A changing post-pandemic world for labour

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ICTUR International
E mail@ictur.org W www.ictur.org

Director Daniel Blackburn

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Editorial: a changing post-pandemic world for labour

The latest edition of IUR focuses on changes taking place in and around the world of work. Our selection reveals labour law reforms but no consistent pattern, with progressive announcements in some countries and sweeping attacks in others. We open with welcome news from the US, where the Biden administration has quickly introduced much needed reforms. Lynn Rhinehart describes the so-called PRO-Act as ‘by far the most significant piece of labour law legislation in decades’ promising to stop employer interference in union elections, restore workers’ bargaining power, improve relief for illegally fired workers, and override ‘right to work’ laws. It seems the US could rapidly see very significant improvements for trade union rights. As David Bacon’s piece on union access to farm workers reveals, however, there remains strong opposition to even basic union rights for even low paid and temporary workers.

Over in Ukraine it is a different picture. As in other former Soviet states, the aspects of trade union law that were the bedrock of a very strong framework of social protection are being identified by a modernising administration as archaic barriers to business. Rights and privileges such as union ownership of and provision of fitness and holiday institutions - which gave trade unions considerable powers within the workplace and indeed a strong social role generally – are also all under threat. In New Zealand there is also a sense of radical reform, albeit it a very positive and pro-union agenda, with the government promising a new sectoral bargaining framework. Many looking at the proposals see real possibilities, but if the government is so supportive of workers’ rights why has the country not ratified ILO Convention No. 87, and why are the nurses on strike again?

The background to the recent violent repression of a strike at a power station in Banshkhali in Bangladesh is set out for us by Anupoma Joyeeta Joyee. Seven strikers were shot dead at Banshkhali, making it one of the most severe recent cases of strike repression, though one that has been largely overlooked by the global unions. ICTUR is further dismayed to record the killing of another migrant worker activist from one of Italy’s base unions, which appears also to have gone unmentioned by the ITUC. And Labourstart’s Eric Lee raises with us another recent case where he argues similarly that the global unions could and should have responded to the case of an arrested migrant rights activist.

We turn then to the other aspect of change discussed in this edition of IUR, which concerns not labour law but the changing nature of work and new trade union strategies and practices. Associate Professor Huang Yu brings a warning from China that workers are so far failing to fight for ‘the robot dividend’, managing at best to sustain conditions. And the other dramatic transformation affecting trade union work over the past 18 months has been the struggle to adapt and continue trade union work under the conditions of the pandemic. Dr. Niall Cullianane and Gareth Murphy discuss how the Irish FSU union has adapted to online tools, celebrating some success, ‘the shift to online unionism enhanced some opportunities for officers and staff to share ideas more frequently’, but noting that ‘socially distanced’ outdoor meetings were still regarded as important, and that ‘exchanges with employers have been less than ideal’. Hazel Nolan discusses relating themes around online outreach and activism in a major dispute with British Gas, revealing unexpected potential for online trade unionism to have a dramatic impact and to generate an impressive level of activism and member involvement.

We close this edition of IUR with thoughts from ICTUR President and Vice President Lord John Hendy QC and Professor Keith Ewing, who remind trade unionists of the importance of language with their warning against the pernicious phrase ‘the labour market’, which they argue is giving ‘legitimacy to a capitalist mythology in which buying and selling labour is a natural and unalterable part of the human condition’.

Daniel Blackburn, Editor
The Protecting The Right To Organize (Pro) Act - A Major Step Toward Restoring The Right To Organise For US Workers

US labour law has failed American workers seeking to organise unions at their workplaces and bargain collectively with their employers. The National Labor Relations Act was adopted in 1935 with great promise, establishing as national labour policy the encouragement of organising and collective bargaining by private sector workers. But the law was weakened by the passage of the 1947 Taft-Hartley Act, and employers quickly realised the law had no teeth and could be violated without consequence. As a result, employers learned to fight and defeat worker organising with a variety of tactics both legal and illegal, knowing that they would face no real penalty if they were found to have violated the law. Other changes adopted by Congress and the courts gave employers greater leverage in the collective bargaining process. Courageous workers are still able to overcome a system that is stacked against them and organise unions, but many more are stymied by employer anti-union campaigns. As a result, only one in 12 private sector workers in the United States is represented by a union – the lowest level since the passage of the NLRA. Yet nearly half of all private sector workers say they would join a union if given the chance. There is a 400% gap between the percentage of workers who want a union and the percentage of workers who have one.

The US labour movement is unified in supporting and promoting the Protecting the Right to Organize (PRO) Act to correct some of the fundamental flaws and weaknesses in the NLRA. The PRO Act is by far the most significant and comprehensive piece of labour law legislation in decades. It is far more comprehensive than the Employee Free Choice Act (EFCA), which failed to pass during the presidency of Barack Obama (although the PRO Act does not contain the majority sign up/card check recognition provision that was a centrepiece of EFCA). The PRO Act addresses major structural flaws in the NLRA on both the organising process and the bargaining process, as summarised below.

Preventing Employer Interference in the Election Process and Putting Workers and the NLRB in Charge

One of the major flaws in current US labour law is that it fails to rein in employer interference in the election process. As a result, workers do not have a free and fair choice over whether to form a union – their choice is made in an environment where employers hold too much sway and control. Take as just one recent example Amazon’s conduct during the organising campaign in Bessemer, Alabama. Amazon forced workers to attend numerous mandatory meetings where the company delivered its anti-union message. Meanwhile, union organisers had no similar access to workers and had to reach them outside the warehouse. Amazon went so far as to persuade county officials to change the timing on traffic lights outside the facility to give union organisers less time to talk with workers when they were driving to and from work. Amazon also manipulated the election process by insisting on adding thousands of workers to the bargaining unit, which delayed the process and diluted the union’s support. Amazon fought the union’s request for a mail ballot election, arguing that the election should be on-site under Amazon’s watchful eye. Even though Amazon lost that argument, it persuaded the US Postal Service to install a mailbox at the Bessemer facility, and there is evidence that Amazon representatives had keys to the mailbox – thus undermining any notion of a free, secret ballot election for workers.

These tactics are all too common. Employers hold captive audience meetings in 9 out of 10 organising campaigns, and they are charged with breaking the law in four out of 10 campaigns. Employers risk breaking the law because they know there are no real consequences. There are literally no financial penalties in current labour law for violations, and no compensatory damages for workers who are illegally fired for being pro-union.

The PRO Act remedies this situation in a number of ways. It bans captive audience meetings, and establishes real penalties – including individual liability for corporate officials – when employers break the law. It makes clear that the timing and mechanics of union elections are between workers and the National Labor Relations Board (NLRB) – employers have no standing to intervene in election proceedings. It streamlines the election process to cut down on unnecessary delay – time that employers use to campaign against the union.

Lynn Rhinehart is a Senior Fellow at the Economic Policy Institute, a Washington DC-based think tank focused on economic issues as they affect working people. She previously was general counsel of the AFL-CIO
Restoring Workers’ Bargaining Power

Through a combination of statutory changes, court decisions, and employer practices, workers’ bargaining power, once they choose to form a union, has been drastically eroded. Employers stall the bargaining process such that nearly half of newly-organised workers do not have an initial collective bargaining agreement a year after voting to form a union. Workers’ leverage in bargaining is weak because the law prohibits them from putting economic pressure on so-called ‘neutral’ employers who might have influence in the bargaining process. And employers can lawfully replace economic strikers, gutting workers’ right to strike over their economic demands.

The PRO Act addresses these problems in a number of ways. First, it establishes a mediation and, if necessary, arbitration process for reaching an initial collective bargaining agreement when workers first organise. Having this process will assure workers that they will achieve what they organised for – a binding collective bargaining agreement with their employer. Second, it repeals the ban on so-called ‘secondary’ activity so that workers have more leverage in the bargaining process. Third, it bans the practice of permanently replacing economic strikers and bans the practice of proactive, or offensive, employer lockouts. Under the PRO Act, employers could not lock out workers unless workers were on strike. The PRO Act also explicitly protects intermittent and partial strikes so that workers have these options at their disposal. Finally, the PRO Act contains a strong standard for determining whether an employer is a joint employer with bargaining obligations for groups of workers. This will help correct the problems created by the fissuring of the employment relationship, where employers use staffing firms, subcontractors, and other arrangements to avoid their bargaining and other legal obligations to workers under US labour and employment laws.

Quick Relief for Illegally Fired Workers

One of the biggest shortcomings in current labour law is its failure to protect and compensate workers who are illegally fired by employers in retaliation for exercising their right to act collectively with their co-workers. As previously noted, the law contains no monetary penalties against employers that illegally fire workers. The NLRB is limited in the types of relief it can order – it cannot award compensatory damages to compensate workers for the harms caused by their employer’s illegal conduct and can only order make-whole relief such as back pay. Even then, the NLRB makes deductions for wages that the illegally-fired worker earned, or should have earned, while their case was pending. These shortcomings, alone and in combination, mean that employers face no financial consequences for breaking the law.

The PRO Act would prioritise retaliation cases over all other cases and require the NLRB to immediately seek preliminary reinstatement for illegally fired workers if their preliminary investigation suggests that the employer broke the law. In this respect, the PRO Act is similar to the Coal Mine Safety and Health Act, which requires that illegally fired miners be preliminarily reinstated while their retaliation cases are pending. This approach spares workers the financial hardship of being out of a job while their cases are pending and helps facilitate quicker resolution of these cases. As it stands, workers wait months or years for the NLRB to investigate their charges of illegal retaliation, and they may be out of a job the entire duration.

Relatedly, the PRO Act establishes a private right of action for workers so that they are not entirely dependent on the National Labor Relations Board to pursue their cases. Under current law, workers have no independent path for pursuing charges of illegal retaliation. If the general counsel of the NLRB determines that their case lacks merit, or otherwise chooses not to pursue the case, workers have no recourse. For example, the Trump General Counsel determined that Uber drivers were not employees covered by the NLRA. As a result, Uber drivers were left with no recourse for claims that they faced illegal retaliation under our labour law. The PRO Act also prohibits employers from requiring workers to waive their rights to bring their cases in court, individually or collectively. Employers have used forced arbitration to curtail workers’ access to justice, and the PRO Act would correct this problem for purposes of organising and collective bargaining rights.

Overriding State ‘Right to Work’ Laws to Allow Union Security Agreements

Among the many anti-union provisions adopted by the Taft-Hartley amendments of 1947 was the authorisation of state ‘right to work’ laws. ‘Right to work’ laws prohibit union security agreements voluntarily negotiated by employers and unions to provide that all members of a bargaining unit who receive the benefits of a union contract and representation share in the costs of that representation, either through union membership and dues or through a fee equivalent to dues. (In the United States, unions are the exclusive representative of workers within a bargaining unit, and they have a legal duty to represent all members of the bargaining unit). Prohibiting union security agreements weakens unions by creating a ‘free rider’ problem, where workers get the benefits of union representation without contributing toward its costs, and it creates divisiveness within bargaining units between workers who are union members and paying fees,
and those who are not. For this reason, passage of ‘right to work’ laws has been a priority of anti-union groups for decades. In recent years, ‘right to work’ proponents have won passage of ‘right to work’ laws in Michigan, Indiana, Kentucky, and West Virginia, and 27 states are now ‘right to work’ states that prohibit union security agreements. (Union security agreements are illegal in the public sector as a result of the 2018 Janus v. AFSCME Council 31 decision by the US Supreme Court). The PRO Act overrides state ‘right-to-work’ laws and explicitly authorises union security agreements between employers and unions – a significant change that will help solidify the ‘fair share’ system of representation in the United States.

Closing Gaps in Coverage

Finally, the PRO Act would close some, but not all, of the gaps in the coverage of US labour law and extend the right to organise and bargain to more workers. In particular, the PRO Act adopts what is known as the ‘ABC’ test – named that for its three interlocking sections (A), (B), and (C) – a strong legal test designed to prevent employers from misclassifying workers as independent contractors and depriving them of their rights under federal labour and employment laws.

Conclusion

The PRO Act is not a panacea. It will not fix all of the problems in our labour law. It does not require employers to bargain with unions over business decisions, or extend coverage to all excluded workers including agricultural workers or domestic workers who work in people’s homes. It does not require employers to engage in multi-employer or multi-site bargaining, which would enable unions to set broader standards and develop sectoral bargaining power. But its passage would correct several fundamental flaws and weaknesses in US labour law and help restore the promise of the law – to encourage the practice of collective bargaining.

