Congress of the Communist Party of Cuba*. Accessed at <http://en.cubadebate.cu/opinions/2011/04/16/central-report-6th-congress-communist-party-cuba/> (November 21, 2015).
- Dilla, Haroldo. 1999. Comrades and investors: the uncertain transition in Cuba. In Panitch and Leys (Eds.), *Global Capitalism Versus Democracy: Socialist Register 1999*. New York: Monthly Review Press.
- Evenson, Debra. 2003. *Law and Society in Contemporary Cuba*. 2nd Edition. The Hague, Netherlands: Kluwer Law International.
- Fernandes, Sujatha. 2003. *Reinventing the Revolution: artistic public spheres and the state in contemporary Cuba*. Thesis (Ph.D.) University of Chicago.
- Fuller, Linda. 1992. *Work and Democracy in Socialist Cuba*. Philadelphia, PA: Temple University Press.
- Fuller, Linda. 1986. 'Changes in the Relationship Among Unions, Administration, and the Party at the Cuban Workplace, 1959-1982'. *Latin American Perspectives*. Vol. 13, No. 2 (Spring), pp. 6-32.
- Kong, Tat Yan. 2006. Labour and globalization: locating the northeast Asian newly industrializing countries. *Review of International Political Economy*. Vol. 13, No. 1, pp. 103-128.
- Lee, Tamara L. 2016a. *Raúl Castro's Great Debate: Worker Involvement during Political and Economic Reform in Contemporary Cuba*. Unpublished manuscript, Cornell University.
- Lee, Tamara L. 2016b. *Participative Labor Education in Cuba: Union Leaders as Educators and Facilitators of Worker Political Practice*. Unpublished manuscript, Cornell University.
- Ludlam, Steve. 2013. Recoding Workers' Rights. *Cuba Sí* Autumn: 13-15.
- Ludlam, Steve. 2009. *A rectification by any other name: Cuba's strategy to revive socialist values*. Paper presented at the Cuba Research Forum, University of Nottingham (September 7/8, 2009).
- Republic of Cuba. 2002. *Constitution of the Republic of Cuba, 1976 (as Amended to 2002)*. Accessed at: <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf> (April 3, 2016).
- Xiaoyang, Zhu and Anita Chan. 2005. Staff and workers' representative congress: an institutionalized channel for expression of employees' interests? *Chinese Sociology and Anthropology*. Vol. 37, No. 4, pp. 6-33.

After decades as a perceived mouthpiece for State interests, the CTC has demonstrated crucial independence allowing it to simultaneously support tough state reform policy while defending workers' rights

Free Trade and Precarity in Peru: US Department of Labor reviews freedom of association rights

The OTLA has issued recommendations to the Government of Peru with a view to ensuring compliance with the obligations contained United States-Peru Trade Promotion Agreement

On 18 March 2016, the US Department of Labor's Office of Trade and Labor Affairs (OTLA) published its public response¹ to a complaint filed under the United States-Peru Trade Promotion Agreement (PTPA) by the International Labour Rights Forum (ILRF), Perú Equidad, and seven Peruvian workers' organisations. Under Article 17.2.1 of the PTPA, each party to the agreement is obliged to 'adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998): (a) freedom of association.' Article 17.3.1(a) further states that a party 'shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.'

The complaint – filed on 23 July 2015 – alleged that 'by permitting the unlimited consecutive renewal of short-term contracts under the law that governs employment contracts in the non-traditional export (NTE) sectors, the Government of Peru has failed to meet its PTPA commitment to adopt and maintain in its statutes and regulations, and practices thereunder, the right of freedom of association and the effective recognition of the right to collective bargaining. The submission also cites specific instances to support its allegation that the Government of Peru, through its action or inaction, has failed to uphold its PTPA commitment to effectively enforce its labor laws in the NTE and agricultural sectors with respect to freedom of association, the effective recognition of the right to collective bargaining, and acceptable conditions of work.'

The OTLA's report largely upholds the allegations, and issues recommendations to the Government of Peru with a view to ensuring compliance with the obligations contained in the PTPA. But to what extent will they do so?

Despite decades of dialogue aimed at integrating enforceable labour standards into the US' free trade agreements (FTAs), procedural delays, weak drafting, and political inaction have meant that violations of labour provisions contained in FTAs have to date had limited impact. Labour chapters in trade agreements therefore tend to produce little more than endless rounds of what Lance Compa has dubbed 'talk therapy'². Of the dozens of complaints submitted to the US Department of Labor concerning violations of labour rights – putatively enshrined in the labour provisions of some thirteen US-FTAs created since 1993 – only one complaint has proceeded beyond the level of 'talk therapy'. Seven years

after the complaint was raised against Guatemala under the Dominican Republic-Central America FTA (CAFTA-DR), the US finally escalated the dispute to arbitration in September 2014. During that time, some 70 labour organisers in Guatemala were reported killed, but no mention was made of the systematic use of violence against trade unionists in the US' submissions to the arbitral panel. A hearing took place in June 2015, but the disputing parties remain embroiled in trying to decipher what it means to 'fail to effectively enforce labor laws... in a manner affecting trade or investment between the Parties' – treaty text that is reproduced in both CAFTA-DR and the PTPA. Any decision in the dispute will still be years in the making.

Booming trade, busting unions

The PTPA entered into force in 2009. In the first five years of the agreement, revenue from non-traditional export (NTE) sectors from Peru to the US increased by 80 percent, and total export revenue from Peru to the US increased by 26 percent. As a result, the demand for labour in the NTE sectors has also grown. NTE sectors include textiles and apparel, agricultural and fishery products, jewellery, wood and paper, and non-metallic minerals.

According to the OTLA's report, the plight of workers in Peru's NTE sectors has not been much improved by the export boom. Following the allegations of union-busting in the NTE sectors submitted in July 2015, the OTLA conducted a review of the claims between September 2015 and March 2016, entailing consultations with stakeholders (including the government of Peru, the submitters and other workers' organisations) and a fact-finding mission to Peru.

Under Peruvian law, both the government and employers must refrain from 'any acts likely to constrain, restrict or impair, in any way, the right of workers to unionize; and intervening in any way in the establishment, administration, or maintenance of trade union organizations.' Further legal instruments were enacted in 2007, in order to clarify that any use of short-term contracts to limit freedom of association is unlawful and deemed a 'very serious offense', with violations subject to hefty fines. In NTE sectors, the use of short-term contracts is governed by Decree Law 22342, the Law Promoting Non-Traditional Exports, which provides that – subject to certain exceptions – employers may hire workers on short-term contracts and that such contracts may be renewed as many times as is necessary. In all other sectors, the use of consecutive short-term contracts is limited to five years.

The OTLA report found that 'employers often do not renew the short-term contracts of workers who



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attempt to exercise their right to freedom of association. Despite the attempts to legislate to combat this practice in 2007, the report highlights that in practice, *'where workers challenge the legality of their contracts' non-renewal as an act of anti-union discrimination, the lengthy administrative and judicial processes required to do so often mean that the workers do not have access to remedies for a number of years.*' For example, in one case, NTE sector workers who were union members submitted an inspection request in November 2009 after their contracts were not renewed; the decision to order the workers' reinstatement was not reached until 2013, by which time the employer had already filed for bankruptcy. And although the law provides for a 60-day period for contracts filed under Decree Law 22342 to be approved by a Regional Ministry of Labor and Promotion of Employment Office (Direcciones Regionales de Trabajo y Promoción del Empleo, DRTPE), the duration of contracts under the law can be as short as 30 days, meaning that the contract may effectively be completed before the approval period has run its course. Moreover, the conformity of a contract with legal requirements will only be examined by a labour inspectorate if a complaint is filed, placing the burden on workers to file complaints, rather than on employers to comply with the law. There is no mechanism for confirming the legality of such short-term contracts before they enter into force.

These concerns about union-busting are far from new. Indeed, the OTLA cites the ILO's Committee on Freedom of Association 375th Report (2010) on the systematic use of short-term contracts as a method of preventing workers in the NTE sectors from exercising their trade union rights:

'Almost 30 years having passed since the entry into force of Decree Law No. 22342, the policy of promoting temporary employment has almost become permanent, but without any monitoring of the effects of the law questioned by the complainant organization on the labour market... it is apparent that temporary contracts have been used repeatedly as a means of discouraging trade union membership and have had prejudicial effects, such as the low average remuneration in the textiles-dress-making sector, even though, in the last 14 years, exports in the sector have increased five-fold, while labour turnover has led to a lower average duration of employment and poor skill levels.' (375th Report of the Committee on Freedom of Association, GB.308/3. 2010. para. 868).

The OTLA concludes its report with a commitment to 'continue to monitor the issues' and issues a recommendation to the Government of Peru (GOP) to '[a]dopt and implement legal instruments and other measures to ensure that the use of short-term contracts in the NTE sectors does not restrict workers' associational rights.' Finally the OTLA commits to using 'progress towards implementing these recommendations, or similar measures, for determining appropriate next steps in engagement with the GOP, and will assess any such progress by the GOP within nine months and thereafter, as appropriate'.

The OTLA's concluding recommendations are unlikely to persuade those already disenchanted with the US government's approach to linking trade to labour standards. While welcoming the OTLA's findings, the ILRF's Legal and Policy Director, Eric Gottwald, noted with concern that there is no 'clear timetable for ensuring Peru's timely compliance'.

Conditionality, compliance and enforcement

A 2013 study published by the ILO's International Institute for Labour Studies (IILS) argues that while the impact of FTA complaint mechanisms on labour rights has been to date somewhat limited, labour rights have been best served in the pre-ratification stages of FTAs: 'There are examples where pre-ratification conditionality has contributed to significant reforms of domestic labour legislation and practice'³.

Interestingly, the PTPA is specifically cited as a leading example in precisely this regard. During negotiations for the PTPA – which was concluded in 2009 – the US raised concerns about the use of 'temporary employment and outsourcing arrangements for anti-union purposes' (p.39). The IILS study does however acknowledge that, as the PTPA was implemented, 'improvements in labour standards were accompanied by deregulation in other areas of labour law'. For instance, one presidential decree altered the definition of 'small and medium enterprises' in order to ensure that 'the percentage of workers falling outside the regular labour law increased' (p.42).

Therein lies a lesson for discussions about trade and labour. Regardless of any gains made at the PTPA's negotiation stages, the OTLA's report highlights that a large part of the problem lies in domestic enforcement. Administrative and judicial delays – often lasting years before a resolution is reached – effectively deny workers in Peru's NTE sectors from pursuing enforcement of their legal rights. In this respect, any legal reforms achieved through pre-ratification conditionality of FTAs may serve little purpose, if the law is later simply ignored in practice. And as long as the enforceability mechanisms of FTAs' labour provisions are weak, then the FTAs themselves provide little practical support in the event of rights violations after the agreement has come into force. In the meantime, the rights of workers remain precarious.

Administrative and judicial delays – often lasting years before a resolution is reached – effectively deny workers in Peru's NTE sectors from pursuing enforcement of their legal rights

Notes

- 1 Available here: www.dol.gov/ilab/reports/pdf/Public_Report_of_Review_of_US_Submission_2015-01.pdf
- 2 Lance Compa, "How to Make the Trans-Pacific Partnership Work for Workers and Communities", 14 Jan. 2016. Available at: <http://www.thenation.com/article/how-to-make-the-trans-pacific-partnership-work-for-workers-and-communities>
- 3 *Social dimensions of free trade agreements / International Labour Organization*; International Institute for Labour Studies. - Geneva: ILO, 2013. Revised edition 2015. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_228965.pdf

Supreme Court of Argentina Expands Recognition of Freedom of Association

Several complaints made by the CTA and others trade unions to the ILO preceded the Supreme Court's extension of freedom of association to all unions

Over the last 8 years, the Supreme Court of Argentina has rendered four decisions that have expanded the recognition of the freedom of association. Although the principle of freedom of association is enshrined in the Constitution (of Perón in 1949, reformed by the dictatorship in 1957) and several International Treaties ratified by Argentina, historically the Argentinian approach to trade union rights has been characterised by the attribution of rights according to the number of union members.

