

## **ASSOCIATION - FREEDOM OF - TRADE UNIONS**

### **IV. CONCLUDING OBSERVATIONS**

#### **CERD**

- Yugoslavia (Serbia and Montenegro), CERD, A/50/18 (1995) 48 at para. 244.

The immediate drafting and implementation of legislation with a view towards outlawing every manifestation of racial discrimination and fully implementing the Convention is recommended. Particular attention should be paid to the legal regulation of matters such as the media and freedom of expression, employment and trade unions, the education system, and the health-care system.

- Guatemala, CERD, A/50/18 (1995) 58 at para. 310.

Concern is expressed that conditions of extreme poverty and social exclusion are endured, in particular by the indigenous Maya Quiche population. Such conditions adversely affect the enjoyment of the rights guaranteed under article 5 of the Convention such as the right to own property, the right to work, the right to form and join trade unions, and the right to housing, public health and education.

#### **ICCPR**

- Dominican Republic, ICCPR, A/48/40 vol. I (1993) 95 at paras. 450 and 464.

##### *Paragraph 450*

The situation of Haitian workers remains a matter of pressing concern and little action has been taken to remedy the situation. In this connection, concern is expressed over the State party's compliance with the provisions of the Covenant concerning forced labour. Freedom of association is not guaranteed and trade unionists have been persecuted.

##### *Paragraph 464*

There should be more active enforcement, particularly in the "export zones", of the exercise of trade union rights in conformity with article 22 of the Covenant.

- Costa Rica, ICCPR, A/49/40 vol. I (1994) 31 at paras. 157 and 161.

##### *Paragraph 157*

It is noted with concern that many labour regulations, particularly those relating to freedom of association as protected under article 22 of the Covenant, are not in conformity with international

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

standards. In particular, the rights of workers employed by small agricultural businesses, especially those who wish to form unions in coffee and sugar cane plantations, may not be protected under the current legal regime. Additionally, there is concern that the system of "solidarity" organizations (*asociaciones solidaristas*) may prevent the effective enjoyment of those rights in general.

### *Paragraph 161*

The Government should consider steps to review and, where necessary, reform labour legislation to ensure that freedom of association, as guaranteed under article 22 of the Covenant, is enjoyed by all workers in Costa Rica and, in particular, that workers in small agricultural enterprises are free to organize.

- Mexico, ICCPR, A/49/40 vol. I (1994) 33 at para. 175.

The conditions in which the rights provided for in articles 21 and 22 of the Covenant are exercised, as evidenced by the severe repression of peaceful demonstrations by striking workers, are of concern.

- Cameroon, ICCPR, A/49/40 vol. I (1994) 36 at para. 197.

Regret is expressed at the difficulties encountered by workers in exercising freely and peacefully their rights under articles 21 and 22 of the Covenant.

- Togo, ICCPR, A/49/40 vol. I (1994) 44 at para. 256.

The restrictive conditions in which the rights provided for in articles 21 and 22 of the Covenant are to be exercised are noted with concern, and the severe repression of peaceful demonstrations during the period under review involving loss of life which has not been fully investigated is deplored.

- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at paras. 155 and 162.

### *Paragraph 155*

The attacks against journalists and unionists, and the lack of protection afforded to them, which restrict the enjoyment of the rights of freedom of expression and association provided for in articles 19 and 22 of the Covenant are of concern.

### *Paragraph 162*

Special protection should be provided to journalists and members of trade unions under threat or intimidation so as effectively to protect the rights provided for in articles 19 and 22 of the Covenant.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

- Sri Lanka, ICCPR, A/50/40 vol. I (1995) 75 at paras. 458 and 472.

### *Paragraph 458*

It is noted that the workers employed in the free trade zones, 80 per cent of whom are women, are unable, in practice, to enjoy fully the rights set forth in articles 21 and 22 of the Covenant.

### *Paragraph 472*

With respect to the implementation of article 22, the State party should ensure that workers within the free trade zones effectively exercise their right to organize.

- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at para. 239.

Concern is expressed at the curtailment of freedom of association, especially within the workplace. In this sense, the high levels of violence against trade union members, the intimidation by agents of offshore operations and the high number of cases of strikes that are deemed illegal is of concern.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at para. 288.

The restrictions on freedom of association and assembly in law and in practice are of concern. The numerous reports received according to which members of unions were harassed and intimidated, sometimes even arrested and detained, and that the dissolution of certain unions was ordered by the Government, are of concern.

- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at para. 334.

A multiplicity of trade unions should be possible under the law.

- Germany, ICCPR, A/52/40 vol. I (1997) 32 at para. 188.

It is of concern there is an absolute ban on strikes by public servants who are not exercising authority in the name of the State and are not engaged in essential services, which may violate article 22 of the Covenant.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at paras. 206, 214 and 217.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 206*

Members of various social sectors, particularly human rights activists and members of trade unions, are subject to intimidation, and thus face serious obstacles in the legitimate exercise of their rights.

### *Paragraph 214*

The curtailment of the rights of members of trade unions to the freedoms of association, assembly and expression, the high levels of violence against trade union members, the intimidation by police agents of persons taking part in peaceful demonstrations, and the high number of strikes that are deemed illegal are of concern.

### *Paragraph 217*

The necessary mechanisms should be put in place to avoid a recurrence of the events surrounding the 1995 state of siege, where the police used excessive violence against the members of teachers' unions.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at paras. 248 and 260.

### *Paragraph 248*

Because of the absence of legislation concerning the exercise of the freedom of association, it has not been possible to establish free trade unions so that workers may exercise their rights under article 22 of the Covenant.

### *Paragraph 260*

Laws should be enacted making it possible for trade unions to be formed and to carry out their activities freely in defence of the rights of workers.

- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at paras. 357 and 358.

### *Paragraph 357*

While legislation governing the incorporation and status of associations is on its face compatible with article 22 of the Covenant, *de facto* State party practice has restricted the right to freedom of association through a process of prior licensing and control. It is regretted that civil servants continue to be denied the right to form associations and to bargain collectively, in violation of article 22 of the Covenant.

### *Paragraph 358*

The State party should ensure that the competent authorities adhere scrupulously to the provisions of the Statute on Incorporation of Associations. Furthermore, the Government should review and ultimately lift its ban on the establishment of associations by civil servants.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

- Senegal, ICCPR, A/53/40 vol. I (1998) 13 at para. 65.

The lack of full enjoyment of freedom of association, in particular the fact that foreign workers are barred from holding official positions in trade unions, and that trade unions may be dissolved by the executive is of concern. Therefore, the State party should take all necessary measures to permit foreign workers to hold official positions in trade unions, and provide guarantees and legal redress to trade unions, in accordance with article 22 of the Covenant, against dissolution by administrative measures.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 170.

The refusal of the Central Labour Relations Commission to hear an application of unfair labour practices if the workers wear armbands indicating their affiliation to a trade union contravenes articles 19 and 22 of the Covenant.

- Chile, ICCPR, A/54/40 vol. I (1999) 44 at para. 221.

Civil servants must be guaranteed the right to join trade unions and to bargain collectively.

- Canada, ICCPR, A/54/40 vol. I (1999) 48 at para. 239.

The Committee notes with concern that the State party has not secured throughout its territory freedom of association. In particular, the Act to Prevent Unionization with respect to Community Participation under the Ontario Works Act, passed by the Ontario legislature in November 1998, which denies participants in "workfare" the right to join a trade union and to bargain collectively, affects implementation of article 22 of the Covenant. The State party should take measures to ensure compliance with the Covenant.

- Costa Rica, ICCPR, A/54/40 vol. I (1999) 54 at para. 286.

Freedom of association, including the right to collective bargaining, should be guaranteed to all individuals. Labour legislation should be reviewed and, where necessary, reformed to introduce measures of protection against reprisals for attempts to form associations and trade unions and to ensure that workers have access to speedy and effective remedies.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 491 and 492.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 491*

That the right of foreign and domestic workers to form and join trade unions and to take part in their activities is restricted *de facto* is of concern.

### *Paragraph 492*

The State party should enable all parts of the labour force to join and to engage in trade union activities, by informing them of their rights under article 22, paragraph 1, of the Covenant.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(27).

Interference by the authorities in trade-union activities including the free election of union leaders is of great concern. The State party should, pursuant to article 22 of the Covenant, guarantee that unions are free to conduct their business and choose their business without official interference.

## **ICESCR**

- Rwanda, ICESCR, E/1989/22 (1989) 36 at paras. 190 and 192.

### *Paragraph 190*

It was noted that while due allowance should be made for the differences available to States in fulfilling their obligations under the Covenant, lack of material resources does not explain why there is only one trade union in the State party. Although article 8 of the Covenant requires State parties to allow their citizens to form trade unions and to join trade unions of their choice, in the State party there is effectively no choice.