The PRO Act passed the US House of Representatives earlier this year and is pending in the US Senate, where current Senate rules allow for filibusters on legislation that require 60 votes to overcome. Forty-seven senators are co-sponsors of the PRO Act, and efforts are underway to win the support of additional senators. The AFL-CIO and other advocates have called for filibuster reform if it stands in the way of passage of the PRO Act and other critical legislation. President Joe Biden has announced his strong support for the PRO Act, in stark contrast to the Trump Administration, which threatened to veto the legislation if it was adopted. There is no specific timetable for action on the PRO Act, but the US labour movement is united in its determination to win passage.

Notes

2 Working people want a voice at work (Factsheet), EPI, at: https://www.epi.org/publication/working-people-want-a-voice/
6 https://www.supremecourt.gov/opinions/17pdf/16-1466_2c8j.pdf
8 Senate Rules Cannot Be Used to Block a Workers First Agenda (Executive Council Statement), AFL-CIO, at: https://aflcio.org/about/leadership/statements/senate-rules-cannot-be-used-block-workers-first-agenda

The PRO Act overrides state ‘right-to-work’ laws and explicitly authorises union security agreements between employers and unions.

Over 60 million jobs have been lost since the beginning of the financial crisis in 2008. With the addition of new labour market entrants over the next five years, 280 million more jobs need to be created by 2019. Half the world’s workforce are employed in precarious work and one and three jobs pay less than $1.25 per day. To just maintain the status quo 1.8 billion jobs must be created by 2030. We are seeing levels of inequality in income distribution back to the scale of the 1920s. We are living through a boom period but only for the one percent.

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FOCUS A CHANGING POST-PANDEMIC WORLD FOR LABOUR

Attack on Rights: Case Of Ukraine

The government is trying to radically reshape the social map of Ukraine for new business owners who are to come as a result of recently announced large-scale privatisation, through direct liquidation or indirect reduction of guarantees, benefits and compensations.

From 1992 to 2018, 133,000 facilities were privatised in Ukraine. During that time, the public sector shrank to 16 percent. 5/6 of the country’s economic potential was privatised for less than 11 billion USD, which is only 13 percent of Ukraine’s nominal GDP in 1990. Due to the new wave of privatisation, the state should have no more than 5 percent of ownership.

Today, according to various estimates, and this is the verdict of privatisation, ‘only 7 percent of new highly productive jobs’ are created. Seven percent! The rest of the jobs are for wages of 150-250 USD a month.

This is a shameful level for workers of any country. This is the bottom of industrial and agricultural production. Ukraine became a country that the government promotes as a place with cheap labour that pretends to be its competitive advantage. In fact, it is a disgrace to the model ‘the market will adjust everything and put in its place’.

Instead of attracting investment, there is an unprecedented outflow of labour, which is also generated by an unprecedented attack on labour rights and institutions. As a result, a significant decline in trade union membership, and workers’ coverage by collective agreements, and, consequently, a decline in their income and marginalisation.

At the same time, under pressure from new and future owners of enterprises subject to privatisation, the state intervention in the labour market continues to intensify. The government is trying to ‘clean up’ the labour and trade union laws and is even considering denouncing a number of ratified conventions that are hindering implementation of their plans.

The content and scope of existing guarantees and rights of workers to safe and healthy working conditions, their proper social protection in this area will be significantly narrowed. The next draft law of the Ministry of Economy ‘On Safety and Health of Workers at Work’ does not meet the main goals set out in the EU-Ukraine Association Agreement.

At the same time, there is deprivation of trade union rights and guarantees, which are considered a rudiment of the industrial economy (which is being destroyed in Ukraine), and this is being initiated. If the draft law No 2681 is adopted, the trade unions will be restricted in their rights to establish primary organisations in enterprises, deprived of the most important powers, social dialogue will be exhausted, including coordination procedures for consideration of draft laws and other regulations in the field of labour and social and economic relations.

The draft law No 3115 proposes to eliminate parity of unemployment and generally deprive the trade union and employers’ parties of their role in managing this self-governing Fund. Draft law No 3663 proposes to liquidate the Social Insurance Fund and entrust its functions to the Pension Fund of Ukraine.
Amendments were made to the Tax Code of Ukraine (the Law No 466-IX), which obliges tens of thousands of trade unions to file regular tax and financial reports, with the trade union members not having professional accounting training and dealing with accounting and reporting on a voluntary basis.

The scale of attacks on labour rights shows that Ukraine turned into one of the laboratories, in particular, for deregulation of labour relations. ‘The country is a laboratory rabbit,’ said Roman Vashchuk, former Canadian Ambassador to Ukraine (2014-2019), during his presentation at the Shevchenko Scientific Society of Canada’s online conference on ‘Western reforms’ in Ukraine.

The scale of the attacks on labour rights shows that Ukraine turned into one of the laboratories for deregulation of labour relations. And it all started with the liquidation of the Ministry of Labour, the transfer of labour relations to the Ministry of Social Policy, and then to the Ministry of Economic Development, Trade and Agriculture. It came to the point that Ukraine, where a declining spiral of rights is being set in motion everywhere, begins intimidating workers, especially of neighbouring countries.

The government is trying at all costs to deprive workers of the rights they have fought for for decades. The COVID-19 pandemic and its impact on labour became another catalyst for aggravation of labour rights. Of course, the trade unions understand that the labour market is developing rapidly, new forms of employment are emerging, which bring new challenges, require new approaches to labour organisation, due to rapid development of technologies, which, in turn, require updating the regulatory framework, which can be developed as a result of wide public discussion.

However, instead of public discussion involving the social partners, everything is limited to meetings of the National Reform Council, a special advisory body under the President of Ukraine, established in August 2014. Mikheil Saakashvili, Chairman of its Executive Committee, former Georgian President, together with Oleksandr Olshanskyi, well-known Ukrainian businessman, founded the non-governmental organisation Office of Simple Decisions and Results. Among its largest donors are Tomasz Fiala, CEO of Dragon Capital, and the Association of Information Technology Entrepreneurs. The Office resembles the Scientific Research Institute of Sorcery and Wizardry in the famous science fiction writers Strugatsky brothers’ novels Monday Begins on Saturday and Tale of the Troika.

Of course, the EU-Ukraine Association Agreement does not provide for creation of the Scientific Research Institute of Sorcery and Wizardry, which would deal with magic recipes for simplifying labour relations, as if in the working people’s interests. All recipes of the Office are recipes for self-removal of the state and leaving the employee alone with the employer. These are recipes for abandoning the paternalistic state, its social character. These are recipes for abandoning Ukraine’s international obligations in labour relations. At one time, Mr Saakashvili destroyed collective labour relations with the Ministry of Labour and the Legal Inspectorate in Georgia. This is the purpose of introduction of a simplified procedure for labour relations for the enterprises with up to 250 workers, which are 99.9 percent of business entities.

It should be noted that all decisions of the National Reform Council and its Executive Committee, in accordance with Presidential decrees, should be discussed and agreed, including with public organisations. Nobody knows with which public organisations, for example, the draft law on simplification of labour relations was discussed. Probably with the draft laws’ developer of the Office of Simple Decisions and Results, which is registered as a public organisation.

The so-called ‘simplification’ of the labour law is de facto reduced to minimising social and legal protection of workers and strengthening attacks on the trade union rights. All of this contradicts both the Association Agreement and the Canada-Ukraine Free Trade Agreement, especially its labour section, which requires draft laws to be discussed with the social partners.

At the same time, it is reminiscent of attempt of the Centre for Strategic Development of Aleksei Kudrin, Chairman of Accounts Chamber of the Russian Federation, to create an emergency body to debureaucratise the laws and radically reform the legal system. The key idea was to form an administrative court with 7-9 people. This body had to eliminate the ‘brake points in the law’ – gaps in bylaws, excessive and contradictory rules.

All changes to the labour and trade union laws are embodiment of ideas of libertarianism professed by the ruling Servant of the People party, which views trade union activities and traditional trade union rights as an anachronism, a relic of the industrial era, and an obstacle to economic progress in modern society.

Under pressure from a growing number of private owners of means of production, the government is trying to turn the trade unions into a secondary subject of labour relations. According to Halyna Tretiakova, Chairperson of the Social Policy and Protection of Veterans’ Rights Parliamentary Committee, ‘Today Ukraine is preparing a large-scale trade union reform. This reform is conceived as one of the components of social sphere reform. The scheme is simple: absolute deprivation of the trade unions of their rights, and then accusation that they are unable to address vital issues of ordinary citizens. The next stage is their so-called reform in order to finally transform them into organisations such as associations of phialatists or horticultural societies. And this, as mathematicians say, is a bad infinity.

Being dependent on foreign investments, the Ukrainian state entered into competition for...continued on page 28...
Progress and contradictions: New Zealand's new sectoral bargaining framework

In 2018 I worked with the NZCTU's legal advisor to co-author a submission to the UN's Universal Periodic Review of New Zealand, which took place the following year. It was an interesting project to be involved with, because the violations of trade union rights in New Zealand are obviously less severe than many of the situations ICTUR normally responds to, but it was nonetheless an example of a country in which a very strong trade union framework had been dismantled, with sweeping and lasting impacts on the world of work. Does the new sectoral bargaining framework herald an effective tack back to a robust labour rights system?

New Zealand is introducing a sectoral bargaining framework that many will see as an inspiring model. New Zealand remains one of very few countries in the world not to have ratified the most fundamental international instrument on trade union rights, ILO Convention No. 87. Historically, this peculiarity had come about not because of opposition to trade unionism, but conversely because New Zealand believed that its 1930s-era compulsory trade union system was superior to – and would be incompatible with – the post-war liberal trade union rights model of 'freedom of association'. The New Zealand Government thus refrained from ratification of the ILO instrument and only ratified the UN's two core human rights Covenants (the ICCPR and the ICESCR) with formal reservations against the freedom of association principles. But the reservations New Zealand lodged were specifically worded to apply to 'existing legislative measures' in 1978, and were intended to protect a compulsory union membership system that ended decades ago. As ICTUR and the New Zealand Trade Union Council wrote in 2018 submissions to the UN Universal Periodic Review, 'this once principled stance has simply become an embarrassing anachronism' that 'sends the wrong message about New Zealand's commitment to freedom of association and the protection of that right'.

For most of the 20th Century registered trade unions enjoyed monopoly bargaining rights and a system of compulsory unionism, until the dramatic changes wrought by the Employment Contracts Act (ECA) of 1991, which remained in force until 2000. The Act supported individual bargaining and individual contracts rather than collective agreements and curtailed the grounds on which strike action could lawfully be initiated. Membership in NZCTU-affiliated unions halved over the decade. The fall was attributed to the ECA but also widespread privatisation and high unemployment. National bargaining was terminated in several sectors, and by 1993 there had been a 45 percent fall in the number of workers covered by collective agreements. In 1994 the ILO ruled that the ECA breached ILO Conventions 87 and 98, but the Government ignored the ruling. According to the NZCTU the ECA encouraged the growth of 'poor quality jobs', with an increase in casual and part-time work and exploitation of vulnerable workers by bad employers. It had also led to a 'collapse of trust and good will' in industrial relations.

In elections in Nov. 1999 the Labour Party returned to office and introduced the Employment Relations Act (ERA). The ERA retained a focus on individual contracts and a workplace bargaining model, giving registered unions the exclusive right to negotiate collective agreements and introducing a new legislative concept (based on Canadian models) of good faith negotiations in collective bargaining. The NZCTU regarded the Act as only a moderate improvement that ultimately failed in many of its stated objectives. Following the National party's return to power in 2008 a raft of reforms were introduced, which the NZCTU denounced as an attack on union membership, exercise of union rights, collective bargaining and, therefore, wages and conditions. For all the praise that the country's current Prime Minister and Labour Party leader Jacinda Ardern earned internationally as a 'liberal beacon', and 'the anti-Trump', the problems for New Zealand's workers and unions have as yet remained structurally unchanged since the 1990s. Just this year NZCTU leader Richard Wagstaff reported that 'at least 30 percent of New Zealand's workers – over 635,000 people – are in insecure work. We believe it may well cover 50 percent of the workforce'. 95,000 workers have no usual work time, 61,000 workers have no written employment agreement, 573,000 workers earn less than the Living Wage and almost a quarter of a million Kiwi workers say they have experienced discrimination, harassment or bullying at work.