The Act on trade union associations No. 23551 of 1988, dating from the period of government by Alfonsín (the 1988 Act) provides for two categories of unions (i) the most representative union with a 'personería gremial' trade union status and (ii) the less representative union, simply a registered trade union. This model is characterised by this coexistence of unions with trade union status and merely registered trade unions, with attribution of exclusive powers and rights to the former. The trade union status confers benefits such as 1) the conclusion of collective agreements, 2) the representation of the collective interest, 3) trade union immunity, 4) the right to elect representatives, 5) tax exemptions, 6) the right to strike, and 7) the collection of trade union dues through deductions from wages by the employer. Unlike unions with trade union status, registered trade unions do not benefit from fundamental rights, which limits their ability to defend the interests of the workers they represent. Moreover, in practice the exclusive rights prevent the emergence of new unions with capacity for collective action. The last jurisprudence of the Supreme Court of Justice declared unconstitutional various provisions of the 1988 Act and extended the above-mentioned rights to all unions.

Right to elect representatives

In 2008, the Supreme Court of Justice made a significant step in the consolidation of a new jurisprudential trend on the freedom of association, when it rendered a decision pertaining to the exclusiveness of the right to elect union delegates in the case *Asociación Trabajadores del Estado / Association of State Workers (ATE) v. Ministry of Labour*.

ATE is a registered union, and its trade union officials lodged a complaint against the State because according to Article 41 (a) of the Act No. 23551, to be a delegate the candidate must be affiliated to a union with trade union status and must be elected at an election called by this union. The Court supported its decision with the principle of 'free and democratic trade union

organisation', which is protected by Article 14 bis of the Constitution, and is supported by the observations of ILO's supervisory bodies on ILO Convention No 87. Following the principle of the Constitution, the Court understood freedom as the ability both to form trade unions and to adopt their own internal structure, activities and action programme, without the intervention of public authorities limiting or obstructing the exercise of that right; and *democracy* as participation and union pluralism.

Agreeing with the ILO's supervisory bodies (the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations) the Court observed that the distinction between most representative and less representative unions in the national legislation should not prohibit less representative trade unions from defending the interests of their members, or from organising their activities and formulating their programmes. Furthermore, the Court remarked on the ILO's observations that the national legislation is not compatible with the ILO Conventions No 87, No 98 and No 135 amongst others, and demanded on several occasions that the Argentinian Government take the necessary measures to bring the legislation into full conformity with the Convention No 87 of the ILO. The Court stressed that the present case concerns a fundamental right; that of the election of delegates, delegates who maintain a direct link with the workers they represent and exercise their representation at the workplace. For this reason, the restriction imposed by the law on ATE exceeded the limited framework that could justify granting an exclusive right to the most representative unions.

Finally, the Supreme Court declared unconstitutional Article 41 of the 1988 Act and recognised ATE's right to intervene in the elections of staff delegates.

Trade union immunity

In 2009, trade union immunity was discussed by the Court in the *Rossi v. National Army* case. Ms Rossi was a worker at the Naval Hospital and the president of a registered union. After a union strike the employer applied disciplinary sanctions and suspended Ms Rossi for five days and changed her place of work.

The Argentinian legislation, by virtue of Article 52 of the 1988 Act, guarantees protection to delegates from unions with 'personería gremial' against dismissal, suspension and modification of labour conditions during their terms of representation. However, the Court affirmed its 2008 decision as well as and its interpretation of the con-



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stitutional Article 14 bis stated therein. Article 14 bis stipulates that union representatives shall enjoy the guarantees necessary for the fulfilment of their union tasks and employment stability. The constitutional protection implies that the state must abstain from interfering with trade union rights. This negative obligation complements the positive obligation to adopt appropriate measures to protect and preserve the exercise of trade union activity without fearful union representatives. According to the Court, the right to organise must be safeguarded by a particular protective framework for union representatives. The Court noted that the ILO's supervisory bodies repeatedly remarked on the incompatibility of Articles 48 and 52 of the 1988 Act with the Convention No 87. The general system established by the 1988 Act tries to concentrate the entirety of union rights on a single type of union. The purpose of these restrictions is to establish the unity of trade union action by legal means. However, according to the Court the 1988 Act has not reached, on this issue, the point of confrontation with the guarantees provided by the Constitution because it supports a harmonious interpretation. It can therefore be concluded that there is no valid reason in constitutional terms to deprive the special protection provided by the trade union immunity to the delegate Ms Rossi. Finally, the Court rendered a decision declaring the exclusiveness of the right to trade union immunity unconstitutional.

In 2014, in the *Codina v. Roca Inc* case, the Supreme Court rendered a second decision on trade union immunity. Mr Codina was a union officer of the registered union. After his dismissal the employer refuse to pay Mr Codina the compensation he was entitled to by virtue of Article 52 of the 1988 Act. In the Labour Court of Appeal Mr Codina alleged that the exclusiveness of trade union immunity to unions with trade union status was unconstitutional. He argued that this right should be interpreted in light of the constitution and should therefore be extended to all unions. The Court of Appeal denied compensation to Mr Codina because he was not member of a union with trade union status and consequently he did not benefit from trade union immunity. The Supreme Court however, overturned this decision and expanded trade union immunity.

Representation of collective interest

In 2013, the Supreme Court of Justice decided on the right to represent the collective interest in *ATE union v. Government of Salta*. ATE started legal proceedings against pay cuts for the municipality of Salta workers. According to Article 31(a) of 1988 Act a union with trade union status has the exclusive right to defend and represent the collective interests of workers before both the State and individual employers.

The Supreme Court of Salta held that ATE could not represent the collective interest of the workers because the sole body legally empowered to represent the collective interest is a union with trade union status. Registered unions can only act within the framework of the authority conferred by the 1988 Act, namely in defence of the indi-

vidual interests of its members (Article 23 letter a) or in defence of collective interest only when no other union with trade union status exists in the geographical area, occupation or category.

In appeal, the Supreme Court of Justice cited its decisions in *ATE* and *Rossi* and definitively confirmed the incompatibility of Article 31 of the 1988 Act with Article 14 bis of the constitution and with ILO Convention No 87. The Court argued that the constitutional principle of freedom of association should be interpreted in accordance with international human rights obligations, which in Argentina are hierarchically superior to domestic laws by virtue of Article 75, subsection 22. In 1993, 1996, 1997, 1998, 1999, and 2001, the ILO's supervisory bodies demanded that the Argentinian Government change its legislation related to the exclusiveness of the representation of collective interest, stating that it was not compatible with Convention No 87. The Supreme Court unequivocally recognised the right invoked by ATE to represent the workers' collective interests. Therefore, according to the Court, Article 31 of the 1988 Act is unconstitutional, as it privileges unions with trade union status over the registered unions which prevented ATE from representing collective interests.

The future and the right to strike

A significant number of complaints made by the Central de Trabajadores de la Argentina / Confederation of Workers of Argentina (CTA) and others trade unions before the ILO preceded the Supreme Court's expansion of the freedom of association. The Supreme Court doctrine called on the authority of the International Labour standards and ILO's supervisory bodies to open a line of interpretation of the constitutional block.

However, the legislation providing exclusive rights in Argentina is still in place. After the presidential elections last December any likelihood for change is low. In his first hundred days of presidency, President Macri fired more than 50,000 public workers. Moreover, both of the candidates he recommended for vacancies in the Supreme Court had a restrictive view on labour rights.

In addition, there is a debate currently taking place in the Supreme Court in the *Orellano v. The Post Office* case on the exclusiveness of the right to strike. In the months to follow, the Supreme Court will decide on the scope of the term 'union' in Article 14 bis of the Constitution. The current political climate causes trade unions and labour lawyers to be concerned about the outcome of this case.

To conclude, the model of trade union unity should be left, in my opinion, to trade unions themselves to decide. The right to define the model of unity should not be limited by legal means. Freely unionised workers should be able to choose the union model themselves, without unnecessary restrictions. Argentina over-regulates freedom of association and the right to organise with legislation which is limited in flexibility. The Supreme Court's emerging jurisprudence on this subject is in contradiction with the 1988 Trade Union Act. This is an opportunity for legislative change on freedom of association in Argentina.

However, the legislation providing exclusive rights to unions with 'most representative' status is still in place and, after the presidential elections last December, change is unlikely

Mexican unionism and the international outsourcing model

The mechanisms that formerly strengthened Mexican unions' control and legitimacy have been transferred to the employers

The main characteristic of the Mexican unions from the end of the Revolution in the 1930s up to the 'lost decade' of the 1980s, was its close and subordinate relation with the Mexican State. The main Mexican confederations have always had close links to the government of the Partido Revolucionario Institucional / Institutional Revolutionary Party (PRI). That meant many significant things: on the one hand, that the working class interests of the Mexican workers were subordinated to the nationalistic/developmentalist project of the Mexican State. It also permitted the PRI regime to maintain itself in power for more than 70 years, based upon the diffuse support of the Mexican population and the active support of the organised masses that voted for the party, voluntarily or forced by their leaders.

This modernisation pact, that also comprised the peasants (that had been benefited by the land reform) and diverse other popular groups, permitted the Mexican State to implement a system of control that gave huge margins of discretion to the government, and that has worked against the unions and the workers since the 1980s, when the economic model changed. This system of control rests (as it is still in place in spite of the reform of the labour law of 2012) on the capacity of the government to decide whether a union should or should not be registered and allocated the legal power to represent the workers, the same for any change in leadership and the legality or illegality of the strikes. This faculty is complemented by a double closed shop – entry and exit – which means that a worker has to belong to the union in order to be admitted for the job, and that if they are expelled from the union, they lose their job. On the other hand, there can only be one union per enterprise (and collective negotiation is done at the plant level), and unions can be imposed on any enterprise with 20 or more workers; this did not mean that the union was active, but that it existed formally. This latter principle, made the two closed shop measures all the more powerful to control workers, and especially to prevent dissidence.

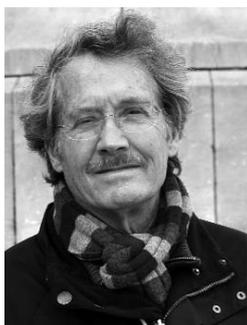
State corporatism was accepted by both the unions and the workers. In the first place, because it meant an exchange relationship: the leaders got economic and political benefits, while the workers had social and economic benefits (especially those situated in the large state-owned companies). This exchange relationship was a way for both unions and the government to earn legitimacy among workers: the benefits that the union secured (in terms of employment, social protection and wages) provided the support of labour for the government. In the first place, this system was functional for the project of industrialisation, as corporatism implied a form

(in terms of Foucault) of disciplining the workers: labour discipline resulted in productivity increases and economic growth, which led to an increase in labour demand, higher wages and social protection. This last capability of corporatism was essential in order to convert a rural population into an urban/industrial one.

This system functioned as long as the economy grew and produced benefits for the workers that were unionised, and until other political parties became strong enough to demand more transparent elections and question the role of the 'official' Confederación de Trabajadores de México / Confederation of Mexican Workers (CTM) unions in controlling the vote of the workers. This happened as a result of the crisis that exploded in 1982, when both oil prices fell and interest rates of the huge Mexican debt went up. Mexico suspended payments and had to turn to the IMF, which imposed draconian measures on the country. The financial catastrophe and the recipes of the international financial institution resulted in the abandoning of import substitution and the orientation of the Mexican economy towards the external market. The new export-led growth mode led to an exceptional expansion of the assembly maquiladora industry. It also led to the orientation of other exporting industries to the same outsourcing mode once the government gave up all industrial policies to enhance the integration of local production to the export sectors.

Since the abandoning of the import substitution economic model, corporatism started to transform. First, the export-led economic model, based on an outsourcing platform for international capital, demanded low salaries and low social security costs. Secondly, the crisis and the new model did not engender the virtuous circle between worker discipline, productivity increase and mounting wages and benefits for the workers of the most strategic unions and some trickle down for the other workers, that was based on a protected and closed economy. Finally, with the electoral democratisation, that accompanied the liberalisation of the economy, corporatism was increasingly incapable of ensuring the votes and the legitimacy of the authoritarian regime.