But in 2021 the prospect of radical change looked more likely, with the announcement of the imminent introduction of a system that would facilitate the negotiation of sector-wide agreements that would be given the force of law. While hardly a return to the country's once fiercely pro-union framework, the new model is still a significant change for an economy in which enterprise unionism has become the norm and in which there are few remnants of the old national level agreements that once policed pay and conditions. The new model dates back to a 2019 discussion paper in which the Government...
sought views on a range of options for the design of the new system. The consultation closed on 27 November 2019, and in 2021 the outline model of the system that would be introduced was unveiled. Legislation is now being drafted, with the expectation that it will be passed into law in 2022.

The outline model is geared towards sectoral collective bargaining and the establishment of so-called Fair Pay Agreements that will set minimum standards (on a range of issues – despite the name the bargaining process will not be limited to pay) throughout an industry or occupation. To get the process underway, unions will need to demonstrate a certain level of representativeness, either 10 percent or 1000 workers in membership (a ‘public interest’ test will provide a third route) across either a sector or occupation, according to the union’s claim.

Certain flexibilities ‘can’ be allowed, including for example regional differences, and exceptions for businesses facing financial hardship. Government funds will be provided as a contribution to support bargaining, and the NZCTU’s coordinating role, though this is rationed to the costs of a maximum of 4 FPA negotiations each year. One aspect that will stand out internationally is the rule that employers ‘must allow employees to attend two 2-hour paid meetings during FPA bargaining.’ This builds on already quite progressive rules that include a right of access to workplaces for the purpose of seeking ‘to recruit employees as union members’ (Section 20(3), Employment Relations Act 2000).

The devil lies always in the detail, and as the legislation is not yet published this can only be a preliminary overview in quite general terms, but the process for reaching agreement looks quite interesting. There will be provision for substantial discussion and an emphasis on reaching agreement between the parties, but with mediation support from the Employment Relations Authority where bargaining stalls. Once an agreement is reached it will need to be endorsed by a simple majority of fewer voting individuals but an equal vote share). Well prove to be a stalling point, as the employer-side vote will normally be easier to coordinate (with fewer voting individuals but an equal vote share).

How this particular aspect is regulated, and how voting pans out in practice, will be critical to the effectiveness of the legislation as a sectoral bargaining tool. However, where bargaining parties reach a stalemate, the proposal is that the Employment Relations Authority will set FPA terms ‘by determination’7. Once the parties reach agreement (or following the intervention of the Authority) the terms will be given force of law by secondary legislation.

The NZCTU has greeted the announcement warmly “Fair Pay Agreements will provide a framework for fairness, they will allow for an industry-wide set of minimum standards for employment terms and conditions. These standards will include minimum pay rates, penalty rates, and other conditions. Any sector or industry which has a Fair Pay Agreement will now have a better base of employment conditions, and all employees will now require employment agreements that recognise these standards as a minimum,” said Richard Wagstaff, President of the NZCTU, emphasising that the sectoral framework ‘will improve the lives of many New Zealanders and their families by lifting the wages of some of our lowest paid. In the past year we have all clearly seen the essential work that people working in our supermarkets, our cleaners, and security guards do. But they continue to be paid the minimum wage or close to it.’ The reform ‘signals the biggest change to workplace laws in several decades. This is what working people in union have been campaigning for; a more balanced employment relationship between working people and employers – putting people back at the centre of employment’9.

While the new bargaining framework has been widely welcomed by trade unionists, however, there remain key areas of concern and discontent in the labour movement, particularly in relation to the situation for public sector workers, who will not be covered by the new FPA system. Indeed, the announcement of the new FPA framework followed quickly on the heels of an announced public sector pay freeze, which has prompted opposition from teachers and nurses, with discontent leading 30,000 nurses to join a one-day strike on 9 June (further strikes were announced in July). Internationally, many trade unionists will be intrigued by New Zealand’s renewed commitment to sectoral bargaining, and will be following the new framework with keen interest. However, the country’s position on trade union rights at the international level looks set to remain oddly contradictory, with no sign of movement towards ratification of ILO Convention No. 87.

Notes
1 The New Zealand delegation’s concerns around ‘freedom of association’ under the UN instruments (which largely mirror the ILO concept) is discussed (briefly, but informatively) in The Universal Declaration of Human Rights: Origins, Drafting, and Intent, by Johannes Morsink (University of Pennsylvania Press, 1999), p178-9
2 Joint submission 17 (ICTUR / NZCTU), New Zealand UPR 2019
3 BBC online, 17 October 2020
4 NZCTU, at: https://www.union.org.nz/employment-law/
6 The framework will supposedly cover all ‘employees’ but not ‘contractors’
Who’s ‘Taking’ From Whom? The Supreme Court’s Real Target - Farmworkers’ Organising Rights

Most of the media coverage of the recent Supreme Court decision about the farmworker access rule took for granted the way growers, and the court, defined this regulation. Jess Bravin in the Wall Street Journal called it ‘a regulation giving union organisers the right to visit farmworkers.’ The first line of the rightwing majority’s opinion called it ‘A California regulation [which] grants labour organisations a right to take access to an agricultural employer’s property.’

The court, and the growers, deliberately confuse the mechanism of the rule with rights, calling it a right of organisers or organisations. It is not. The right the rule implements is simple. When workers are protesting and organising a union in the fields, they have a right to talk to union representatives at work. It’s a right of workers, rather than a right of union representatives. Rolling back this right, and the ability of farmworkers to organise against their endemic poverty, is the main target of the Supreme Court’s attack.

At Cedar Point Nursery, the grower that filed the case heard by the court, the stakes were clear. Cedar Point is a nursery growing rootstock for commercial strawberry growers in Dorris, a remote town in northern California near the Oregon border. Hundreds of workers migrate here from their homes in central and southern California every year to harvest, trim and pack the plants.

In 2015 Cedar Point labourers walked out to protest conditions that included, according to worker Jessica Rodriguez, low wages, dirty bathrooms, and harassment from supervisors. They called the United Farm Workers, which sent organisers and implemented the access rule to talk with them on the property. The strike lasted for just a day, and after the strikers returned to their jobs, the organising effort fizzled out. No election was ever held to begin the process of trying to get a contract.

What happened at Cedar Point is not unusual. The following spring in McFarland, in the densely farmed San Joaquin Valley, hundreds of workers struck the blueberry fields of Gourmet Trading over similar issues. Support for the organising was overwhelming. They called the UFW after they’d struck. Once they returned to work the union filed for access, and workers held meetings after work at the ranch. They voted for the union a few days later, and today they work under a union contract.

In 1996, during a huge campaign to organise the strawberry industry in Watsonville, UFW organisers visited picking crews in dozens of fields. They taped butcher paper on the walls of the portapotties during lunchtime meetings. Strawberry workers wrote down their demands for raising some of the lowest wages in agriculture, and planned marches to the company offices to announce them.

In all these cases the access rule provided a way for workers to understand the organising process and get help with it. Farmworkers need this because of the nature of the work. They are often migrants, working in a harvest in one area of California although they live in another. Cedar Point’s workers lived hundreds of miles from Dorris, and during the work season slept in motel rooms and temporary housing. At Gourmet Trading some pickers travelled an hour or more to get to the field every day. Those distances make it hard—and sometimes impossible—for people to meet with union organisers at home.

According to the Handbook of the Agricultural Labor Relations Board, which administers California’s Agricultural Labor Relations Act, “The access regulations … are meant to insure that farm workers, who often may be contacted only at their work place, have an opportunity to be informed with minimal interruption of working activities.”

Organising a union is a collective process. Workers need to talk with each other about it. When the Pacific Legal Foundation argued the Cedar Point case in 2017 before the Ninth District of the U.S. Court of Appeals, and lost, its attorney Wen Fa asserted, ‘All the workers live in houses or hotels. Many have cellphones.’ Even if this were true, forming or joining a union at work is not like buying insurance. It is something people do together.

When organising starts, and workers and the union announce they want an election, California’s labour law says voting must take place within a week (within 48 hours if there’s a strike) because the work only lasts as long as the season. The law requires the grower to furnish a list of names and addresses, but according to longtime organiser and former UFW vice-president Eliseo Medina, “those lists are notoriously bad.”

For the tens of thousands of H-2A guest workers brought to California by growers every year, home visits are often forbidden in their company housing. “H-2A workers are even more impacted by losing the access rule,” Medina charges. “They don’t have the legal right to organise and they’re living in housing under the growers’ 24-hour control”.

But the most important thing about the access rule is that it demonstrates that the grower doesn’t have absolute power at work. As an organiser for the UFW in the 1970s, and now as a journalist, I’ve seen what normally happens in the fields when workers start to organise. The crew foreman usually begins talking all day about how terrible the union is. He makes threats: if people join the union they’re going to be fired or the company is going to move its crop production elsewhere.

Supervisors buzz around the field in their pickup trucks, watching everyone and making sure the
workers know they’re being watched. Very often the company hires union busters. They talk to workers, while they’re working, as long as workers are in that field. When union organisers come into the field at lunchtime, it shows that the union has power too, and can actually change things. That’s really why growers hate the rule - because it’s a limitation on their power. According to Medina, “It gives people confidence that change is possible”.

Growers hated the rule because it made organising easier, and called it a ‘taking’. In an important way it is. Unspoken in the Supreme Court decision is that the real damage growers suffer is that farmworker wages will go up if organising is successful. If the access rule helps them, it will cost the growers money.

That’s not a respectable argument, though, even for right-wing lawyers and justices. Instead Pacific Legal Foundation attorney Wen Fa claimed (and the Supreme Court agreed) that access damages growers’ property rights. Property rights trump the right of workers to organise. The majority opinion asserts, ‘No traditional background principle of property law requires the growers to admit union organisers onto their premises.’

However, William Gould III, former chair of both the National Labor Relations Board and the Agricultural Labor Relations Board, says the access rule creates “a kind of public forum where everyone is congregated [that] is vital to union organising efforts and our public policy which supports them”.

He warns that the impact of the court’s decision will not be confined to farmworker organising. “One of the Courts casualties,” Gould charges, “may well be the constitutionality of legislation [the PRO Act] passed by the House in Washington, pending before the Senate, which would give expanded access to reply to employer captive audience speeches filled with anti-union propaganda on company time and property”.

While the PRO Act’s passage is far from certain, the sights of growers and the Pacific Legal Foundation are also trained on a target closer to home. The Center for Constitutional Jurisprudence, another right-wing legal think tank that filed an amicus brief in the Cedar Point case, has been trying to knock out another key provision of California’s farm labour law: mandatory mediation. Under this procedure, when workers vote for a union and the grower won’t agree to a contract, the ALRB can appoint a mediator to craft a settlement. That can then be adopted by the board and imposed on the grower as a first contract.

The Center for Constitutional Jurisprudence supported a challenge to mandatory mediation by Gerawan Farming, Inc. In 2017 the California Supreme Court ruled against Gerawan, and held the process constitutional. It would not be unlikely to see growers take a challenge to the US Supreme Court, seeking a decision upholding property rights. Ultimately, the Agricultural Labor Relations Act itself could either be taken off the books, or, as it was in the 1980s, rendered so weak as to be virtually useless to farmworkers and farmworker unions.

In 1975, when California passed the Agricultural Labor Relations Act, the UFW had a big impact on the wages and working conditions of California farmworkers. At that time the base wage in a union contract was about two and a half times the minimum wage. At the end of the 70s the union had 40,000 members paying dues at any given time. During those years, when I was an organiser for the union, we’d win elections to represent about 160,000 workers.

That’s not the case today. In her defence of the access rule, ALRB attorney Victoria Shahid argued that it was not used often enough to impose a real burden on growers. In 2015, she noted, the UFW only used the access rule on 62 of California’s 16,000 farms.

The decline in the union’s strength has had a direct impact on the living standards of farmworkers. Today their wages hover around the minimum wage. Each year growers bring a mushrooming number of H-2A guest workers into the state’s fields. “Even undocumented workers have more rights than H-2A workers,” Medina charges. In this context, eroding the right of farmworkers to organise will have immediate consequences.

For the UFW and other unions trying to rebuild their strength in the fields, access has been a very important tool. On the ALRB’s current agenda is an access request filed by the Teamsters Union to go onto the property of a cannabis grower. Workers in the industry today are organising rapidly, and unions use access to go into the greenhouses to talk with them.

Losing the access rule is not going to stop farmworkers from organising in California and elsewhere—or stop unions from helping them. That is the key to raising their wages and fighting this country’s epidemic of rural poverty. Farmworkers were not helped, however, by the relative silence of the labour movement in the face of this attack on their rights. And because other workers need these same rights desperately—to access and mandatory mediation—the labour movement’s silence hurts their efforts as well.

The Supreme Court may have made a predictable decision in the Cedar Point case. But a much more vocal and militant response can and should push hard to force its rightwing majority to retreat. Start with the question the court so artfully dodged - when growers enforce poverty for the country’s 2.5 million farmworkers, who is ‘taking’ from whom?

Notes
2  https://www.youtube.com/watch?v=ha7sQXmFk
5  https://uclawreview.org/2020/06/16/did-the-ninth-circuit-create-a-circuit-split-analyzing-cedar-point-nursery-v-shiroma/
Qatar: The strange case of Malcolm Bidali

Last summer, the international trade union movement was celebrating the news from Qatar. The country which is slated to host the 2022 FIFA World Cup had come under enormous pressure to respect the rights of workers, especially migrant workers, who were getting the country ready for such a high profile event.

The headline on the website of the Brussels-based International Trade Union Confederation (ITUC) could not have been more gushing: ‘A new dawn for migrant workers in Qatar’. The article went on to say that ‘new laws adopted today by the State of Qatar are a game changer in the protection of workers’ rights’. And just to be clear: the focus was on the rights of migrant workers.

The ITUC’s general secretary was quoted as saying that ‘these changes are a break with the past and offer a future for migrant workers in Qatar underpinned by laws which respect workers, along with grievance and remedy systems’.

But events in recent weeks in the gulf state have raised questions about how much has really changed.

On 4 May, Qatari security services arrested a 28-year-old Kenyan man employed as a security guard by GSS. His name is Malcolm Bidali and at first no one would confirm that he was being held and under what charge. Bidali has become known in recent months as an outspoken proponent of migrant workers’ rights in Qatar, writing regularly — under a pseudonym — for various blogs, but also speaking publicly at events.

A few days after his disappearance, a number of global civil society organisations stepped forward demanding to know his whereabouts. These included Migrant-Rights.org, FairSquare, Amnesty International, Human Rights Watch and the Business & Human Rights Resource Centre. No unions were in the group sending that message. The Qatari government was forced to confirm that Bidali was being held on the charge of violating Qatar’s security laws and regulations.

Several days later, on 21 May, one of the global union federations — UNI Global Union — which represents security guards, announced that it had sent a letter to the Qatari government. UNI demanded Bidali’s immediate and unconditional release. ‘We believe that Mr. Bidali is imprisoned for his documentation of inhumane housing and working conditions, such as crowding ten people into a room, gruelling schedules, and cuts to income’, wrote Christy Hoffman, UNI’s General Secretary.

Finally, a few days ago, word got out that Bidali had been released. But the threat of imprisonment still hangs over him. According to the Qatari government, Bidali was ‘formally charged with offences related to payments received by a foreign agent for the creation and distribution of disinformation within the State of Qatar’.

As in similar cases in other countries, the message being sent by the Qatari government could not be clearer: the arrest of Malcolm Bidali, who spent nearly a month in solitary confinement, was designed to strike fear into the hearts of any other migrant workers in Qatar.

It’s great that organisations like Amnesty International put pressure on the Qatari regime to release Bidali. But — with the notable exception of UNI — where were the unions?

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Eric Lee is the Editor of Labourstart.org

It’s great that organisations like Amnesty International put pressure on the Qatari regime to release Bidali. But — with the notable exception of UNI — where were the unions?
The Rising Death Toll of the Banshkhali Coal-Fired Power Plant

Throughout Bangladesh’s crucial journey of graduating into a developing economy, the corporations have taken the front seat instead of their driving force – the workers. While the enormity of the 2013 Rana Plaza disaster could not be ignored by the global unions and corporate social responsibility groups, the discreetly emerging trend of repression in the energy sector is going largely unnoticed.

On 17 April 2021, seven workers were killed and 21 were injured as a result of the police open firing at their protest at the SS Power I Ltd (Banshkhali Power Plant), Chattogram, Bangladesh. The workers initiated the protest demanding payment of wage arrears, an increase in wages, reduction of work hours to half-day on Fridays and iftar break during Ramadan. Certainly, the Banshkhali incident is not as mammoth as the Rana Plaza disaster, but given its troubling historic build-up, it should have received wider global attention. However, inadequate links between the locally involved unions and the international unions, among others, have led to scarce international coverage.

Context of the conflict

Banshkhali Power Plant is a joint venture between the Bangladeshi conglomerate S Alam Group, China’s SEPCOIII Electric Power Construction Corporation and HTG Development Group Co Ltd. with the respective stakes of 70, 20, and 10 percent, to construct a 1320-megawatt coal-fired power plant. Ever since the plant’s construction began in 2016, the villagers of Banshkhali have been critical of its installation despite S Alam’s promises of local development and creating employment. Banshkhali is located on the southeastern coast of Bangladesh, just 59 kilometres south of the Chattogram seaport. Its biodiversity is critical not only for the locals but also for the entire country. People of this coastal region primarily depend on agriculture and fisheries for their livelihoods. The Banshkhali farmers, housewives, salt workers and fishermen were made aware of the potential adverse effects of coal-fired power plants by extensive advocacy1.

Potential impacts, such as, the salinisation of groundwater, pollution of local water bodies, disruption of water drainage patterns would significantly impact their livelihoods. The promise of between one and three thousand factory jobs, for many was not seen as sufficient to offset the potential impact of the power station on the fishing and farming that sustained a population of 50,000. While protesting the construction of the plant in 2016, four locals were gunned down by the police. Those killings were allegedly not properly investigated2, and it is feared that the same may happen this time around as well. Historically, these killings tend to disappear from the Bangladeshi news cycle rapidly. Any follow-up is usually rare unless rights organisations or civil society members intervene.

Despite opposition, construction of the powerplant carried on, and the government of Bangladesh remained nonchalant about the Banshkhali locals’ legitimate concerns. Even the most preliminary step of the venture -- the acquisition of land -- was controversial. A recent independent analysis also claims that the Environmental Impact Assessment (EIA) contains inaccuracies and omissions3. The analysis claims that the EIA has used flawed air quality modelling to show predictions of a significantly lower pollution level.

The State’s response to workers’ protests

The reason for the police firing 332 shots at the unarmed protest of workers on 17 April 2021 must be explored, especially when on the other side of the protest is the corporation that has violated those very workers’ rights4. The undeniable pattern of suppression of protests in current Bangladesh shows that the state has often used its police force to protect the interests of corporations. The law enforcement agencies’ classist treatment of the working class is also apparent from the stark difference in their conduct towards the corporation owners as opposed to the poor workers.

The situation prior to the Rana Plaza collapse in 2013 was horrendous, both in terms of police violence and workplace safety: figures from the International Centre for Trade Union Rights (ICTUR) show six workers killed by police in 2009, 45 garment workers killed in factory fires in 2010, and four garment workers shot dead in protests over low pay and poor safety standards in 20125. The greatest death toll came in 2013 when at least 1132 people were killed in the Rana Plaza building collapse6. Only five months earlier, at least 112 workers had died in the Tazreen Fashions factory fire on the outskirts of Dhaka. In the years immediately following Rana Plaza police violence against striking workers has been less severe, but it has persisted: on 8 January 2019 police fired rubber bullets and tear gas on the outskirts of Dhaka, killing one worker and injuring many others.

Reforms to the Industrial Relations Ordinance started with the Bangladesh Labour Act 2006, and
The government’s compulsion to exhibit economic growth regardless of any human and environmental costs have put the Bangladeshi working class at a precarious position.

more changes were introduced following the events of 2013, but trade union rights hardly changed. Participating in an unregistered trade union remained a criminal offence under the amended law, while the Bangladesh Labour (Amendment) Act 2018 established new criminal penalties for various attempts to compel employers to agree to demands. As many businesses refuse to host formal discussions with unions, workers often express dissatisfaction through spontaneous protest, which the law has criminalised. These actions are then repressed by a violent police response. Sub-contracted workers, such as those who protested at Banshkhali, have even fewer formal or effective channels to raise grievances.

On top of employers opposing union registration altogether, the right to strike is further encumbered by the requirement of 51 percent union members voting in favour of the strike. The government retains the right to stop the strike if it is satisfied that the strike may cause ‘serious hardship to the community’ or is ‘prejudicial to national interest.’ These terms have not been defined. Therefore, in cases where the situation may potentially escalate, employers benefit from these legal loopholes that can potentially thwart the workers’ strikes. Such dubious provisions also corroborate to the state’s preference towards the corporate employers as opposed to the workers.

Where disputes arise between workers and corporations, it is usually the workers who are termed ‘unruly,’ so as to justify firing at them. Although the Penal Code of 1860 permits the use of lethal force for the purposes of self-defence and protection of property, the force must be proportionate to the perceived threat. For the Banshkhali incident, however, by all accounts, the proportionality of firing 332 number of lethal shotgun bullets at an unarmed protest defies all justification of legality and morality. UN guidance on the use of armed force says that it can only be justified where there is ‘imminent threat of death or serious injury’ and only when less extreme methods are insufficient. In the aftermath of the shooting at Banshkhali a number of left unions did speak out against the killings, including the Bangladesh Trade Union Kendra (English: Centre) and the Sramik Karmachari Oikya Parishad (SKOP, English: Labour Worker Unity Council). However, perhaps due to these unions not being members of the global unions group, the Banshkhali incident has received insufficient global coverage.

Not only the police, even the lawmakers continuously fail to show a reasonable duty of care to working-class citizens. This became obvious when the government imposed a partial lockdown during the second wave of Covid-19 that completely excluded readymade garments factory workers. The subtext of such provision was that the minimum wage workers on whom the economy of Bangladesh stands are expendable. Their lives seem to be less valuable than the corporation owners they work for. The state law enforcement merely reflects this lopsided national moral compass in the country where class inequality is increasing rapidly – particularly with the threat of climate change.

**Legal actions following the incident**

Instead of admitting accountability for applying lethally disproportionate force on a legitimate protest, on 18 April, the Banshkhali police filed a case accusing 2500 people on charges of attacking law enforcement officials. The Chief Coordinator of the power plant lodged another case against 22 named and 1040 unnamed individuals with allegations of setting vehicles on fire during the protest. Two men were arrested on 3 May over the case filed by the Chief Coordinator.

On 21 April, Ain O Salish Kendra (ASK), a leading Bangladeshi rights organisation, filed a writ petition against the state authorities as a public interest litigation. It sought a directive on the relevant authorities to conduct a judicial inquiry into the killings. The petitioners asked for approximately USD 353,000 in compensation for the families of each worker killed.

On 28 April, five other rights organisations collectively instituted another writ petition similarly seeking a High Court order for a judicial inquiry and to halt the construction of the power plant until the completion of the inquiry.

The writ petitions highlighted that the state law enforcement authority failed to perform their duties as law enforcers by ensuring the rights of the workers. The state’s responsibility ‘to emancipate the toiling masses, the peasants and workers, and backwards sections of the people from all forms of exploitation’ as enshrined in Article 14 of the Constitution was in no way fulfilled as the local administration has demonstrably sided with the monetary power wielding S Alam Group since the inception of the project.

On 4 May, the Court ordered the S Alam Group to compensate the relatives of the seven deceased workers. The power plant stated that it had already paid US $3600 to each family, which Justice M Enayetur Rahim found to be too nominal and ruled that the plant must pay an additional US $2400 as initial compensation. The Court further wanted to know why the families should not be compensated with USD 353,000 each.