On the other hand, one might have expected that with democratisation, a new unionism would appear, like in Brazil, where unions were taken over by a younger and more democratic generation of leaders, who better represented the workers. However, this did not happen in Mexico. The first non-PRI president – from the right-centre Partido Acción Nacional / National Action Party (PAN) – elected in 2000, did not fulfil his campaign promise of 'liberating' the unions from the control of the old confederations, nor did the government support new unions to arise. The



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control exerted by the Ministry of Labour through its administrative capacity to decide which unions and leaders get the legal status has kept the old unions and leaders in place. The government was more preoccupied in maintaining social peace than in democratising the union scenario.

Because of the consequences of the new economic model and neo-liberalism, the Mexican government did not need to crush the stronger unions as Thatcher did in the UK. The retreat of the State and the liberalisation of the economy had as its result the deregulation of the labour market and the flexibilisation of the labour conditions inside the enterprises; which, in its turn, entailed the weakening of the labour unions. In addition, the crisis and the new economic model signified the increase of the informal economy, the growth of the tertiary sector of the economy and the reduction of public sector employees, all of which significantly reduced the weight of the unionised workers in the economy. This situation was aggravated by the incapacity of the labour movement to compensate the influence lost amid the formal workers with a greater presence among the sectors that increased in these last decades: informal workers, commerce, services. Thus, the rate of unionisation, of strikes and strikers (which was already low in Mexico) both plummeted.

In fact, the mechanisms that strengthened the union's capacity of control and legitimacy (from the thirties to the eighties) have been, in a sense, transferred to the employers in many of the enterprises that have been created during the years nineties and 2000. This is because, since then the government, with the complicity of the 'official' CTM unions, have registered thousands of unions that exist only on paper (some researchers have estimated that 90 percent of the unions that have been created since, are of this type). These 'protection' unions are set up by employer's lawyers, in order to serve as a means to impede the autonomous organisation of the workers, due to the fact (as mentioned above) that only one union per company is permitted.

In contrast to other countries in Latin America, where deregulation of the industrial relations was achieved through a change in legislation, in Mexico the existing labour law was very functional; it needed merely to be circumvented. This required the 'official' CTM leaders to allow the power of unions to be diminished in exchange for maintaining their control over the confederations and the economic and political privileges they entailed. They thus allowed the government and the private and public enterprises to do the contrary of what they had done before: instead of bettering the conditions of workers and increasing the control of the unions in the interior of the enterprises, in the 1990s this situation totally reversed. Internal relations of the enterprises were radically flexibilised; while in the past, contracting a worker was achieved through the union, now it is rather the employers who have this right, mostly without any negotiation. The changes in the productive process and the organisation of labour are now decided almost exclusively by the employers. While some of the work-

ers in the most strategic and dynamic sectors (oil, education, health, telephone, automobile) still have the protection of unions, in the vast majority of the workplaces (*maquiladora* industries, construction, commerce, services, small and medium enterprises, the spare part auto-industry) there are no unions or they are protection unions.

The fact that the legislation had not changed until 2012, was a constant complaint on the part of the business sector, which was fearful of the consequences of a change of the conditions if a leftist party came into power. Although, this situation has allowed the technocratic PRI and *panista* governments (since 2000) to continue imposing State control over unions through a series of mechanisms, the labour law was finally changed at the end of 2012. Although there were legal reform projects in Congress that both accepted the flexibilisation of the labour market and democratisation of the unions, the law that was finally passed by all parties, including the leftist ones, excluded democratisation. It modified the internal relations in the enterprises – concerning outsourcing, employment rules, possibility of dismissal, etc. – but did not eliminate the closed shop, the necessity to register the unions on the part of the government, allow several unions in the same enterprise, or impose secret ballots in union elections and decisions (now it is done through raised hand procedure).

Some of the results of this weakening of labour and unions – which serves a function for the economic model grounded on international outsourcing based on low wages – is the impressive degradation of Mexican salaries, especially the minimum wage which is one third in real value from what it was in the mid-1980s. On the other hand, we have witnessed a continuous growth of the poor population and even of poor workers. In response, there has been a clear intention to dismantle the corporatist welfare system that favours the formal workers in order to channel the resources to the poor, through cash transfer assistance programs. The government transformed the 'pay as you go' pension system of the private sector workers into an individual capitalisation system in 1995 and that of the public sector workers in 2007, without any opposition from the unions. Finally, whereas in other countries in Latin America there has been an important attempt to formalise informal workers through inspection and collective negotiations, in Mexico no advances in this respect are noticeable.

The weakness of the Mexican unions has had evident effects on workers' conditions but it has also reinforced an economic model with a very low capacity of integration of new technology and low productivity growth as it is basically (with some exceptions) based on manufacturing segments with a high concentration of labour, which in turn is based on low salaries. This is one of the reasons why the Mexican economy grows so little and creates so few of the jobs needed, and why although the relative number of poor population has been reduced, it has grown in absolute numbers.

In the vast majority of workplaces there are no unions or only protection unions

‘Vestiges of Dictatorship’ – Copper and Labour Reform in Chile

In September 2015, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, noted that Chile continues to face ‘deep and significant social challenges’

On 22 March 2016, thousands of workers and students took to the streets in Santiago de Chile to demonstrate their support for a general strike called by the Central Unitaria de Trabajadores (CUT), Chile’s largest national federation. The protestors were demanding the strengthening of trade union rights in the proposed labour reform Bill, as well as reforms to pensions and public health and an overhaul of the constitution. Labour reform has long been on the agenda for President Michelle Bachelet and the centre-left coalition *Nueva Mayoría*. In April, weeks after the demonstration and after over a year of negotiations, both houses of the National Congress (Cámara de Diputados and Senado) approved the labour reform Bill. Members of the opposition (centre-right) coalition *Chile Vamos* immediately announced that they would challenge the reforms in the Constitutional Court, a process which will delay the enactment of the Bill for a further 30 to 45 days.

Among the most controversial aspects of the Bill are those concerning the union rights of contract workers and the regulation of strikes. The proposals have provoked strong opposition from the national employers’ organisation (la Confederación de la Producción y del Comercio, CPC) who allege that the reforms will privilege unionised workers in large enterprises over the country’s growing number of unemployed, and impact on wage bills and productivity. Moreover, these reforms are taking place in a highly volatile period for the country’s copper industry and the economy as a whole. Tensions between the copper industry – long regarded as Chile’s cash cow – and the labour movement peaked in July last year with the killing of contract worker Nelson Quichillao López during a strike at the state-owned copper company, Codelco.

The rear-view mirror

In September 2015, Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association visited Chile on his first official visit to the Americas. Kiai noted that, although ‘the brutal atrocities of the dictatorship era are in the rear-view mirror’, the country continues to face ‘deep and significant social challenges’ – most significantly those concerning of indigenous peoples’ land rights, educational reforms, and labour and trade union issues. In respect of each of these three ‘social challenges’, Kiai detailed instances where freedom of assembly and association rights in Chile have been harmed by disproportionate state responses. Use of excessive state force in the management of social protests demonstrates that ‘some vestiges of dictatorship remain, despite

[Chile’s] advances over the past 25 years’. In the concluding statement of his visit, Kiai observed:

The ghost of this era looms particularly large over the security sector, chiefly the police—and specifically the Special Forces—and their function in policing social conflicts and assemblies...

I am particularly disturbed by the killing in July 2015 in El Salvador of Nelson Quichillao, a contract copper mine worker who was shot dead by Special Forces who used live ammunition during a protest calling for better pay and benefits. Authorities claim that the protest was not entirely peaceful. However, the police response raises serious questions regarding proportionality of response. Individuals retain at all times their rights to life and physical integrity, even if they become violent during protests, and it is the State’s duty to safeguard these rights...

It is also imperative that the Government ensures that all employers cease anti-union activities such as targeting and firing workers for exercising their right to strike, which demeans the right. I urge the Government to continue taking measures to bring its legislation into full compliance with ILO Conventions 87 and 98 as urged by ILO’s Committee on Experts on the Application of Conventions and Recommendations.

It is clear to me that the government values the contributions of the private sector to the economy and policy. But it is not so obvious that it values civil society associations, including trade unions, in a similar manner.

The Special Rapporteur’s drawing attention to the killing of Nelson Quichillao López is a welcome effort to raise awareness of the situation of the labour movement in Chile’s mining industry. Maina Kiai is due to submit his full report on Chile to the UN Human Rights Council in June 2016. We reported on the case in *IUR* 22.3 last year. While a police investigation into the case has been opened, reports at the time indicated that the strikers, unarmed, were shot at by Special Forces after they barricaded the entrance and halted production at Codelco’s El Salvador mine. Organised by the Confederación de Trabajadores del Cobre (CTC) union, the strike was part of a coordinated action across seven Codelco sites. CTC resorted to strike action on behalf of Codelco’s contract workers, after Codelco refused to negotiate on their pay and conditions of employment. According to the CTC, workers were building a dirt barricade with a bulldozer when police opened fire. Several other strikers were injured. The killing provoked fur-



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ther protests and the strike – in which over 40,000 CTC members reportedly participated – continued for over three weeks, until the CTC and Codelco re-entered negotiations.

End of the copper boom

It is notable that these events took place at a moment of heightened tension around the economic future of Chile's copper mining industry. Mining contributes 12 percent of the country's GDP. The world's largest copper producer, Chile is the source of a third of the world's supply of the commodity, which accounts for 60 percent of exports. Through the 2000s, Chinese demand fuelled a massive global commodities boom and demand for copper delivered the Chilean state-owned company, Codelco – one of the largest sources of government revenue – with windfall profits. As the copper prices peaked in 2007, President Bachelet's popularity increased, as she was able to direct the profits into funding pension reform, public services, social programmes and job creation. The copper boom helped Chile weather the global financial crisis of 2008; copper prices had quadrupled by the end of the decade. From 2003 through 2013, Chile's real GDP growth averaged almost 5 percent per year.

Re-elected for a (non-consecutive) second term in 2013, President Bachelet now faces a very different scenario. China had become the largest importer of copper by 2014, accounting for 40 percent of the international market. But as Chinese demand has fallen, copper prices have undergone a three-year slump and Chile's dependency on its copper exports is becoming increasingly strained. The strike at the El Salvador mine in June 2015 was coincident with the beginnings of a Chinese stock market crash which further rocked the global commodities market. Economic growth in Chile has not exceeded 2.8 percent since the last quarter of 2013 and in 2015, some 23,000 job losses were reported in Chile's mining industry.

The future of Chile's copper economy is further plagued as the resource becomes harder to mine; after decades of extraction, the industry is having to adjust to mine for lesser grade ore in deeper pits. Bachelet was re-elected on the promise of pumping copper profits into social programmes, but as sources of profitable ore decline, Codelco itself requires massive levels of investment. And as profits fall, public support for mining generally has waned: the industry been rocked by political scandal (with a former deputy mining minister, Pablo Wagner, awaiting trial for bribery and money laundering), massive social protests over environmental harm, and a number of fines against mining companies. In March 2016, Chile's state environmental agency ordered the closure of water facilities attached to a gold mine owned by the Canadian company Kinross Gold Corporation on environmental grounds.

Towards fairer practice?

The booming copper industry had become reliant not only on Chinese demand for the commodity but also on cheap outsourced labour, enabling mining companies to undercut collective agreements. According to government statistics in 2014, contracted workers at the largest copper mines (which produce for 90 percent of copper output) accounted for 74 percent of the labour force. In 2006, they accounted for just 66

percent. In 2014, remuneration of contracted workers cost mining companies on average only 43 percent of that of direct employees.

The labour reforms passed in April 2016 may encourage mining companies to bring contracted workers in house. Among many other aspects, the reforms will remove prior restrictions prohibiting contracted workers from collective bargaining. The Bill excludes only employees who work in roles representing the employer or in management positions from participating in collective negotiations.