On 27 May, upon urging the youth to speak up about the injustices on the people of Banshkhali via his personal Facebook account, Engineer Mr. Shahnewaz Chowdhury was sued by the Banshkhali Power Plant under sections 25, 29 and 31 of the controversial Digital Security Act 2018. A lower court rejected his bail application, sending him to jail on 30 May. This action is difficult to reconcile with the earlier Court
The Banshkhali workers, their families and the locals should not be harassed. A police probe following the incident cited the instigation by outsiders, irregular payment of salaries and inadequate sanitation in the living quarters of the Bangladeshis as some of the reasons of the clash. However, the rationality of police firing shots has been deferred to the probe to be conducted by the district administration and to the investigation stage of the case.

Recently, 129 prominent civil society members and 74 organisations from 21 countries including Bangladesh have endorsed a letter to, among others, the relevant banks, sponsors and stakeholders to immediately withdraw their financial and technical support to the power plant. The letter demands investigation of issues of human rights violations and the plant’s EIA.

**Conclusion**

The Bangladesh government's official position is to move away from coal power plants in the near future. Already the plans for nine plants have been scrapped). Only five ongoing projects including the Banshkhali Power Plant have made the cut.

The country’s crucial developmental transition has called for countless sacrifices from its working class while a few corporations like S Alam have reaped massive benefits. But they did not do so in a vacuum. It is unlikely that a project that has been controversial from the very beginning got this far without the state administration's support. The symbiosis between Bangladesh’s corporate ideology, well-placed opportunist personnel and the government's compulsion to exhibit economic growth regardless of any human and environmental costs have put the Bangladeshi working class at a precarious position.

Tragedies like Banshkhali killings are easy to miss because the recorded death toll since 2016 is only twelve. However, as the climate crisis looms, this number will rise exponentially, particularly due to the activities of capitalist corporations like S Alam. Shotgun bullets are visible but the deaths resulting from the slow burn of a dying ecosystem is difficult to see. In there the fate of the humble villagers of Banshkhali is hanging by a very thin thread.

**Notes**

13. ibid
Bangladesh

On 17 April, police fired on a crowd of at least 2000 striking workers, killing at least five workers (later reports say that seven people were killed) and injuring many more (up to one hundred workers are reported to have been injured). Workers were protesting over unpaid wages, working hours and working conditions, including provision of water and hygiene facilities at the Banshkhali power plant in Chittagong, where many of the plant’s 4000 local workers are employed indirectly through sub-contracted companies. The coordinator of the plant subsequently filed criminal charges against 22 individuals for acts of vandalism and damage said to have been carried out during the protest.

On 10 May, 20 garment workers were injured when rubber bullets and tear gas were fired by police during a demonstration to demand an extended holiday break. The workers were protesting against the refusal of the Ha-meem group to honour an agreement between the Industrial trade union council and the BGMEA employers association on extension of the holidays. The global union Industrial reports that the Ha-meem group is a supplier to major brands, including H&M, Gap and Zara.

On 13 June garment worker Jesmin Begum died from head injuries, reportedly the result of a fall sustained when police charged a workers’ protest with tear gas, rubber bullets and water cannon. The police say they were acting to clear the road, which workers had occupied for 2 hours, outside the Lini Apparels garment factory that closed in January owing workers unpaid wages.

ICTUR wrote to the authorities to protest against the violent repression of trade union protests and to call for a thorough review of the country’s approach to industrial disputes. ICTUR recalled that armed force has been used against striking workers repeatedly in Bangladesh, and to repress legitimate protests by organised labour, often with deadly consequences. ICTUR recalls that the ILO’s Committee on Freedom of Association (CFA) has stated that ‘the use of police for strike-breaking purposes is an infringement of trade union rights’, and that ‘the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity’.

Freedom of Association: Compilation of decisions of the Committee on Freedom of Association, ILO, 6th Edition, 2018, paras. 229, 931), while the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 9) permit the use of firearms only in defence against imminent threat of death or serious injury and only when less extreme methods are insufficient. And in 2018, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) expressed ‘deep concern at the continued violence and intimidation of workers’ in Bangladesh and urged the government to “report on prosecutions initiated convictions obtained, and criminal sanctions imposed for any past incidents, and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated”’ (Report of the Committee of Experts on the Application of Conventions and Recommendations, I.C.107/III(A), International Labour Organisation, 2018).

ICTUR wrote to the authorities calling for restraint in policing of the protests and noting that the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 9) permit the use of firearms only in defence against imminent threat of death or serious injury and only when less extreme methods are insufficient. ICTUR called on the authorities to implement immediately measures to ensure that trade unionists and others wishing to participate in demonstrations are able to exercise their right to freedom of expression.

Colombia

Trade unions have been at the forefront of a series of protests in the city of Cali and across Colombia to which the authorities have responded with violent repression. The protests began on 28 April against planned tax reforms, which critics say would deepen inequality. The scale of the demonstrations forced the government to withdraw the bill, cancelling the tax reforms. However, the protests continued, with frustrations apparently related to the handling of the global health crisis adding to a wide range of grievances from both left and liberal groups opposed to the right-wing Duque government. Unions reported hundreds of people had been arrested, and say that dozens have been killed. The ITUC General Secretary, Sharan Burrow, said that the international union group ‘stands in solidarity with the people of Colombia as they face this vicious assault by a desperate government, just for exercising their right to freedom of expression’.

ICTUR has written to the authorities to express grave concern at this incident and to draw attention to the jarring similarities between this case and the case of Abd Eisa and the UN Universal Periodic Review for Italy observed, ‘anti-union motives were simply not investigated at all’. ICTUR has advised the authorities that it will again report this disturbingly similar case to the UN system under the next phase of the UPR procedure.

Lesotho

On 26 May garment factory worker Motselisi Manase was shot and killed during a strike protest over pay. The strikes saw workers hold out from 10 May, blocking roads with rocks, logs, broken streetlamps and rubbish bins. Police on several occasions dispersed the rallies with a water cannon, and firing rubber bullets. Reports were unclear as to the type of ammunition that killed Manase, though various reports refer to ‘gunfire’ as well as ‘rubber bullets’. The strike ended after the Lesotho Textile Exporters’ Association (LTEA) threatened those taking part with dismissal in a letter sent to four of the trade unions organising in the garment sector, which allegedly described the strikes as
unemployment and under-staffing in schools, which successfully recruited an additional 27,000 teachers into the profession. However, the new teachers were hired as contractors without clear routes to progress to full teaching roles on the normal pay scale and there is concern that the situation has created downward pressure for pay and conditions throughout the sector. The police have disrupted protests on a number of occasions, and in March and April several teachers were arrested for their actions linked to the protests. On 5 April, a court in Tinghir sentenced Khaled Boukamazi, a teacher, to one month in prison over a social media post relating to a teachers’ protest. On 16 and 17 March 2021, at least three teachers were arrested following a protest in Rabat. And on 6 and 7 April, 33 teachers were arrested for violating public health regulations and for ‘harming’, and ‘insulting’ police. The teachers are supported by Education International the Brussels-based global union and by Amnesty International, which says that the teachers were respecting Covid-19 measures, and that the charges against them are unfounded. The teachers were held for 48 hours before they were released pending trial.

ICTUR has written to the authorities to express its concern that the prosecution of teachers for their participation in strike action violates the principles of freedom of association. Morocco has ratified both of the United Nation’s key human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). ICTUR recalled that Article 21 of the ICCPR affirms the right of peaceful assembly, while Article 22 of the ICCPR and Article 8 of the ICESCR establish extensive protections for the principles of freedom of association. Furthermore, the UN supervisory bodies have expressed a clear intention to follow ILO principles around questions of the interpretation of freedom of association, in respect of which ICTUR recalls that ‘no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organising or participating in a peaceful strike. (Freedom of Association, para. 971), and further that ‘arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy (Freedom of Association, para. 975).

Morocco
From 2019, a multi-union coalition of teaching unions (grouping affiliates from the FDT, UMT, UNTM, UGMT and CDT) have been agitating for improved pay, permanent contracts, and better conditions for teachers, and holding regular strikes. The protests largely concern measures introduced in 2016 that were intended to address widespread graduate

ICTUR IN ACTION | INTERVENTIONS

Turkey
Eight leaders of a KESK-affiliated public sector trade union SES (organising in health and social services) were arrested on 25 May 2021 following early morning police raids on their homes. After being held in detention for more than one week the trade unionists were brought before the prosecutor on 1 June. The prosecutor accused Selma Atabay, Gönül Erden, Fikret Çalışan, Bedriye Yorgun, Belkıs Yurtseven Temelli, Ramazan Taş and Erdal Turan variously with leadership / membership of an illegal armed group based his on the testimony of a ‘secret witness’. The eight have been released by the court but are under restrictions, including an order preventing them from leaving the country. Their lawyers have complained of difficulty obtaining information concerning the nature of the charges against them, or any further information about the complaint.

ICTUR has written to the authorities to raise grave concern that allegations purporting to link members of a legal trade union organisation with members of the illegal armed groups have once again been brought against members of the KESK trade union confederation. ICTUR has, over many years, reported numerous such cases, which appear to be brought regularly against trade unionists, often based on secret or only partially disclosed evidence. ICTUR recalls the view of the ILO CFA that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards (Freedom of Association, para. 136), and that ‘allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities (Freedom of Association, para. 80).
Why Don't Workers Fight for the ‘Robot Dividend’?

Since 2015, ‘workerless factories’ have surfaced in various industrial zones in China, capturing media attention. In one case, on the shop floor of a mobile phone module manufacturer, conveyer belts were staffed not by dispirited and sweating workers, but by robots executing repetitive pre-programmed tasks.

China became the largest market for industrial robots in 2013. This wave of robotisation is largely triggered by the rising labour costs and growing labour activism. By 2019, 140,500 new robots were sold nationwide—a twofold increase from five years earlier.

While media touted how industrial automation pushed Chinese economy to shift from leveraging its labour divided to developing a ‘robot dividend’, labour scholars and activists began to wonder how workers could gain a fair share of the ‘robot dividend.’ Recent research has confirmed that in some firms that adopted robots, wage increases lagged far behind the growth of productivity, while in others, wages remained stagnant or were even slashed. It is obvious that the growing wave of labour insurgencies that spread China in the early 2010s was not extended to struggles over labour’s benefits in technological upgrading. Why?

Industrial Automation’s Impact on Employment and Skills

Even in firms less extreme than the ‘workerless factories’, the power of industrial automation to slash labour is very dramatic. My own research in four factories in a city in South China identifies a dramatic reduction in labour demand, ranging between 67 and 85 percent cut per production line. A recent study of 299 manufacturing firms that adopted technological upgrading in Guangdong Province showed each firm fired an average of ninety-six employees, accounting for 9.58 percent of the total workforce. On the shop floor, about 80 percent of positions could easily be replaced with machines.

However, so far, we have not witnessed a large number of the workers made redundant by technological upgrading being thrown on to the streets. There are several reasons. First, firms upgraded their equipment gradually rather than resorting to wholesale shifts to new automated lines. Such incremental arrangements gave companies time to adjust workers’ positions and limit new recruitment. Second, taking advantage of migrant workers’ high turnover rate and specific wage structure, most employers did not have to actively dismiss workers, but used other tactics—e.g. slashing overtime work hours--- to force workers to quit on their own initiative. Third, a few firms were able to absorb the surplus labour by expanding their production lines; however, that is contingent on the firm’s position in the value chain as well as its broader market status.

The impact of automation on workers’ skills is equally controversial. Although technological upgrading has the potential of upgrading workers’ skills, the outcome is highly contingent. My research has discovered that skilled workers are often the main target for job replacement due to their high wages and enhanced bargaining power. Another research has revealed that women workers are offered much less in-house training than their male counterparts because most employers uphold an ideology of gender stereotyping that considers women to be ‘fearful of machines’ or deficient in logical thinking.

Considering that China’s past development path has hinged on labour-intensive production positioned in the low-end of global commodity chain, many manufacturers are either slow or reluctant to take up labour retraining. Among the eight manufacturers I studied, only one invested in training workers, and this was because the company engages in high-precision metalwork that requires substantial levels of skill in the production process. Mr Zhou, the owner of a firm that produces high-end parts for optical-fibre communication equipment, chose to automate to achieve quality improvement, not just larger output. Building on his previous experience working in a state-owned enterprise, he set up an in-house apprenticeship program to train skilled workers. He stated: ‘Machinery is something everybody can buy, but a good production process needs to be designed. One component is hardware and the other is software.’ As a small and medium-sized enterprise, the case of Mr Zhou’s company is quite exceptional. Given the high turnover rate, very few employers in Dongguan are willing to invest in workers’ training.

Workers’ Reactions to Technological Upgrading

How have workers reacted to the introduction of advanced machines? Recent research has revealed that most frontline operators maintain an indifferent or even welcoming attitude towards automation. Quite a few workers I interviewed internalised the mainstream discourse of technological determinism. A migrant worker claimed that "I used to be a farmer. Previously the crops 100 farmers grew were not enough to feed 100 people. Now [with
cases discussed here show worker action that is at best ‘defensive’ to maintain current benefits rather than proactively seeking a share of the surpluses gained through automation.

Mastering the Machines

From the 1960s to the 1980s, under strong union activism and welfare state protectionism, industrial upgrading in the United States and Japan brought the ‘beneficial’ effect of increased wages, although the negative consequences of worker de-skilling and union weakening should not be overlooked. In contrast, when the robotic revolution took off in China in the 2010s, migrant workers, who had contributed a ‘labour dividend’ to the national economy in the previous decades, suddenly realised they were doomed to be replaced with robots.

While most frontline operators in China considered industrial automation to be an inevitable trend, some veteran workers began to question the legitimacy of using machines to replace and degrade labour. However, despite the surge in strikes since early 2010s, we have not seen many reported protests in which workers demanded a fair share of the ‘robot dividend’. The two cases involving workers’ collective action described above prove that these activities were at best ‘defensive’ rather than ‘proactive’, as workers only demanded the maintenance of current levels of benefits rather than a reasonable share of the surpluses gained through automation. The second case has revealed that the trade union focused on immediate economic gains rather than workers’ long-term power, epitomising the sense of economism that Harry Braverman criticised.

While industrial automation seems new to China, early in the nineteenth century, Marx pointed out that technological upgrading under capitalism meant the exploitation of ‘dead labour’—that is, work ossified in the form of a machine—over human workers. However, affected by the mainstream ideology of technological determinism, Chinese workers were slow to see through the meaning behind robotisation. Only when workers understood the nature of ‘dead labour’ can they truly become masters of machines.
Bargaining, representation and organising in the Pandemic: Experience from the Financial Services Union

The global pandemic presents many new problems to trade unionism. Social distancing and home working, for example, introduce real challenges to union organisation rooted in the physical workplace. Moreover, while online communication platforms were the natural response for many organisations, it is unclear whether the fundamentals of trade unionism - building collective identity, collective organising and collective action - are conducive to online dynamics. Unions are not known hotbeds of technological adoption. The face-to-face meeting, a word in the ear of a relevant party, collective meetings with members and - where called for - public demonstrations, are the stock-in-trade of what unions do. Union negotiators need to ‘read the room’, make eye contact and watch body language to be effective negotiators. Likewise, union organisers in recruiting and developing new members need to build rapport and establish trust and confidence, best achieved by face-to-face, interpersonal contact. Although societies are making meaningful advances in the return to some pre-pandemic normalcy in 2021 and beyond, much remains uncertain. Reliance upon online communication platforms may, by necessity, retain their importance. To that end, it is helpful to reflect on the shift to online unionism amid the pandemic, considering what worked and what did not, what to retain even if social distancing recedes and what might present on-going obstacles to navigate where it persists. As part of this effort, we offer insights from the Financial Services Union (FSU), a union representing staff in the financial services sector in Ireland, Northern Ireland and Great Britain, with approximately 15,000 members. Almost overnight in March 2020, FSU, like so many others, turned from a union based in offices and workplaces to a virtual union operating online and remotely. Below we look at how FSU dealt with the challenge of shifting operations online and reflect on the experience of bargaining, engaging the membership and organising new members.

Becoming an online union

All trade unionists will testify 2020 brought some unique challenges for representatives and members. Ensuring that the turn to home working was mindful of childcare difficulties, supports for self-isolation, maintaining socially distant workplaces with adequate ventilation and cleaning facilities sat alongside more familiar issues like pay bargaining and job protection measures. Representatives in FSU, as elsewhere, had to tackle these issues head-on, albeit remotely, while simultaneously adjusting to a new environment of engaging with employers online via new technology. Compounding these challenges was the need to coordinate and respond to the needs of a now dispersed membership: some working from home, others on-site in highly controlled environments.

Thankfully, the union had - by pure luck - in 2019 and early 2020 upgraded its phone systems and internal software packages, including adding Microsoft Teams and installing VPNs (virtual private network) software to facilitate remote network access. Consequently, only a small number of laptops and upgrades were required to support all staff and officers working from home. There was minimal disruption to the union's day-to-day operations as a result, and the union quite quickly adapted to the technical requirements of going online.

However, having the hardware and software available does not necessarily mean everyone can and will use it. The union utilised its online education platform (https://unionlink.org/) to develop Microsoft Teams training modules. Here, staff and officers worked in virtual groups to complete training modules involving individual and teamwork exercises. Notably, the prospect of remote working within FSU impelled greater urgency in taking steps to deepen staff interactions in compensation for the loss of in-person dynamics. Officers instituted more team and all-staff meetings than previously done in person in the office – which was often not possible when staff were engaged in different activities on sites or in representations with employers, civil servants or politicians. The industrial relations team began meeting twice a week, with specific communications meetings at the end of the week, while the organising team began meeting once a week. In part, the union's General Secretary drove this change, moving the focus away from longer-term work plans to more short-term, immediate and focussed activities and deliverables. The greater regularity of group meetings on Microsoft Teams allowed for increased information sharing, best practice outcomes and further planning of weekly activities.
Bargaining with employers

While MS Teams was the software of choice for FSU, officials faced the additional challenge of adapting to the technology of individual employers for representation and negotiation. Skype, Zoom, Cisco Webex, Google Meet all had to be learnt in different meetings, ensuring officials were comfortable sharing screens, navigating virtual breakout and side meeting rooms for effective representation and negotiation. However, officials typically resorted to Whatsapp group chats to ensure private dialogue on their side was maintained during talks - the virtual equivalent of passing a note down the line!

What was the experience of using the various online platforms when engaging employers? The evidence admittedly is not favourable. The technology was inevitably stop-start at times during often crucial talks on complex and novel issues, e.g., pay protection for those self-isolating or arrangements for those working at home with childcare responsibilities. The ubiquitous “you’re on mute!” alongside a range of other technical problems is not conducive to workable negotiations and constructive dialogue. Indeed, the view of some officials was that the technology added tensions and difficulties to already challenging talks. Another official feared that these interactions would end up weakening relationships with employers. As a result, there was greater reliance on phone conversations and even socially distanced face-to-face conversations in open-air locations that had to happen offside to make any meaningful progress in talks.

Keeping in touch with the membership

In engaging the membership, the pandemic looks to have intensified a more significant deployment of social media to communicate with members. With the opportunity of interaction between local representatives, activists and members curtailed, the union ramped up its embrace of Facebook and Twitter for example. The union’s social media usage of Twitter increased significantly, with more than double the number of tweets from FSU in 2020 (424) compared to 2019 (160). Social media focused on articulating union priorities like pay protection, health and safety and halting redundancies, and updates on agreements reached with employers and advice and guidance to members. The union even directed a public message at customers to protect members’ interests. Customers were reminded that where branch visits were necessary, social distancing and sanitation guidelines be followed and respect shown to front-line staff. With 724 Facebook shares, this post was the most popular union post of the period.

Organising online

FSU started 2020 with plans for organising based on physically visiting locations with information stands, activist meetings, local training, drop-in clinics and greenfield site visits. With these plans disrupted, activity turned to digital surveys/petitions and lead generation, follow-ups and activist training. The training for virtual organising was assisted by UNI Global Union and focussed on the importance of phone conversations with members. There was a significant increase too in digital surveys/petitions directed at members and non-members alike. In part, increased surveys/petitions reflected the plethora of pandemic induced work-related issues, but it also served as a substitute for more traditional means of organising.

For example, in 2019, the union completed eight digital surveys/petitions, whereas, in 2020, there were 17 surveys/petitions. These enabled non-members to add contact details which then served as leads for organisers to follow up. The union also developed on non-member leads with subsequent invitations to an ‘Introduction to FSU’ meeting focussed on ‘live issues’ prevailing in a particular employer at any given time.

How well did these activities work? We observed evidence of modest gains: 407 non-member leads generated across the 17 surveys/petitions generated 30 new members (a conversion rate of 7 percent). Notably, 13 of the 17 surveys/petitions occurred in workplaces where the union was already recognised, thus acting as a form of in-fill recruitment. With access to greenfield sites more complicated, FSU organisers undertook six survey/petitions in such locations. However, it was here that the union recruited the bulk of new members. Ultimately organisers report that the experience of organising via online platforms is challenging. The view is that individual and in-person face-to-face conversations are much more effective in converting non-members to membership. To this end, the union has made some rudimentary comparisons for analysis between virtual methods and targeted in-person, face-to-face conversations with non-members from 2016 data. Then, with a sample of 286 non-members targeted for face-to-face conversations, a conversion rate of 36 percent was observed.

Lessons from 2020

The experience of online unionism amid the pandemic has been very much a mixed one. Internally, the shift to online unionism in the context of home working enhanced opportunities for officers and staff to come together to share ideas more frequently, in a way that was not possible pre-pandemic. Such developments are positive. The greater embrace of social media during the pandemic opens new avenues to connect with the membership and the public, enhancing recognition of the union and its work. Yet, the experience of exchanges with employers via collective bargaining online has been less than ideal. We remain less confident that there will be an appetite for continued engagement with bargaining online when the pandemic recedes. Organising online also has limits too and seems to be an inferior method to the more traditional in-person methods for inspiring workers to join and commit to trade unionism.
The British Gas Fire

Fire and rehire isn’t new but it is more prevalent and high profile in the wake of Covid – a tool to legally dismiss and re-engage workers en masse

The winter of 2020/21 was a dark one for many, but in the middle of it a fire was lit. Rather, 10,000 small flames, which made up the individual picket lines of striking members of GMB Union employed by British Gas. This marked the largest dispute seen in the UK during COVID, & the largest to hit the gas industry since the 1970’s.

The story of British Gas, serves as an example of an underlying current in the industrial trajectory of the United Kingdom. British Gas was one of the jewels in the crown of Margaret Thatcher’s privatisation agenda. Fast forward to more recent times and the top brass of Centrica (the private company that has retained the British Gas brand) have managed to turn a company previously worth billions into a billion pound loss.

While the business was busy continuing to lose money and making deeper and deeper cuts you might expect the unions on the ground to be busy resisting. That was sadly not the case, and the issues that came to the fore during the gas strike of 20/21 have their roots here. In 2016 British Gas also announced it would be closing a call centre and office in Oldbury (West Midlands), with a loss of approximately 680 jobs. The unions recognised by British Gas chose not to fight the closure. Roughly the same time as the call centre staff were facing a tidal wave of cuts, the employer made a move on the pensions of the gas engineers. The GMB approached this move by the employer through attempting to negotiate a settlement, which the senior GMB reps at British Gas then recommended to the membership. The union was forced to do an about-face when the grassroots members of the GMB not only shot down the negotiated offer the union presented to them; but began to self-organise in their anger at the union structure which had found itself so far removed from where they the members stood. In the end the GMB managed to avoid a mass exodus through the combination of a change in the top of the union bureaucracy and a quick renegotiation of the previous offer with a slight enhancement that was reluctantly voted through.

Why is understanding the backdrop so important? It matters, because while the scandal of privatisation, offshoring of jobs and cuts has been the narrative of many once great companies/institutions such as British Gas; the way the union reacted, by cultivating a serving culture rather than an organising culture where maintaining a good relationship with the employer was prioritised over ensuring a defence of the union members interests, is also the narrative behind the continued decline of British trade unionism. The pensions dispute was the canary in the mine of the GMB’s structure within British Gas. If you could pinpoint a key moment when the eventual outcome of what happened with the British Gas strike in 20/21 could have been averted, it would have been an intervention following its failings during the pensions dispute. The saga over the pensions dispute was a clear indication that the union was out of sync with the membership. Where the union failed to learn this lesson, the employer didn’t.