Such an approach has nonetheless panicked mining bosses and the centre-right: the reforms have already provoked the ire of the Chilean political opposition and the business community, for potentially increasing the power of unions and incentivising union membership. The challenge pending before the Constitutional Court – initiated by opposition members immediately after the Bill was passed by the legislature – focuses on four points:

- Only an established union (with required quorum) may participate in collective bargaining, and 'negotiating groups' (allowed under the previous labour code) may only participate where no union exists
- Employers will be required to negotiate with unions representing workers from two or more employers; for SMEs this will be voluntary
- Unions will have access to certain types of financial information to prepare for collective bargaining, including on payroll and salaries
- Benefits of collective agreements may no longer be extended by the employer to non-union members without the agreement of the union

The Bill's strengthening of the collective bargaining process – which was formerly only loosely regulated – is however intended to help avoid further costs of industrial conflict. Productivity in the mining industry has proven highly vulnerable to such conflicts. Perhaps most critically, in the light of the events at Codelco's El Salvador mine in 2015, the Bill establishes a concept of 'unfair practice' to prevent access to a workspace being blocked during a peaceful strike and at the same time, prohibits employers from hiring replacement workers from a subcontracting firm during a strike.

The imperative to reduce strike frequency by improving working conditions and labour regulations, and by ensuring miners have better and greater leverage in bargaining, is hoped to deter worker unrest. As mining minister, Aurora Williams, notes: 'substituting a striking miner in Chile is especially difficult, not only because unions are powerful and have a long and proven success record when it comes to negotiations, but also for technical reasons — it's not easy, for example, to find workers capable of working at 4000 metres above sea level'.

If the Bill is enacted, the reforms are likely to cause a major shake-up of Chile's mining industry, and may well prove a positive force for the strengthening of union rights for all workers. This is due in no small part to the actions taken by the labour movement in 2015. Strikes in the copper industry have continued – a smaller strike was reported at BHP Billiton's Cerro Colorado copper mine in January 2016. The industrial conflict has forced mining companies and the government to

... Continued on Page 28 ...

Long on the political agenda, labour reforms in Chile are set to take place in a highly volatile period for the country's copper industry and the national economy

Bangladesh

In March 2016, security guards at the Kabir Steel shipbreaking yard in Chittagong, Bangladesh, shot and injured seven people - including a 16-year-old boy - participating in a protest over workplace conditions and worker safety. After the death of a worker, Muhammad Sumon, in a workplace accident, workers and members of the local community met to protest on 28 March, but the guards then shot at the demonstrators.

ICTUR wrote to the government to demand that they take swift and effective action to investigate these events and to award remedies and impose sanctions where appropriate, as well as measures to ensure that adequate supervisory mechanisms are in place to promote a safer working environment in the shipbreaking industry. The NGO Shipbreaking Platform and one of its members, the Bangladesh Occupational Safety, Health and Environment Foundation, have strongly criticised the Kabir Steel yard for failing to comply with legal requirements on health and safety. Freedom of association and freedom of assembly are provided for under the Constitution of Bangladesh, the Universal Declaration of Human Rights (Art. 20(1)) and the International Covenant on Civil and Political Rights (ICCPR, Arts. 21 and 22).

Colombia

Dr Miguel Ángel Beltrán, a member of the higher education union Asociación Sindical de Profesores Universitarios (ASPU), was arrested on charges of rebellion and conspiracy in July 2015 and sentenced to 8 years' imprisonment in the high security prison 'La Picota' in Bogota. Dr Beltrán was first arrested in May 2009, but after he was cleared of all charges in 2011, he was removed from his position at the National University of Colombia and still suffers a ban preventing

him from serving at any public universities in Colombia. He was recently on a hunger strike to demand a fair review of his case, and improvement of the detention conditions for prisoners.

ICTUR joined the call made by Education International and trade unions worldwide for a formal review of this case, which unions believe is unjust and arises from his political and trade union activities.

Cambodia

In January 2016, it was reported that eleven workers (members of the IUF-affiliated Cambodian Food and Service Workers Federation, CFSWF) at the Cambrew company were targeted for dismissal following their organisation of a strike action.

■ On 1 February, workers from the Star Light Apparel garment factory in the special economic zone (SEZ) in Kandal province were preparing to depart for a protest concerning the dismissal of a leader of the Cambodian Labor Solidarity Union, when they were attacked by dozens of men (including SEZ security guards) armed with steel pipes and meat cleavers. One union member was reportedly hospitalised due to injuries sustained.

■ On 2 February, two trade unionists participating in a protest in to demand the reinstatement of three workers dismissed from the Cerie Garment factory in Samraong Tong district, Kompong Speu province, their union claims the dismissals were due to their trade union activities.

■ On 6 February, workers protesting the dismissal of 45 bus drivers - who had been attempting to form a union at the Capitol Bus Company in Phnom Penh - were violently attacked, leaving several injured. According to the rights group Licadho, some police officers in riot gear participated in the attack,

but none of the alleged assailants have been arrested or charged. Rather, it is understood that two of the injured protesters were arrested at the scene and - alongside four union leaders who were not present at the protest - were charged with criminal and traffic offences carrying potential lengthy prison sentences.

■ Cambodia adopted a new Trade Union Law in April 2016 in spite of clear problems and objections raised by sections of the Cambodian labour movement, by the international trade union community and by leading international human rights organisations. The law imposes severe restrictions on the exercise of trade union rights, limiting the right to strike, enabling government interference in trade union affairs and leaving unions vulnerable to dissolution. The new law also provides for penalties against employers that are totally inadequate to act as a meaningful deterrent for violations of workers' rights.

■ On 4 April, several protestors outside parliament opposing the law were severely injured in clashes with police.

ICTUR wrote to the government of Cambodia to remind them of their obligations as a member of the ILO and under the fundamental ILO conventions - all eight of which Cambodia has ratified. ICTUR also expressed its grave concerns about the repression of trade unionists in Cambodia. The above incidents are a cause for grave concern and ICTUR called on the government to investigate these reports and undertake all necessary measures to ensure that this climate of intimidation, violence and union-busting does not continue. ICTUR joins international human rights organisations in expressing its concern that the labour law is unlikely to prove effective in resolving

what are serious failings in Cambodia's efforts to fully implement and respect the principles of freedom of association.

China

Following their detention in December 2015, three activists from the Panyu Workers' Centre (Zeng Feiyang, Zhu Xiaomei and Meng Han) were formally arrested and charged with 'gathering crowds to disturb public order' in January 2016. A fourth activist from the Nanfeiyan Social Worker Centre (He Xiaobo) has also been arrested and charged with 'embezzlement'. The four activists have been denied access to their lawyers, and their arrests are believed to be linked to their involvement in the Lide Shoe Factory strikes in 2014-15.

ICTUR wrote to the Chinese government to urge for the activists' prompt release from detention.

Egypt

Italian student Giulio Regeni - who was conducting research on independent trade unions - went missing in Egypt on 25 January. His body was discovered nine days later, and forensics authorities believe Regeni was tortured and murdered.

■ In March 2016, acting on the request of the Ministry of Manpower, the government relied on Law No. 35 of 1976 to declare that all independent trade unions in Egypt are now invalidated.

ICTUR joined in the international condemnation of Giulio Regeni's death and urged the government of Egypt to take all appropriate measures to ensure that a full and competent investigation is carried out to determine who is responsible for this crime and to hold them to account. ICTUR further urged Egypt to honour the guarantees provided for under its 2014 Constitution - which expressly guarantees the freedom of workers to form and

join unions of their choosing – as well as Egypt's commitments under international law, to respect freedom of association and trade union pluralism, by repealing or amending the Law No. 35 of 1976. ICTUR reminded the authorities that Egypt has ratified both ILO Convention 87 and has an obligation under international law to respect the principles of freedom of association.

Gambia

In February 2016, three union leaders were arrested after petitioning the President to lower retail fuel prices. One of them – Sheriff Diba, of the Gambian National Transport Control Association (GNTCA) – was detained and died in custody on 21 February. Allegations were reported that before he died, Sheriff Diba was beaten and tortured by members of the National Intelligence Agency.

ICTUR wrote to the Gambian government to strongly condemn Sheriff Diba's murder and to demand that the government investigate the circumstances around this case. According to the ILO's Committee on Freedom of Association, the killing of trade unionists requires the 'institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events.' 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' (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth Edition, 2006, paras. 42-44, 46, 48 and 52).

Iran

On 26 January 2016, 28 workers from Khatton Abad

Mines were arrested and detained during a peaceful protest to demand the reinstatement of 170 contract workers who had been dismissed after they were promised permanent positions. Some of the workers were held for nearly three weeks before being released on bail (costing 50 million toman each) and many have been charged with criminal offences.

- On 5 February 2016, the paramilitary Basij group attacked and arrested members of the Haft Tapeh union during a protest.
- The Iranian authorities continue to target trade union members of the Iranian Teachers' Trade Association (ITTA):
- Imprisoned and charged with 'propaganda' and public order offences since June 2015, Esmail Abdi, a leader of the ITTA, was sentenced on 22 February 2016 to six years in prison.
- Former ITTA spokesman, Mahmoud Behesti Langroodi, and two former ITTA board members, Mohammed Reza Niknejad and Mehdi Bohlooli, were sentenced on 17 March 2016 to five years in prison each.
- It is understood that ITTA members Rasoul Bodaghi and Alireza Hashemi also continue to be detained by the authorities.

ICTUR has written to remind the authorities that workers have a fundamental human right to association under the terms of the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Covenant on Social, Economic and Cultural Rights, and the Conventions of the International Labour Organisation. ICTUR noted that Iran is required by virtue of its membership of the ILO to respect the principles contained in the ILO Conventions. ICTUR called on the authorities to ensure that the activists are given an opportunity to obtain a rapid review of their convictions and sentences before

an appeal court, and called on the authorities to make clear the requirement for the law courts to respect international human rights principles. In addition, ICTUR has co-signed a letter of complaint authored by the Committee for the Defence of the Iranian Peoples Right (CODIR), along with a number of British and international unions.

Philippines

On 2 April 2016, gunmen opened fire on a protest camp of banana workers in Pantukan, Compostela Valley. Trade union members of the Kilusang Mayo Uno – Southern Mindanao Regional chapter (KMU-SMR) narrowly escaped being shot. In previous weeks, the workers had reported an attempted arson attack on the camp. Union leaders have reportedly linked the attack to the successful organising campaign at the nearby Mushamat Farm 2, where union members have experienced significant intimidation and harassment from their employers, including mass dismissals. The events in Pantukan came merely hours after two protesters were reportedly killed in Kidapawan, during a demonstration over food shortages.

ICTUR called on the government to investigate the circumstances around the violence in Pantukan and to establish an independent judicial inquiry to investigate. ICTUR took the opportunity to once again urge the government to ensure that the murder of trade union organiser Rolando Pango on 29 November 2014, in Binalbagan town in Negros Occidental, is fully investigated and that the perpetrators are held to account.

Somalia

On 29 December 2015 in Mogadishu, three armed men opened fire on the car of Omar Faruk Osman – the Secretary General of the Federation of Somali Trade Unions (FESTU) and the National Union of Somali Journalists (NUSOJ) – outside

the union's office. Osman escaped injury, but a guard and two pedestrians were wounded. According to reports, the National Intelligence and Security Agency has opened an investigation into the incident. Osman has complained for many years of his experiences of death threats as part of a political campaign to intimidate him to stop his union work.

This murder attempt constitutes an egregious violation of both human and trade union rights. ICTUR welcomes the government's stated intention to open an investigation and wrote to urge the government to undertake all necessary measures that such an investigation will be carried out swiftly and effectively.