The lesson the employer took from the pensions dispute was that the union structure was out of touch with the membership and therefore on the one hand too weak to get a negotiated offer through the membership, and on the other too weak to fight the company off. The mistake the employer did make was in thinking that they, the company, were in touch with the workforce.

Fire and rehire is nothing new to the industrial landscape in the UK, however its use has become both more prevalent and more high profile in the wake of Covid as a fast-track way for scurrilous employers to strongarm their workers into submission. Fire & Rehire is the process by which an employer can legally dismiss and re-engage its workforce en mass if it can argue (against a low threshold of proof) that contractual changes to terms & conditions are necessary in order to avoid redundancies. In theory it was supposed to help workers. In practice it has become a distorted tool in the arsenal of employers by redressing the balance of power between unions and employers, as a devastating leverage and union busting tactic. Effectively it is akin to a modern-day version of a lock-out.

Centrica approached the recognised unions within the company in the summer of 2020 seeking to negotiate on changes to terms and conditions. If the cuts the call centre staff had faced prior to this were a tidal wave- then this was a tsunami. The GMB union was the only union to respond to this with a mandate for industrial action. Another union attempted a less militant position and sought greater accommodation with the employer, but saw a loss of members moving over to GMB.

Heading into the dispute it is important to point out that the GMB had a union density of roughly 90 percent across the different workforce categories of field engineers. Despite this, years of inertia had decimated the union’s structure and where there should have been 270 reps among the gas engineers alone, there were at best just over a hundred in post. However, where the GMB union structure was out
of sync with the membership, the company proved to be tone deaf to the feelings of its own workforce. This gives context to two distinctive features of the strike. Firstly, it was the decision taken to put out a call to the general GMB membership in advance of the strike for strike volunteers to come forward, and the miscalculation of the employer on the strength of feeling on the ground, that resulted in the proceeding 43 days of solid strike action which took place against all odds in the depths of winter-during a global health pandemic.

Early on union organisers had pioneered the use of webinars to engage thousands of the remote workforce (field engineers work as lone workers in isolation). Regularly attended by over 50 percent of the union membership it was an important tool in organising and motivating the members. It also allowed the union to overcome its own weakened structure and appeal directly to the membership at large. When the call went out for volunteers to step forward, over a thousand members representing more than 10 percent of total union membership responded, including many reps closer to the members. Officers of the union then used the intervening time between the strike notice being served (prior to Christmas) and the first days of the strike (post-Christmas/New Year) to run a series of strike schools with these thousand volunteers developing them into what became a grassroots strike army.

In the late 19th Century, the German economist and philosopher Friedrich Engels, responding to criticism from German comrades of the timing of the miners strikes spoke about the importance in respecting ‘a strike of angry passion’. The ability for the GMB union to recognise the feeling on the ground, where the union structure and the company failed to fully grasp it, was the defining feature of this strike. By having a laser like focus on the membership, and developing the skills of the grassroots strike army, the strength and momentum on the ground boiled over and propelled the dispute onto a national platform from the first day of action and maintained it throughout. By utilising technology, and social media combined with organising skills- namely of how to harness emotional compulsion in a campaign, taken from the strike school- the grassroots strike army took over social media and weaponised it to their advantage in the dispute. It enabled them to project their own story, the authentic voice of the workers at the heat of the dispute to a wide audience.

The consequence of this was twofold. Disputes are not won in the airwaves, or on social media, but this element of the campaign was important none the less primarily because it reinforced a sense of collectivism among what is traditionally a lone workforce on strike during a pandemic. The power of any dispute is always ultimately in the collective. It resulted in forcing the employer back to the negotiation table. Here another hard lesson is to be learned. The opportunity to renegotiate at ACAS (the UK’s public

labour advice and conciliation body) resulted in a new offer being voted down by members. Fundamentally the employer had a total lack of understanding of the nature of their own workforce essentially being craft workers. Many gas engineers therefore benefit from having alternative options, not just in terms of other companies to work for (many of whom tried to openly recruit our members during our own online rallies), but also of setting up on their own in self-employment. The other miscalculation made was on the motivations of the workers. In the dispute the workforce constantly and repeatedly spoke of their work/life balance being the driving force for their strike, yet the only concessions the employer would agree to make was to offer up more money in exchange for the reduced changes to t&c’s. This resulted in the new offer negotiated through ACAS being voted down by an overwhelming majority of the union membership, in a high turnout vote. It could not have been a more resounding rejection. That led to there being no collective agreement with the GMB, and ultimately to hundreds of gas engineers being sacked from British Gas when the Fire & Rehire process came to a head as the employer wound the clock down and many engineers refused to be moved.

Privately the company has admitted to the union that the strike cost them in excess of one hundred million pounds. By not having a collective agreement the company further compounded their own problems with no coherent arrangement over various ways of working, effectively leaving their business in a state of disarray. At the point of writing this, GMB members in British Gas are on the eve of a third vote, with a new offer put to them that is now improved on as the company has been pushed to the brink by a combination of the impact of the strike, the inability to survive a second wave of industrial action, but more than anything by the impact of having driven away so many engineers who have left British Gas and the desperate need not to lose any more of their workforce.

In conclusion the main lessons from this are firstly that an unintended consequence of Brexit is to tighten the labour market, and unions need to be awake to this in terms of the dynamics and ability to leverage employers in a new post-Brexit world. Leading on from that, unions in order to succeed, need to have a bolder vision that moves beyond mere concession bargaining. Our ability as trade unionists to secure winning disputes is premised on how well we have built the union structure from the ground up, Jane McAlevey champions this when she refers to ‘organic leaders’ and ‘structure testing’ but the concept themselves are not new, the lessons are in our history. Finally, we need to be prepared for the fact that in a post-Covid world, workers’ demands and priorities may have shifted away from pay and towards securing gains in their work/life balance, we at least need to be open and receptive to that and we can only do that by having a strong and healthy union structure in place.
The Myth of the Labour Market

There are a number of expressions which are particularly grating, especially when spoken by comrades in the trade union movement. Hearing the British Prime Minister referred to affectionately as ‘Boris’ is one, the use of the phrase ‘labour market’ is another.

The phrase ‘labour market’ gives a legitimacy to a capitalist mythology in which buying and selling labour is a natural and unalterable part of the human condition, in which humans who work for a living are no more than disposable ‘human resources’ and in which those who sell and those who buy labour have some equivalence of bargaining power as they contemplate the wages on the stalls in the ‘labour market’. These myths are unrelated to the reality of capitalism.

For most of the 3 million year of hominid, and the 150 thousand years of human, history there has been no buying or selling of labour; whatever required more than one person to do was done collectively in the common interest: raising the young, caring for the elderly and sick, gathering food, hunting, building shelter and so on. No-one paid or received pay for work. Nor, the anthropologists (e.g. David Graeber, Debt: the first 5,000 years) tell us, did they barter. Those able to help were expected to and did help; favours were met with favours without valuation of equivalence or worth. Humans are co-operative beings and worked co-operatively in their communities. There are still societies which live like that outside the reach of ‘civilisation’.

Even in feudal times little labour was paid for, though the landlord took his slice of the peasant’s produce and, often, his labour. It is capitalism which has generated the ‘work/wage bargain’, as scholars of the contract of employment have pointed out.

The idea of a bargain, freely negotiated, is one that underpins the legal mythology of ‘freedom of contract’ at work and supplies the moral justification for enforcing its terms by law.
III

There are other matters to consider in relation to the notion of the ‘labour market’. There is a legal aspect. The very idea that working people are no more than productive equipment to be bought, hired, sold or scrapped is a notion contrary to international law. The first principle of the Declaration of Philadelphia 1944, the first treaty signed after the Second World War and now an annex to the Constitution of the International Labour Organisation (and binding as a matter of customary international law on every nation on earth), states that ‘Labour is not a commodity’.

There is also a human aspect. The equivalence between inanimate objects used in a business and human beings supplying their labour to it is only visible when looked at from the perspective of the capitalist. From this view point we can see that labour, like buildings, equipment, transport, raw materials, products and so on are all pieces in the jigsaw of a business. Each element presents costs, each element can be replaced, and the utility of each is time limited.

From the perspective of the worker things look very different. The labour available for the worker to sell is not inexhaustible; as she gets older her labour (though perhaps more valuable by reason of greater experience or qualifications) is a constantly diminishing resource which cannot be renewed. Businesses fail for lack of investment, interruptions to supply of materials, changes in demand for goods or services, and so on but always there is the possibility of reinvestment or new capital. The worker’s opportunity to earn from her labour is, in contrast, irreplaceable, limited by compulsory retirement, infirmity and death. Her ability to secure a decent career and pension is governed by her socio-economic status and her education; the enjoyment of her life is largely determined by pay, hours, terms and conditions of employment which for many cannot be controlled or even influenced.

There is another difference too between the inanimate commodity and the human worker. The worker has sensations, comprehension, initiative, the ability to act and work collaboratively, and, of course, responsibilities to others. Though artificial intelligence and algorithms gives some equipment amazing capacity to compute and to communicate and some abilities to respond to new situations, humans are employed as workers because of their autonomy and flexibility to adapt, their ability to sense, to understand, to relae to and work with other humans (and machines), to innovate and to deal with the unforeseen – all in the interests of the business. This is true even in relation to the most menial, repetitive and mechanical tasks; there, workers devise the most efficient way of doing the job (often in ways not thought of by managers or designers) and instinctively take first responsibility to avoid adverse consequences for themselves and the business (from spillages to disasters).

IV

Yet, in all but truly co-operative ventures, employers are threatened by the worker’s human characteristics, her ability to combine with others, to resist injustice and to fight for a greater share of the profit derived from her work. This fear leads employers to seek to set limits to workers exercising their human characteristics. In part this is achieved by hierarchical structures of subordination and discipline, in part by complex contracts of engagement which encapsulate such subservience, and in part by judicial and legislative restraints on collective action.

The modern deployment of computer platforms to engage workers is no more than a reversion to casualisation as an age-old device to constrain the ability of workers to resist exploitation and to minimise labour costs. Casualisation is the just-in-time supply chain theory applied to labour; the worker is only engaged for the week, day, hour or minutes her labour is required. Solidarity with other workers is consequently more difficult and, outside the limited timespan of the engagement, the employer has the added advantage of avoiding all the costs and liabilities inherent in the rights of permanent workers.

V

So the notion of a labour market in the sense of a free market in labour bears no relation to reality. It only makes sense as a description of an arrangement in which employers are largely free to exploit workers by driving labour costs (which include not just wage levels but the costs of workers’ rights) down to the lowest level for which workers will work, subject to the twin factors of minimal employment rights (such as the minimum wage) and the deterrent effect of poverty and Universal Credit.

The effect was evident long before COVID-19 in the horrific fact that, in the UK, 9 million people in poverty live in working households. Since the pandemic we have seen how the most valuable of our key workers, on whom we all depend, suffer low wages, insecurity of employment and the highest risk of illness and death.

VI

There are really only two possible means to bring other factors into play in the setting of terms and conditions beyond the crude mechanism of supply and demand of ‘the labour market’.

Firstly, government can dictate wages and conditions. Legislation already sets certain minimal standards for some working conditions such as mentioned above. In relation to wages, it sets, in many countries, a national minimum hourly rate and, in the public service, imposes wage caps and notionally independent pay setting quangos (in the UK: Pay Review Bodies), the recommendations of which government may reject. This is not a satisfactory system but a more universal system of state intervention by which governments determine...continued on page 28...
Bangladesh: garment labour conditions
In early 2021, the Canadian Steelworkers Humanity Fund published a report *Not Even the Bare Minimum* with the dual aims of encouraging a greater level of responsibility and awareness by Canadian brands for the labour conditions in their supply chains, and to provide the union’s members and activists with insights and background on the living and working conditions in Bangladesh’s ready-made garment (RMG) sector. The report covers issues such as the minimum wage but also food, housing, education and healthcare, while also outlining some eye-opening statistics, such as that ‘RMG export earnings in Bangladesh surpassed $34.13 billion in the 2018–19 fiscal year, accounting for over 80% of total exports’.

The report (from https://www.usw.ca/) predates the violent incidents reported in this edition of IJR, and the developments noted below around the Accord and the Hashem Foods fire.