Turkey

On 17 January 2016 in Cizre Municipality (Şırnak), a member of the DİSK affiliated union Genel-İş, Mehmet Kaplan, was shot dead in front of his house. Another member of DİSK/Genel-İş, Ramazan Uysal, was also reportedly shot on 14 December 2015 while at work for the Cizre Municipality and subsequently lost his arm. Three further members of DİSK/Genel-İş – Mazlum Özmen, union representative and a municipal police officer, Mesut Ayı k, driver and Nedim Oruç, press officer – have been arrested and detained for their trade union activities.

ICTUR wrote to remind the government that Turkey has ratified all eight of the fundamental International Labour Organisation conventions and that the climate of violence, murder, intimidation and harassment of trade unionists in Turkey represents an egregious violation of both human and trade union rights, which must be strongly condemned. ICTUR demanded the institution of an independent judicial inquiry into these attacks.

Trade Union Rights in Colombia

According to the largest Colombian trade union centre, in 2013 there were 451 instances of anti-union violence – one act every 19 hours

The trade union movement and the vast majority of social organisations in Colombia are currently giving their support to peace processes on-going between the government and the two left-wing guerrilla organisations, the Fuerzas Armadas Revolucionarias de Colombia / Revolutionary Armed Forces of Colombia (FARC) and the Ejército de Liberación Nacional / National Liberation Army (ELN). There is hope that, if peace deals are reached that include measures for addressing the deep-rooted social and political inequalities, then an important step will have been taken towards improving the situation for workers, trade unionists and for all of those fighting for social transformation in Colombia. There are however considerable fears that the on-going lack of guarantees for political activists, including trade unionists, will provide a considerable obstacle to peace becoming a reality.

Colombia has for several decades been the most dangerous place in the world to be a trade unionist. Every year numerous union leaders, union activists and union members are assassinated. Over 3000 trade unionists have been murdered since the mid-1970s, and nobody has been brought to justice in the vast majority of the cases.

Over recent years, in spite of opening up of the peace talks and a more accepting discourse from Colombian government officials, the murders have not ceased. A recent Justice for Colombia report documented 534 political activists killed between 2011 and 2015 – this included 134 trade unionists.

In addition to the violence, Colombia has some of the worst workers' rights in the world. A 2015 report by the ITUC gave Colombia the second worst possible ranking and placed it amongst the 10 worst countries in the world to be a worker.

The targeting of trade unionists and the anti-union practices has formed part of a broader political violence which has seen obstructions placed in the way of the activities of all types of social organisations. This structural political violence has contributed to the maintenance of a deep-rooted social inequality and these two factors have provided the root causes to the more than five-decade long civil war.

Trade Union Violence

Alongside the murders, trade unionists suffer permanent persecution, which includes unlawful detention, physical attacks, forced disappearance and regular death threats.

Most of the killings are carried out by right-wing paramilitary death squads with documented links to the Colombian security forces. However, many are murdered by the Colombian Army, and the secret police were even exposed for drawing up 'death lists' of union members.

According to the largest Colombian trade union centre - Central Unitaria de Trabajadores de Colombia / Central Union of Workers (CUT) – in 2013 there were 451 instances of anti-union violence – one act every 19 hours, every day of the year.

The grim toll of Colombia's war on trade unions amounts to at least 13,713 violations of the right to life and liberty since 1977 – 3062 assassinations, 233 kidnappings, 342 violent attacks, 6572 violent threats, 1890 forced displacements and 725 arbitrary detentions. Between 2000 and 2010, Colombia accounted for 63 percent of trade unionists murdered globally.

The Colombian government has made significant effort to convince the international community they are taking steps to tackle anti-trade union violence, not least as part of their push to agree free trade agreements with the United States and the European Union.

The Colombian government will often point to the protection measures provided by the state to many trade unionists - ranging from a bodyguard and a bullet-proof car, to a mobile phone or a bullet proof jacket - but the high impunity rate continues to give a green light for the assassinations to continue. Colombian organisations regularly point out that there often appears to be more time dedicated to investigating false accusations of trade unionist links to guerrilla organisations than to bringing those responsible for carrying out the murders to justice.

The Labour Action Plan (LAP), was agreed in 2011 to demonstrate the commitment of the Colombian government to protect workers' rights prior to the signing of the free trade agreement with the US – it has failed however to stop the killings. In the four years following the implementation of the LAP, more than 100 trade unionists were killed.

And whilst the authorities assert that they are acting to apprehend the perpetrators, the evidence does not support this. A 2014 report by the CUT showed that 86.8 percent of assassinations remain in impunity, while 99.9 percent of threats are never investigated.

The Colombian Trade Union Movement

Trade union membership levels have taken a devastating hit as a direct result of the anti-union violence, anti-trade union laws and policies and massive labour market changes.

In spite of these difficulties, the union movement continues to play an active role in Colombia: in 2013 and 2014, together with social organisations from across the country, the trade unions were involved in weeks of strikes and disruptions across Colombia in response to the devastating impact of international free trade agreements.

JUSTICE FOR COLOMBIA (JFC) is a British NGO that campaigns for human rights, workers' rights and the search for peace with social justice in Colombia.

Until the 1990s Colombia's unions were among the strongest in Latin America. Membership – now the lowest in the Americas – has halved in less than 20 years, leaving only 850,000 trade union members in the country, less than 4 percent of the workforce.

The movement is fragmented, with more than 2000 registered unions and three national centres – the CUT, the Confederación de Trabajadores de Colombia / Confederation of Colombian Workers (CTC), and the Confederación General de Trabajo / General Confederation of Labour (CGT). The CUT is the largest centre, with 746 affiliated unions, representing more than 600,000 members. The union movement is attempting to engage in a consolidation process, but progress remains slow.

FECODE, a national federation representing around 250,000 teachers is Colombia's largest union, followed by FENSUAGRO, representing around 100,000 peasant farmers and agricultural workers nationally. Both are CUT-affiliated, as are the majority of the other key trade unions including ANTHOC (health workers), UNEB (financial sector workers), USO (oil workers) and FUNTRAENERGETICA (miners, metal workers and the chemical sector).

Workers' Rights

In addition to the permanent threat of violence, government and employers also routinely undermine and sabotage workers' rights.

Whilst Colombia signed up to the ILO's fundamental conventions, the country has been a regular topic for discussion by the ILO's expert Committees for two decades due to continual violations, including freedom of association and the right to organise. Unions claim its removal in 2010 resulted from a deal engineered to exclude Colombia in exchange for the government accepting the sanction of a high level tripartite mission to investigate abuses.

Despite government claims of progress, thousands still face harassment, blacklisting, arrest and dismissal for their union activities.

A combination of anti-union tactics and the effects of neo-liberal economic policies have posed further problems to the Colombian union movement. Sweeping privatisation has had a severe impact upon rights, whilst over recent years there has been a significant increase in the number of low-paid 'informal' workers. Over 60 percent - particularly women and Afro-Colombians – are forced to work outside the formal economy.

The widespread use of temporary contracts - which are excluded from the Labour Code - and 'employment cooperatives' by privatised companies to move staff into insecure employment, undermine collective bargaining and deny workers union rights. Of seven million Colombians in formal employment, just four million have permanent contracts.

Private sector employers often use 'collective pacts' between individuals and employers, which also undermine collective bargaining. Employers offer better pay to workers in return for leaving the union. The LAP was supposed to make these pacts unlawful, but they are still widely used.

In total, less than 1 percent of Colombians are covered by collective bargaining agreements.

The right to strike is also severely curtailed: federations are banned from calling strikes and stoppages are illegal in a wide range of services, in breach of ILO Conventions.

Impact of Free Trade Agreements

Free Trade Agreements (FTAs) have led to hundreds of thousands of Colombians being forced off their land, a surge in anti-union violence, strikes, protests and increasing poverty.

The long-delayed US-Colombia FTA – the Colombia Trade Promotion Agreement (CTPA) – was signed in 2011, a year after Canada signed a similar agreement and in the face of strong opposition from trade unions.

Under the agreement, tariffs were eliminated on 80 percent of US consumer and industrial exports. Poor Colombian farmers are forced to compete against heavily-subsidised US products.

US exports have soared, more than doubling in just two years, with Colombia becoming the largest US market in South America.

Oxfam estimates the average income of 1.8 million grossly under-protected small farmers will fall 16 percent and that the earnings of 400,000 farmers - already surviving on incomes below the minimum wage - will drop by up to 70 percent.

Mass displacements jumped 83 percent in one year following the agreement's implementation in May 2012, mostly in areas affected by the CTPA.

The CTPA also opened up Colombian industries and services, such as water, energy, and healthcare to privatisation.

At the time of the initial signing of the agreement, opposition from campaigners in the US forced the Obama administration to append the Labour Action Plan, which aimed at:

- 1 Strengthening state institutions
- 2 Achieving regular work contracts
- 3 Protecting the right to organise
- 4 Protecting the right to bargain collectively
- 5 Overcoming violence and impunity

Four years later however the LAP had still not been implemented.

Fines for labour abuses go uncollected, impunity remains the norm for labour killings, and retaliation against unions and activists who attempt to defend their right to organise and collectively bargain are rampant – including mass firings.

The agreement with the US was followed by a deal with the European Union. In spite of a campaign by Justice for Colombia together with unions and MEPs which caused a delay of over three years and saw every Labour MEP vote against the deal, the EU-Colombia free trade agreement was ratified by the European Parliament in 2012. The agreement was finally adopted by all member parliaments in 2015 when Ireland narrowly ratified it, despite opposition from trade unions and campaigners.

Specific human and labour rights obligations were agreed as part of the EU deal, however the article is not binding and the only mechanism for enforcement is for a member state to take Colombia to the International Court of Justice and secure unanimous agreement of all EU member states - an extremely difficult and somewhat insufficient mechanism for holding one of the world's worst human rights violators to account.

Peace and Social Justice

On-going paramilitary violence against political activists and institutionalised anti-union practices continue to pose a very real threat to the ability

The government has made efforts to convince the international community they are taking steps to tackle anti-trade union violence, but institutionalised anti-union practices continue

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Australian Unions Win Landmark Accident Make-Up Pay Case

The industrial relations tribunal examined the evidence for and against workers' compensation step-downs for the first time and ruled to protect entitlements available to injured workers

In August 2015 a Full Bench of the Fair Work Commission, Australia's national industrial relations tribunal, handed down a decisive judgement upholding the principle that accident make-up pay provisions should continue as an entitlement available to injured workers under 37 modern industrial awards. The unanimous Full Bench decision supported an application by the Australian Council of Trade Unions, the country's peak union organisation, despite vigorous opposition from major employer groups along with the federal Liberal/National coalition government and its New South Wales counterpart.

Accident make-up pay provisions have been an important component of many industry awards and enterprise agreements in Australia. They are designed to offset the financial hardship of 'step-downs' - phased cuts in income replacement payments for injured workers - contained in Australia's predominantly state based workers' compensation laws. Accident pay provisions operate on the principle that if a worker suffers a work related injury the employer is obliged to make up the difference between his or her pre-injury wages and income replacement payments paid by the workers' compensation insurer. Typically, make-up pay provisions apply for periods ranging from 26 to 52 weeks, by which time the vast majority of injured workers have returned to work.

Accident Pay and Modern Awards

Accident make-up pay emerged in Australia during the 1970s, at a time when unemployment was at historically low levels. In conjunction with a resurgent post-war labour movement and reform minded governments a new, progressive, political agenda emerged which facilitated substantial reforms to workers' compensation laws. This was particularly evident in Western Australia, Tasmania and South Australia where incoming Labor governments, during the early 1970s, lifted weekly payments for injured workers to 100 percent of pre-injury average weekly earnings.

Campaigns for improvements in weekly compensation payments also occurred in states where conservative governments still held sway. However, as statutory compensation increases were not a realistic possibility at the time unions gave increased consideration to the inclusion of 'accident pay' provisions in industrial awards and other wage fixing agreements. The push for accident pay was spearheaded by the metal trades and building unions, and was strongest in New South Wales and Victoria, the two largest states. By 1976 there were some 119 federal awards and industrial agreements that incorporated make-up pay provisions for all workers covered by these collective bargaining arrangements.

Since the 1970s, the significance of make-up pay has fluctuated depending on the adequacy of weekly payments available under state workers' compensation legislation. From the 1970s through to the latter part of the 1980s there was an, uneven but, upward trajectory in weekly payments and their duration. Since then the general trend has been in the opposite direction, reflected in the winding back of entitlements and the widespread use of step-downs in weekly payments.

In the wake of these setbacks, accident make-up pay remains an issue of significant relevance for the Australian labour movement. The reason is not hard to find. In New South Wales and Victoria, for example, injured workers receive no more than 80 percent of their average pre-injury earnings if unable to return to work within 13 weeks. A step-down of this magnitude equates to a pay cut of 20 percent - a high price to pay for being injured at work and particularly so for low paid workers. Elsewhere in Australia, step-downs are not always as harsh or, where they are, come into force at a later date.

The continuation, however, of accident pay provisions as an enforceable collective bargaining entitlement was brought into question by the award modernisation process which commenced in 2008. The stated aim of the modernisation process was to review and streamline Australia's national industrial relations system. One of the crucial aspects involved was the extent to which existing entitlements remained relevant and should be incorporated in modern awards.

In the case of accident pay provisions, employer groups argued for their exclusion from modern awards whereas unions and the federal Labor government sought to secure their inclusion. When the new system came into place in January 2010 over 1500 pre-existing awards had been reviewed and transformed into 122 modern awards. Accident pay was included, but only as a 'transitional' provision to be reconsidered as part of a four yearly review of modern awards scheduled for 2014.

Fair Work Safety Nets and Workers' Compensation Laws

A key aspect of the *Fair Work Act* (FWA) and the modern awards system involves the requirement to 'provide a fair and relevant minimum safety net of terms and conditions'. The ACTU argued that inclusion of accident pay provisions into the relevant awards was consistent with, and necessary to achieve, this objective. The emphasis placed on the safety net objective in the FWA was particularly pertinent for low paid, award reliant, workers who are most likely to experience substantial financial disadvantage were this entitlement to be removed.



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While acknowledging the significance of the 'safety net', employer representatives inferred that other sections of the FWA limited the jurisdictional capacity of the Full Bench to vary modern awards to incorporate accident pay provisions. In raising this concern they also argued, that instead of accident pay arrangements sanctioned by workplace relations tribunals, the 'task of regulating the minimum payment of injured workers should properly be left to worker's compensation legislation and the governments and authorities who design such schemes'.

The Full Bench was not convinced by these arguments. On the safety net issue it broadly supported the union case that accident pay materially assisted injured workers, particularly the lower paid, and – as a pre-existing entitlement – was unlikely to impose any significant financial burden on employers. Its decision also specified that accident pay entitlements would apply equally to injured workers whose employment had been terminated, unless they obtained alternative employment. In relation to the jurisdictional issue, the Full Bench noted that accident pay had been a longstanding entitlement in many industries and held that accident pay provisions could 'operate alongside workers' compensation schemes' and do so in a manner that would 'not undermine the key policy objectives of those schemes'.

Step-Downs and the Return to Work Debate

The role of step-downs has long been at the heart of this debate. Step-downs in income replacement payments for injured workers have been a pivotal, and controversial, design feature in Australian workers' compensation schemes since the 1980s. They remain one of the fundamental fault-lines in contemporary workers' compensation policy – widely opposed by unions and injured worker associations, but strongly backed by employer organisations and broadly supported by state and federal governments.

The employer case relied primarily on government-commissioned reports and the views of state governments when enacting or amending step-down provisions, whereas that of the union movement was based on a commissioned report which examined the research evidence.

The justification proffered for step-downs is that they provide a necessary incentive to get injured workers back to work. The theory underpinning this policy stance is derived from neoclassical economics and posits that utility maximising workers opt to 'return to work' or 'remain off work' depending on the level of income replacement they receive. The higher the level of income replacement the more likely they are not to return to work, and vice versa. In this one dimensional depiction of worker behaviour no account is taken of workers' attitudes towards work which are not only shaped by economic considerations but also the psychological and social benefits – self-esteem, personal development, job satisfaction and friendships – that work can provide.

This reductionist view on step-downs is inherently problematic. It has long been acknowledged by Australian workers' compensation authorities, for example, that the overwhelming majority of injured workers actually return to work within a relatively short period and do so without the need for any external intervention. Also striking is that there has been no substantive research in Australia to support the contention

that higher payments induce injured workers to 'game' the system.

Evidentiary claims for step-downs are largely confined to econometric studies from the US and Canada, which suggests that increases in income replacement payments are statistically associated with increases in the duration of compensation claims. From these findings, it is inferred that reductions in weekly payments, via step-downs are an appropriate mechanism by which to reduce claims durations and increase return to work outcomes. There are though numerous shortcomings with this type of reasoning.

An important methodological problem is that return to work outcomes are typically based on initial return to work data, even though first efforts are not always successful. The aggravation of injuries, for example, may necessitate further time off before sustainable results are achieved. A more appropriate approach would be to measure sustainable return to work outcomes. The lack of attention given to this issue, however, has resulted in findings that have systemically underestimated return to work outcomes.

More generally, there is no settled consensus as to the magnitude of the claims duration increases reported in these studies. In much of the literature, a 10 percent increase in weekly payments is associated with a 3-5 percent increase in claims duration. The interpretation of these findings is also questionable. The prospect that a somewhat longer initial period off work may facilitate a more durable return to work has rarely been considered. This is despite the availability of evidence which suggests this may be the case.

Another, very significant, consideration is that, more recent research, utilising improvements in data quality and statistical techniques, indicates that the linkage between weekly payment increases and claims duration have been substantially overstated. In other words, the supposed return to work incentive effects involved may be negligible or non-existent.

It must also be recognised that the return to work process is not simply the responsibility of injured workers. Insurers and employers have crucial roles to play. Return to work prospects for injured workers can be dramatically influenced by whether or not there are delays in determining their claims and arranging referrals for return to work services by insurers and, most importantly, the provision of suitable employment by employers.

The Importance of the Accident Make-Up Pay Decision

This is the first occasion where the evidence for and against workers' compensation step-downs has been adjudicated by Australia's highest industrial court. The Full Bench hearings took place against a legislative backdrop in which workers' compensation entitlements for injured workers have seemingly been under constant attack in recent decades – a development by no means limited to Australia.

In supporting the case for the inclusion of accident pay provisions in modern awards, the Full Bench decisively rejected the notion that step-downs are required to motivate injured workers in returning to work. An admission by a major employer group, during proceedings, of 'a lack of

The decision strengthens the case for the reform of compensation laws and provides a platform for unions to negotiate further accident pay provisions

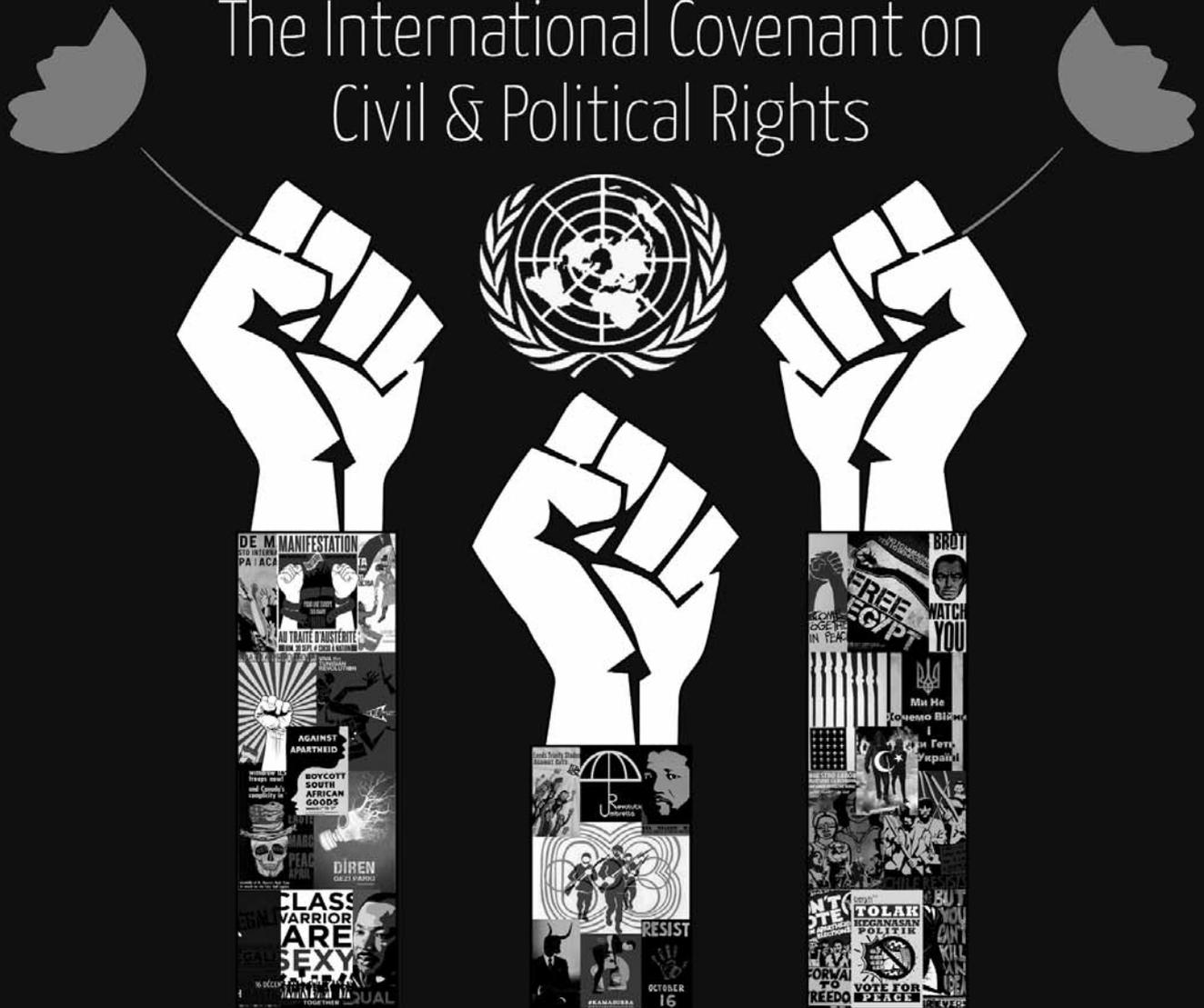
This article is based on a report commissioned by the Australian Council of Trade Unions

I would like to thank Gabrielle Starr for her comments on an earlier draft of this article

... Continued on Page 28 ...

Celebrating 50 Years

The International Covenant on Civil & Political Rights



THE RIGHT OF PEACEFUL ASSEMBLY
SHALL BE RECOGNIZED.

NO RESTRICTIONS MAY BE PLACED ON THE EXERCISE OF THIS RIGHT
OTHER THAN THOSE IMPOSED IN CONFORMITY WITH THE LAW AND
WHICH ARE NECESSARY IN A DEMOCRATIC SOCIETY IN THE INTERESTS
OF NATIONAL SECURITY OR PUBLIC SAFETY, PUBLIC ORDER, THE
PROTECTION OF PUBLIC HEALTH OR MORALS OR THE PROTECTION OF
THE RIGHTS AND FREEDOMS OF OTHERS.

ARTICLE 21 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ADOPTED BY
THE UN GENERAL ASSEMBLY ON DECEMBER 16, 1966

KTUR

celebrates the...