Bangladesh: Accord
The Accord on Building and Fire Safety in Bangladesh, established in 2013 following the horrendous Rana Plaza building collapse, which killed more than one thousand workers, has had another - temporary - reprieve as unions, brands, and retailers agreed to a brief extension, giving the Accord a further 3 months (from 1 June). The Accord was renewed and updated in 2018. UN, Industriall and multinational brands are continuing negotiations to plan the longer term future for the Accord.

Bangladesh: factory fire
On 8 July a fire broke-out at Hashem Foods Limited at Bhulta of Rupganj in Narayanganj. The seven-story building produced fruit drinks, packing material and plastic packaging. An estimated 200 workers were in the building, at least 52 of whom were killed. 49 of whom were trapped and killed on the third floor, while three workers died jumping from the building. Relatives have complained about locked doors and ineffective exist strategies, and there are allegations that children were working there. The factory owner has been arrested. Left parties and trade unions say that the Department of Inspection for Factories and

Establishments, the Department of Labour and the Fire Service and Civil Defence department also bear responsibility for the incident and its severity.

ITUC Global Rights Index
The eighth edition of the ITUC’s *Global Rights Index* is published, and in a welcome move this year the study is integrated with an expanded website that allows better access to detail. The web format is searchable by country or type of violation, see: https://www.globalrightsindex.org/en/2021. The report tells us in three headline findings that ‘Workplaces are becoming less safe, with more restrictions on trade union activity in Belarus, Colombia, Cambodia and Myanmar; Surveillance of workers is increasing, with Amazon’s surveillance of warehouses becoming a global scandal; and that Rights are being dismantled as governments have passed repressive laws in Honduras, India, Indonesia, Slovakia and Uruguay’.

The report says that ‘The Middle East and North Africa is the worst region in the world for working people for eight years running’; notes that ‘Libya, Palestine, Syria and Yemen were still beset with conflict, and fundamental liberties and rights in those countries were trampeled’, and that ‘the ten worst countries for working people in 2021 are Bangladesh, Belarus, Brazil, Colombia, Egypt, Honduras, Myanmar, the Philippines, Turkey and Zimbabwe’.

The complex statistical methodology for ranking countries to produce the ‘ten worst’ remains in place, but the problems inherent in data gathering (including from whom data is gathered), and in comparing ‘apples with oranges’ (or as the case may be, restrictive legislation and dismissals with violence and even murder) mean that subjective evaluation (with reasoned explanations) might actually be preferable, but the Index is always a welcome and interesting reference point, and with a wealth of information on the state of union rights worldwide.

Gig economy / app workers
A new paper from TUAC lists the key concerns and objectives of the global unions group in respect of gig economy workers. *Workers in the On-location Platform Economy – Global Unions’ Policy Demands* calls on governments to consider issues that it says are ‘pervasive’ in the platform economy, and to adopt ‘ten key policy demands for better working conditions’. Clarifying the terminology, TUAC notes that the labour platform economy can be divided in two segments: ‘on location’, and ‘online’ where workers carry out tasks remotely (also known as crowd work). Workers in the ‘on-location’ platform economy, the paper explains, are often known as ‘gig workers’, typically providing services such as passenger transport, food and goods delivery, road freight transportation, cleaning and other personal or professional services. TUAC and its global union partners then outline priority demands for basic improvements in the sector, including fair contracts, health and safety, a living wage, etc. The paper is available from TUAC https://tuac.org/.

Lawsuits silencing activists
ICTR has repeatedly drawn attention to the potential for defamation laws to be used to suppress human rights and labour advocacy. A new report from the Business and Human Rights Resource Centre maps the extent of the problem (though warning that their findings are likely only the “tip of the iceberg”). The report is based on research to identify types of legal challenge referred to as ‘Strategic lawsuits against public participation (SLAPPs)’ that can be either criminal or civil lawsuits that may serve to intimidate, bankrupt or silence critics. The Resource Centre calls these actions ‘an abuse of the legal system by powerful actors’. The research identified 355 cases filed since 2015, and noted that most were associated with mining, agribusiness, logging, and palm oil industries. The report notes that unions may be at risk of such actions, and includes as an example the case of four members of the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) who were sued by their employer following factory protests in January 2020.
**Norway / European human rights: Holship**

In a recent decision, the European Court of Human Rights (ECtHR) has examined the difficult intersection between the European human rights framework and business freedoms articulated under EU law, see *Case of Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers’ Union (NTF) v. Norway* (10 June 2001). Tackling essentially similar conflict of law questions as those that were addressed by the Court of Justice of the European Union (ECJ) in the notorious cases of Viking and Laval, the ECtHR has taken a different perspective. A broad ‘margin of appreciation’ was considered appropriate, and the ECtHR found that Norway’s Supreme Court did not breach Article 11 when it forced an end to a dockers’ strike, but crucially the ECtHR addressed directly the question of how these different legal frameworks should be reconciled. The ECtHR has said that ‘freedom of establishment is not a counterbalancing fundamental right to freedom of association but rather one element, albeit an important one, to be taken into consideration in the assessment of proportionality under Article 11, paragraph 2’.

**Shipbreaking: duty of care**

Some welcome news - in relation again to Bangladesh - is the ruling from the UK Court of Appeal, concerning the responsibility in law of a London shipping company to a worker in Bangladesh’s notoriously dangerous shipbreaking industry. The claimant’s lawyers, Leigh, Day and Co, predict ‘far-reaching implications across the shipping industry and the way it disposes of end-of-life vessels’. The ruling in *Hamida Begum (on behalf of MD Khalil Mollah) and Maran (UK) Ltd [2021] EWCA Civ 326* is only a decision against striking out (the judges believe that the case has at least some prospect of success at trial), but it is a reminder that a negligence-based common law of success at trial), but it is a reminder that a negligence-based common law framework for holding businesses to account in relation to the human rights impacts of their global activities predates – and continues to develop in parallel to – the draft business and human rights Treaty process underway in Geneva (and the ‘binding due diligence’ laws adopted by some European countries). A quote from Lord Justice Males provides an intriguing insight both into contemporary judicial conceptualisation of the issues, a glimpse into how these aging vessels come to be run aground on the beaches of Bangladesh, and a sense of the appalling conditions in which they are dismantled:

‘The choice was straightforward. Either the ship could be sent for dismantling in the relative safety of a dry dock in China or it could be run aground on a beach in the Indian subcontinent to be broken up by hand by workers who were not even provided with rudimentary safety equipment and where fatalities and serious injuries were both common and notorious. It might be thought that any responsible owner faced with that choice would opt for safety. But not so. Chinese shipyards would have been prepared to pay US $10 million for the ship but a buyer in the subcontinent, which did not have to bear the expense or go to the trouble of providing safe conditions for its workers, would pay more. A shipbreaker in Chattogram (formerly known as Chittagong) in Bangladesh, where conditions were worst of all, would pay the most, US $16 million. The owner of the “MARAN CENTAURUS” decided to take the money, leaving the workers in Chattogram to take the risk. So it was to Chattogram that the ship went. That, at any rate, is the Defendant’s case, reduced to its essentials [...] In due course the entirely foreseeable happened when the Claimant’s husband joined the ranks of Chattogram fatalities, falling to his death when working on the vessel at height without having been provided with a safety harness’.

**Spain**

After years of trade union struggle against the criminalisation of the right to strike under Article 315.3 of the penal code, the article was finally repealed in April 2021. Unions had complained of ‘a generalised and abusive application of Article 315.3’, that had included demands for prison sentences of up to 8 years, and the threat of imprisonment against 300 trade unionists (some of whom were indeed sent to prison) following their participation in strike action. CC OO and UGT welcomed the reform.

**UK**

Three changes are proposed to the role of the Certification Officer (CO) – the UK’s trade union regulatory office – including a levy placed on trade unions to fund the CO’s costs, activation of the power of the CO to levy fines for breach of restrictive and complex trade union legislation, and a power to investigate third party complaints about unions by members of the public and third party organisations.

This latter reform, says the UK’s Institute of Employment Rights, risks tying up trade unions ‘with time-consuming and expensive investigations prompted by right-wing pressure groups – potentially making them pay for vexatious investigations that have no merit’ (this echoes powers proposed under Australia’s hugely controversial Fair Work ‘Integrity’ legislation, that ICTU presented submissions against in 2019).

According to the IER, the changes will not be debated in parliament but will be introduced simply by a commencement order, while the TUC ‘were not consulted about these proposals’. The plans ‘will put a major strain on union finances and their members at the very time that the pandemic is still causing economic harm’. TUC General Secretary Frances O’Grady said: “These reforms are based on politics rather than the real problems working people face. They will hit unions with expensive new levies – that’s money straight rom the pockets of care workers, nurses and supermarket staff. And unions will have to spend more time dealing with baseless complaints. Ministers should be working with unions to improve working lives – not looking for new ways to undermine us.”
...continued from page 7...

attracting financial flows from multinational companies, to offer the most favourable conditions, which are mainly reduced to preferential tax regime and reduction of social benefits.

During the very first storms of the revolutionary, the French bourgeoisie dared to take away from the workers the right of association but just acquired. By a decree of June 14, 1791, they declared all coalition of the workers as ‘an attempt against liberty and the declaration of the rights of man’, wrote Karl Marx. Radical figures in the French Revolution believed that freedom was sacred and derived from the nature of the human being. The association, in their view, restricted this freedom.

Ukrainian revolutionaries cannot simply ban the right to association, nor those times, and are therefore forced to cover up their real intentions with the need to ‘reorientate the work of the trade unions’. It is not surprising that politicians are trying to mislead everyone. They act as old car dealers, real estate sellers, and advertising agents.

The government is constantly trying to nationalise the property of the Federation of Trade Unions of Ukraine through legislative initiatives (the draft law of the Ministry of Economy ‘On Legal Regime of Property of All-Union Public Associations (Organisations) of Former USSR’, opening criminal proceedings, seizing it, misinforming, and forming a negative image of the trade union governing bodies and leaders who allegedly profit from the trade union property.

All this does not correspond to repeated statements of the government about intentions to build a democratic state of European standard in Ukraine and contradicts the fundamental human rights to decent life and work, to organise, and degrades the dignity of Ukrainian citizens.

Violations of trade union rights by employers also remain numerous. As a result, for several years in a row in the annual Global Rights Index, published by the International Trade Union Confederation, Ukraine is among the worst, group 5 of countries in which there are no ‘guarantees of workers’ rights’ – one of the worst in Europe.

Anti-union tools are inexhaustible. Despite the constant change of government, anti-union, anti-production and anti-social policies only intensify. As a result of the reform of industrial relations system, the workers and trade unions may be rejected in the last century. Unfortunately, the long-term, unidirectional, disproportionate and socially unfair measures proposed in the draft laws by the Ukrainian government do not find an adequate response from the signatories of the EU-Ukraine Association Agreement and the Canada-Ukraine Free Trade Agreement.

Nevertheless, as long as the implementation of policy in which one injustice is strung on another continues, the trade unions will be fiercely opposing it.

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wages and conditions is unlikely to be acceptable to employers or workers.

The only other alternative is collective bargaining. This is the technique required by international law and now espoused even by the OECD and the Biden administration. Collective bargaining by unions on behalf of workers utilises their collective strength and levels up the inherent imbalance of power at the workplace. When conducted on a sectoral basis it has the capacity to set minimum terms and conditions for entire industries, adapted for the needs of the industry. It gives workers a democratic voice. It is universally accepted that collective bargaining increases wages and hence increases demand in the economy. It creates more jobs, reduces the need for state benefits to prop up low wages, increases the tax take, and, above all, it reduces inequality.

In the UK sectoral collective bargaining will require legislation (we had some such legislation for most of the twentieth century) both to establish the structures and to make the results of the bargaining binding on each industry.

Sectoral collective bargaining is the answer to the myth of ‘the labour market’, a phrase we should never hear on the lips of comrades again.
Trade Unions of the World

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Trade Unions of the World is the essential guide to trade unions and trade unionism in more than 200 countries and territories around the world, examining the social, political and economic contexts they inhabit. Each country profile includes an overview of the political and economic history of the country or territory and an outline of the development of trade unionism locally and the situation for trade unions and trade union rights today.

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