International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 8

- (a) The right of everyone to form trade unions and join the trade union of his choice
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations
- (c) The right of trade unions to function freely
- (d) The right to strike

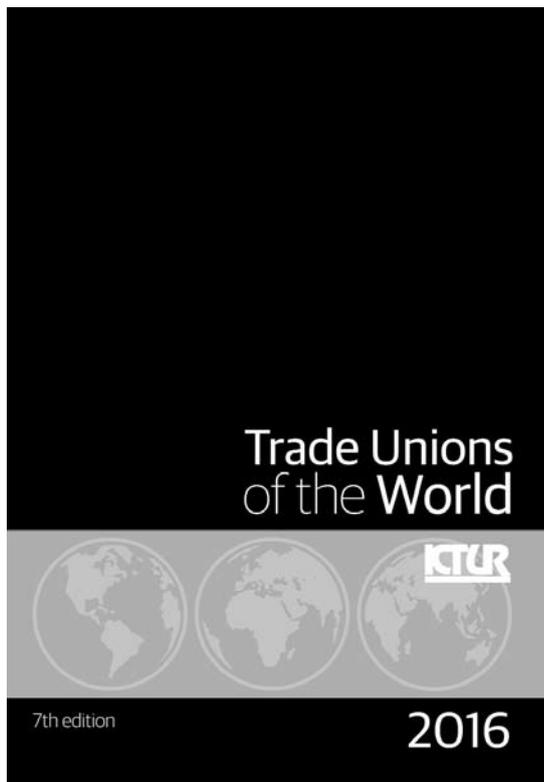
Ratified by 164 States
Adopted 16 December 1966



Trade Unions of the World

The International Centre for Trade Union Rights is proud to present its publication of **Trade Unions of the World 2016** (7th Edition).

The leading reference work on the international trade union movement, *Trade Unions of the World* is an **essential resource** for all trade unionists, labour rights organisations, NGOs, researchers and policy makers. The new edition provides a unique and valuable insight into the struggle of international labour and the role of trade unions in the global economy.



The 2016 edition contains **198 country profiles, each including:**

- a history of the **major trends in trade unionism** and their connection to social and political struggles, **up to the present day**
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Global Unions statement to the IMF and World Bank

In a statement to the 2016 Spring Meetings of the IMF and World Bank held in Washington on 15-17 April 2016, the Global Unions strongly criticised the policies of both international financial institutions, particularly with regard to labour protections. The Global Unions group comprises the ITUC, as well as the BWI, EI, IAEA, IFJ, Industriall, ITF, IUF, PSI, UNI, and the Trade Union Advisory Committee (TUAC) to the OECD.

The statement specifically criticises the IMF and the World Bank's systematic overestimation of the rate of recovery of the global economic since the financial crisis of 2008-9, their inconsistent approaches to addressing inequality, promotion of labour market flexibility, and failures to implement robust labour safeguards in development lending operations. The Global Unions further issued a series of recommendations focusing on improving the institutions support for public investment, social protections, energy efficiency and transition, stronger protection of labour rights, and comprehensive measures towards the effective regulation of the financial sector and tax transparency. The extracts below detail the Global Union's position with regard to labour rights.

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 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 revised draft of the labour safeguard contained 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 draft of August 2015 included 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 submitted written suggestions to the World Bank for correcting the remaining flaws and presented them during the last round of public consultations that ended in March. They also called on the Bank to adopt effective means and procedures for implementing the new safeguard and monitoring its application.

Global Unions have urged the World Bank's private-sector lending arm IFC, which has applied 'Performance Standard 2: Labour 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.

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

... Continued on Page 28 ...

Global Unions' full statement is at: <http://www.ituc-csi.org/statement-by-global-unions-to-the-17170>

IUR reports on the Global Unions group's latest interactions with the international financial institutions with regard to labour rights.

Latin America's trade union landscape

A long history underwrites conflict between landless peasants, indigenous coca farmers, traditional miners, and multinational companies and the State

The regional power balance in the Americas, long tilted towards the North, is changing: Brazil, despite a troubled recent past that saw the country experience economic stagnation and a crisis sufficient to warrant an IMF loan has been on a relentless upwards trajectory, and is the world's seventh largest economy. Argentina, which defaulted on debt repayments, similarly posted extraordinary economic recoveries over recent years, and both have been notable for their efforts to increase social spending and to tackle serious problems of poverty.

Two stark facts about the history of the Americas are key to understanding the evolution of the modern region. The first of these is that the region was largely settled by forceful conquest: in distinct waves, indigenous peoples' communities were decimated, and their land claims buried beneath the complexity of European legal and commercial manoeuvring. Many were brought to the Americas against their will as part of the transatlantic slave trade: more slaves were brought to Brazil than to any other country or region; Brazil was also the last nation in the Western hemisphere to formally abolish slavery in 1888. These histories underwrite contemporary disputes between movements of landless peasants, indigenous coca farmers, traditional and artisanal miners, and the modern nation State and multinational resource extraction and land management.

- In 2008 the ILO reported that in Brazil an estimated 25,000 to 40,000 workers were 'still victims of conditions analogous to slavery'.
- In Colombia there have been regular and serious conflicts between the rural poor, wealthy individuals acquiring land, and multinational land interests

The corporatist legacy and '21st Century socialism'

Between the 1930s and 1980s, around the region, various forms of State-driven industrialisation programmes promoted the growth of State-owned enterprises and the expansion of public administrations. State corporatism sought to integrate labour movements into nationalist development programmes. Corporatist settlements created quite a strong basis for trade unionism to operate, and established what were, at the time, major advances in the protection of workers' rights under the law. In 1917, for the first time ever, the Mexican Constitution made the protection of the worker a State political commitment. Domestic markets were largely closed to international competition and all local employers had to abide by the same labour laws, and faced the same comparative labour costs. Trade unions became key stakehold-

ers in the political coalitions that controlled the State. For example, the General Confederation of Workers, in Argentina, and the Confederation of Mexican Workers became the strongest pillars, respectively, of the Peronist Party and the Institutional Revolutionary Party (PRI). Venezuela, Argentina and Mexico had strong labour movements closely allied to the ruling political parties during the mid / late 20th Century. Both Brazil and Argentina provided for a State-imposed, top-down trade union structure. Cuba's state socialism provided an ideological counterpart but it also built union structures in close alliance with the State.

While these models incorporated trade unionism within certain parameters they also restricted union rights, insisting that public sector workers organise separately, or restricting public sector organising rights. Public sector unions in Brazil, for example, had no legal framework for organising or bargaining in this period¹. With the restoration of democracy and the 1988 Constitution public sector unions in Brazil then acquired a broad sweep of Constitutional rights, although due to a lack of legal enactments the courts have subsequently chipped away at these freedoms, creating an overall much more complex pattern than in the private sector. These models produced at first growth and stability, but ultimately debt, inflation, and corruption. Military rule of one form or another followed corporatism in several countries.

Towards the latter half of the 20th Century neo-liberal market reforms began to be implemented as debt-ridden corporatist economies stalled and countries experimented with, or were forced to accept, IMF-promoted strategies such as privatisation and liberalisation. Where these reforms saw unemployment rise and social benefits fall, matched with the loss of food and energy subsidies, social unrest followed, and was put down brutally in a last gasp of corporatist authoritarianism, as in Venezuela in 1989, when police equipped with what the Inter-American Court of Human Rights described as 'assault weapons', ended a protest demonstration by killing at least 276 people, including seven children. In other countries throughout the region violence and conflict also continued as wealthy land-owners and right-wing interests (in some cases back up by US military intervention) clashed with leftist guerrilla movements seeking to promote revolutionary socialism. These conflicts produced dreadful violence and in many cases have now subsided (Colombia's paramilitaries have – in theory if not in practice – disbanded, and both of the country's guerrilla movements are now negotiating with the authorities in a peace process).

Since the late 1990s the region has experimented with a distinctive blend of socialist politics, dubbed '21st Century Socialism', and promoted

Freedom of Association: Trade Union



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in Venezuela, Bolivia and Ecuador. Other forms of left-wing government have also presided in Brazil, Argentina and Chile during this period, giving the region a distinctively leftist flavour. In comparison with the 1990s, and despite significant challenges and rumblings of unrest, democracy, overall, has progressed. The election of popular and progressive governments more attuned to working class needs meant social improvements and more social inclusion. Particularly notable within this trend was the election of Bolivian President Evo Morales (who is of indigenous descent); his election sent a powerful signal that inroads had been made in the struggle to overcome the centuries long legacies of slavery and colonisation. But the death of Hugo Chavez seemed to mark a turning point, and in recent years the left has found itself on the defensive. Just this past year Argentina has moved from a Peronist to a neo-liberal leadership, and Brazil's President has been struck from office by an impeachment process which many on the left regard as a right-wing coup.

Despite the 1990s reform era, Latin America overall has largely resisted neo-liberal economic orthodoxy. According to the ILO, the region overall saw a fall in unemployment, sustained increase in wages, and the evolution of jobs covered by social security systems, with ILO describing these as 'positive and encouraging signs'. This occurred in a regional context of economic growth and – on average – low inflation, with poverty reduction and improved inequality indicators. But there are still fifteen million people across the region who are unemployed, and almost 48 percent of those employed in the non-agricultural sector have informal jobs, barely subsist, and have no social protection². Among the employed population, at least 130 million people are engaged in informal and precarious work. Here too, the ILO singled out Brazil, where it was noted that most job creation here (unlike most other countries) had occurred in formal employment³.

Public Services International has observed that Central America faces some of the worst economic, environmental, social, labour and political problems, including social exclusion, poor health and education services. According to a 2012 PSI conference report, in Central America:

- 35 percent of children under the age of five suffer from chronic malnutrition, and that this figure reaches 50 percent in some countries.
- No country has more than 55 percent of the population in the formal economy, most people have precarious jobs,
- social security coverage is on average only 24 percent
- investment in education and health is on average only \$19 per capita⁴

Latin America, the ILO and trade union rights

Latin America has a good record for ratification rate for ILO Conventions, and it also has high levels of ratification for Conventions 87 and 98. The exceptions are Brazil (which has ratified C98, but not C87) and Mexico (which has ratified C87 but not C98), and Puerto Rico (which, like the metropolitan USA, is not covered by either of these core instruments). In a recent meeting with the ITUC, Mexico gave an encouraging commitment to ratify Convention 98. So the commitments have been made, and Latin America is largely

within the ILO monitoring and reporting system. Nonetheless, compliance is a serious problem.

Trade union density varies hugely. Cuban density levels are typical of the State-backed monopoly trade union systems of socialist countries. Brazil is the regions' labour movement giant, at 12 million members, yet this is a reflection of a large population as much as trade union organising power: overall, Brazil has a low union density. Argentina also has a large labour movement, and comparatively higher density. In Central America membership and density is in many cases very low.

Throughout Latin America anti-union discrimination and aggressive anti-union campaigning during workplace elections are major problems in the private sector. Privatisations are a major problem in the public sector: workers are dismissed, the union de-recognised, and then a new workforce is hired in a new company with no union. Other barriers to freedom of association include:

- Chile requires that union executive members cannot be member of political parties.
- Venezuela has a history of complaints surrounding the oversight of trade union administration and elections.
- Brazil has a framework where only one union is permitted at each level, e.g. municipal, inter-municipal, state or federal.
- Cuba's State-backed CTC trade union has a de facto monopoly on organising in all sectors.

The region also has a serious problem with violence against trade unionists and impunity for those responsible. This problem of anti-union violence is not unique to the Americas, but it is a far worse problem here than in all other regions. While other regions do experience episodes of violence the level and frequency of violence against trade unionists reported in Latin America is far greater. The worst of these have been in Colombia and Guatemala.

The traditional approach to bargaining had seen leaders rely on union movements for political endorsement, and their close ties to the state had yielded rewards for their members. In Argentina and Brazil the post-corporatist union-State frameworks make it difficult for alternative unions to gain bargaining rights where established rivals exist. In Argentina recent legal developments have, to some extent, opened this framework. In Brazil the reality remains that a very high bar is set for a union seeking to establish itself as a recognised bargaining partner. In several countries there are subtle attempts to replace public sector collective bargaining with so-called consultations.

Strike bans are common, especially in the public sector, and often around an excessive concept of 'essential services', which far exceed ILO standards. Where strikes do go ahead repression has at times involved armed police and even military intervention.

The regions trade unions have very diverse roots in corporatism, socialism, and in movements of the rural poor

Notes

- 1 'The right to strike in the public sector in Brazil', Pedro Armengol, IUR 21(4) 2014, pp8-9
- 2 The ILO in Latin America and the Caribbean: Advances and Perspectives, ILO Regional Office for Latin America and the Caribbean, 2013, p9
- 3 The employment situation in Latin America and the Caribbean, ECLAC / ILO, May 2013, No. 8, p7
- 4 Proceedings of the 29th World Congress of Public Services International, Volume 3, PSI, 2012,p38

Argentina

Thousands of workers and trade unionists demonstrated in Buenos Aires and other cities around the country in support of national strikes on 24 February 2016, and again on 29-30 March, to protest large-scale public sector job losses. The strikes, called for by the Association of State Workers (Asociación Trabajadores del Estado, ATE) and the confederation Argentina Workers' Union (Central de Trabajadores de Argentina, CTA), are in response to the economic measures imposed by the new government of President Mauricio Macri. In office since December 2015, Macri fired more than 50,000 public sector workers within his first one hundred days.

Arthur Svensson prize 2016

The Arthur Svensson international prize for trade union rights for 2016 has been awarded to the website, LabourStart (www.labourstart.org). The prize is awarded for the successful promotion of labour rights throughout the world. Over the past 18 years, LabourStart has run about 240 e-mail campaigns directed at governments and companies that have failed to respect labour rights. During these years the organisation has built up a global network of trade union activists. Eric Lee, chief editor of LabourStart, said, 'the 140,000 trade union activists who have supported our campaigns for workers rights are the real winners of the prize'.

Australia

Following a historic vote by members of the Maritime Union of Australia (MUA) at the end of February 2016, the MUA gave unanimous support for a merger with the Construction, Forestry, Mining and Energy Union (CFMEU). The CFMEU national secretary Michael O'Connor welcomed the result and said he expected it to be supported by the CFMEU national executive. A merger between the MUA and CFMEU would create one of the largest and most powerful unions in Australia.

Bangladesh at the ILO

The ITUC has filed a case concerning Bangladesh to the ILO's Committee on Freedom of Association. Three years have passed since the Rana Plaza factory collapse, in which over 1200 workers were killed. But the Bangladesh government continues to violate workers' rights. The ITUC case details how the Registrar of Trade Unions has persistently refused legitimate registration applications for trade unions in the garment and other sectors. Nearly 75 percent of union registrations in 2015 were rejected on spurious grounds, existing unions have been dissolved, and the government has failed to act to stop factory management from engaging in union-busting. Some union leaders have been the victims of violent attacks. Sharan Burrow, ITUC General Secretary, commented, 'While the Bangladesh Accord is saving lives, the authorities are still colluding with local factory bosses to repress workers' rights. Few employers have agreed to bargain with registered trade unions for decent pay and conditions. The government continues to show callous indifference to the very people who contribute most to the economy, putting key export markets at risk'.

Britain's EU Membership

The British TUC has commissioned an independent legal opinion on the dangers for working people and labour rights in the UK if Britain leaves the EU. The UK referendum on EU membership will be held on 23 June 2016. The report, written by Michael Ford QC, notes that all workers' rights which are currently required under EU law would be potentially vulnerable if the UK were to leave the EU. These include the rights to properly paid holidays, protections for agency workers, health and safety protections, as well as protections against forms of discrimination, such as for pregnant or older workers. Workers would significantly lose their right to seek redress from the European Court of Justice. The TUC General Secretary Frances O'Grady commented: 'bad bosses will be rubbing their hands with glee if

Brexit gives them the chance to cut workers' hard-won protections'. The full opinion is available here: www.tuc.org.uk/sites/default/files/Brexit%20Legal%20Opinion.pdf

European Works Councils publications

The European Trade Union Institute (ETUI) has published two extensive studies on the 1994 European Works Councils Directive and the 2009 'Recast' EWC Directive: *European Works Councils and SE Works Councils in 2015 - Facts & figures and Variations on a theme?* The implementation of the EWC Recast Directive. At the core of the EWC Directives are transnational information and consultation rights of workers' representatives, with the objective of ensuring legal certainty in the setting up and operation of EWCs. In advance of the forthcoming 2016 review by the European Commission and the European Parliament of national implementation of the Directives, the studies seek to analyse 20 years of experience from practice of EWCs, to identify shortcomings and pitfalls. Both are available to download from the ETUI website: www.worker-participation.eu

France

Trade unionists and workers in France have been holding weekly strikes and demonstrations since 9 March 2016, to protest against a labour reform bill that seeks to further decentralise collective bargaining and threatens to extend the 35-hour working week and enable employers to sack workers more easily. The bill – which was adopted by the French cabinet on March 24 – is the first stage of a complete reform of the Labour Code, due for completion in 2018. It will allow companies to introduce a 48-hour week and 12-hour days. The bill has been strongly opposed by the confederations CGT, FO, FSU and Solidaires. On 31 March, official estimates suggested nearly 400,000 people participated in demonstrations, while union figures suggest some 1.2 million marched. At the sixth day of action on 9 April, an estimated 120,000 marched in Paris and other major cities to contest the bill.

Opposition to the labour reforms has also sparked a spate of night-time occupations of the Place de la République in Paris and other locations (known as *Nuit Debout* or 'rise up at night'), in the same vein as the Occupy and Indignados movements.

ILO InfoStories

The ILO has launched a new website, *InfoStories*, which uses video, data visualisation and illustration to explain themes including discrimination in the workplace and forced labour. One section focuses on whether collective bargaining can create a fairer economy. The website is intended to present complex concepts and the results from ILO research in clear, jargon-free language, for use as a tool for presentations and classes on labour-related themes. For researchers, it also offers the raw data used in each chart for download. Visit the website here: www.ilo.org/infostories

Iraq

A new documentary film about the role of 'US Labor against the War' in mobilising the US trade union movement in support of the struggle for workers' rights in Iraq after the fall of Saddam Hussein. The film *Light from the Darkness: The New Iraq Labor Law* was produced by the Center for Study of Working Class Life at Stony Brook University, and is available online: <http://uslaboragainstwar.org/Article/75612/light-from-the-darkness-the-new-iraqi-labor-law>

Made in China

A new quarterly newsletter on Chinese labour, civil society, and rights has been launched. The newsletter, *Made in China*, is co-edited by Ivan Franceschini and Kevin Lin and supported by the Australian Centre on China in the World, the Australian National University, and the European Union Horizon 2020. The first issue includes articles on the recent wave of protests in the Chinese state sector, the expected impact of the Trans-Pacific Partnership on labour rights, and the plight of Chinese labour NGOs. *Made in China* is available online: www.chinoiresie.info/madeinchina

Mauritania

On 9 February 2016, Mauritania became the fourth country to ratify the 2014 Protocol to the Forced Labour Convention 1930. To date, only Niger, Norway and the United Kingdom have formally committed to implementing the Protocol, which supplements the 1930 Convention, by requiring States to take effective measures for prevention, protection of victims and ensuring their access to justice and compensation. According to ILO estimates, some 21 million people worldwide are victims of forced labour. Mauritania ratified the 1930 Convention in 1961, and the 1957 Abolition of Forced Labour Convention (No. 105), in 1997. Slavery was officially abolished in the country in 1980 and criminalised in 2007, but incidents are still reported and, to date, enforcement of criminal sanctions has not been effective. In 2013, Messaoud ould Boulkheir, President of the country's National Assembly, declared that 'slavery is alive and well in Mauritania'. Becoming one of the first states to ratify the Protocol may be an important step for Mauritania fulfilling its commitments to abolishing slavery.

Morocco

A 24-hour national strike was called by Moroccan trade unions on 24 February 2016 to protest a bill on pension scheme reforms. The strike was supported jointly by the federations, the UMT, CDT, UGTM and FDT after tripartite discussions were exhausted. According to union estimates, almost 85 percent of workers participated in the strikes nationally. The reforms to cut public spending – which are being pushed by international financial institutions, the IMF and World Bank – include raising the retirement age (to 63 by 2019) and increasing worker pension contributions. The government claims the pensions of 400,000 workers are at risk, as the government is unable to finance them.

Trade Unions for Energy Democracy

The Trade Unions for Energy Democracy (TUED) saw a surge in membership at the end of 2015, in the wake of December's Paris Climate Change Conference, COP 21. TUED is a global, multi-sector initiative to advance democratic direction and control of energy in a way that promotes solutions to the climate crisis, energy poverty, the degradation of both land and people, and responds to the attacks on workers' rights and protections. In the final months of 2015, seven unions (including the UK union UNISON and the US National Educational Association) representing over 4.5 million workers joined TUED, which now has 47 members in 17 countries worldwide.

UK Trade Union Bill

On 21 April 2016, in a statement on the conclusion of his second visit to the United Kingdom, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, expressed serious concerns about the progress of the Trade Union Bill currently before parliament: 'chief among them are the new threshold requirements regarding industrial action by unions in "important public services". As it stands, the Bill would require that 50% of members turn out to vote on industrial action, and that at least 40% of the entire membership – assuming the 50% minimum turnout met – votes in favour of the action... it is profoundly undemocratic. Anyone who doubts this should ask themselves how they would feel if similar requirements were imposed for UK general elections... There are other concerns with the Bill as well: provisions which allow the replacement of some striking workers; provisions which restrict picketing in a way that ordinary peaceful assemblies are not restricted; and restrictions on electronic voting... Sometimes, when you do not get it right, it is better to step back and start from scratch'.

... Continued from Page 13 ...

take seriously the need for a level-playing field on which workers and employers negotiate.

The combination of the labour reforms and Chile's fluctuating copper fortunes may also bring other issues to the fore. With profits low and wage costs due to rise, it may become imperative to reassess how Codelco's profits are distributed. Under a controversial 1958 law (codifying a practice which began in the 1880s, and was strengthened under the Pinochet dictatorship), Codelco is obliged to allocate 10 percent of its export revenue to the armed forces. These contributions – over which there is no parliamentary oversight – have totalled more than US\$13 billion over the last fifteen years. Since the 1990s, attempts to have the law repealed have repeatedly failed, but Codelco's financing of the military is also back on the political agenda for 2016.

... Continued from Page 17 ...

of trade unionists, social organisations and any potential political parties or movements to emerge from the demobilisation process to participate in Colombian politics and Colombian society. Whilst the peace process is generating real and legitimate hope, it will only be with the full participation of these groups that Colombia will have any chance of addressing the fundamental social inequalities that must be overcome if all Colombians are to live in peace.

... Continued from Page 19 ...

conclusive evidence' linking step-downs with earlier return to work rates no doubt assisted in reaching this conclusion.

The Full Bench decision strengthens the case for the reform of step-downs in workers' compensation laws and, in the interim, provides a platform for unions to negotiate further accident pay provisions. Finally, the arguments put forward by the ACTU may be of assistance to the broader labour movement as part of an international strategy to improve compensation payments for injured workers.

... Continued from Page 23 ...

- 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: Labour 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 actions to contribute to attainment of the Sustainable Development Goals of the UN's 2030 Agenda, which includes targets on full and productive employment, protection of workers' rights, reduction of inequality, universal health coverage, universal primary and secondary education, and national social protection systems for all including floors.

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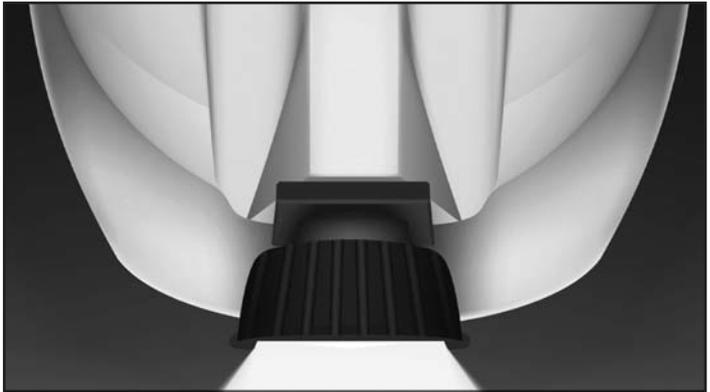
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