### *Paragraph 192*

Consultation and co-operation are no substitute for the right to strike.

- Jamaica, ICESCR, E/1990/23 (1990) 34 at para. 168.

Individuals and groups do not appear to enjoy fully the rights to organize, to collective bargaining and to strike. In this connection, attention is drawn to the desirability of further developing the law with respect to the right to strike.

- Luxembourg, ICESCR, E/1991/23 (1990) 24 at para. 129.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

It is questioned whether the Covenant, virtually alone among applicable international human rights treaties, is considered to be non-self-executing in its totality. It was observed that by contrast to this approach, the Covenant contained a number of provisions which the great majority of observers would consider to be self-executing. These included for example, provisions dealing with non-discrimination, the right to strike and the right to free primary education. In that connection, a view was expressed that a theory according to which every State should have its own system of interpretation of the international treaties would lead to chaos and would destroy the very essence of international law.

- Costa Rica, ICESCR, E/1991/23 (1990) 41 at para. 194.

The restrictions placed on the participation of foreigners in trade unions are not in conformity with article 8 of the Covenant.

- Afghanistan, ICESCR, E/1992/23 (1991) 15 at para. 93.

The situation regarding the principles of freedom to form and join trade unions, tripartism, collective bargaining and the right to strike, set forth in article 8 of the Covenant is noted with concern.

- Panama, ICESCR, E/1992/23 (1991) 24 at para. 138.

The restrictions placed on the participation of foreigners in the executive committees of trade unions are not in conformity with article 8 of the Covenant.

- Viet Nam, ICESCR, E/1994/23 (1993) 34 at para. 139.

Concern is expressed over the absence of an independent and pluralistic trade union movement and the lack of clear and specific rules on the right to strike.

- Lebanon, ICESCR, E/1994/23 (1993) 39 at para. 176.

Government employees should be accorded the right to form and join trade unions in accordance with the provisions of the Covenant.

- Senegal, ICESCR, E/1994/23 (1993) 51 at para. 266.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

The State party should consider amending the relevant national legislation with a view to permitting foreign workers to hold trade union office and limiting the powers of authorities to restrict the right to strike by imposing compulsory arbitration.

- Morocco, ICESCR, E/1995/22 (1994) 28 at paras. 115, 120 and 122.

### *Paragraph 115*

The full enjoyment of trade union rights as provided for under article 8 of the Covenant is of concern. In this regard, although the Constitution guarantees the right of association and the right to form and join trade unions, as well as the right to strike, these rights have on several occasions reportedly been violated in practice. Information has been received on concrete cases of limitations on the right to strike, and lack of effective protection of workers against anti-union discrimination including arbitrary dismissal, arrest or physical violence.

### *Paragraph 121*

The State party should consider adopting relevant measures to ensure that effective sanctions are adopted and implemented in order to penalize the infringement of labour and trade union freedoms and regulations. The State party should give serious consideration to complaints about violations of labour regulations and trade union rights and provide judicial remedies to victims of such violations.

### *Paragraph 122*

Urgent steps should be taken in order to protect workers' rights to join the trade unions of their choice, and to provide protection against arrest, imprisonment and arbitrary dismissal of their labour leaders.

- Belgium, ICESCR, E/1995/22 (1994) 34 at para. 155.

The right to strike should be explicitly inscribed in Belgian law.

- Mauritius, ICESCR, E/1995/22 (1994) 37 at para. 175.

The restrictions of the right to form trade unions in force under the Industrial Relations Act, 1973 are of concern. Further, genuine collective bargaining is not practised in Mauritius. Wages and benefits are in effect determined by the Government. Of particular concern is the fact that the right to strike, although recognized in theory, cannot be exercised in practice because the Industrial Relations Act, 1973 requires a 21-day cooling-off period and empowers the minister to refer any industrial dispute to compulsory arbitration, enforceable by penalties involving compulsory labour. This has the effect



## ASSOCIATION - FREEDOM OF - TRADE UNIONS

of making most strikes illegal. Participation in a strike not approved by a court is a sufficient ground for dismissal. In this regard, it is noted with concern that the respective recommendations submitted in May 1992 by the Special Law Review Committee set up to review, *inter alia*, the Industrial Relations Act (Garrioch Committee) have not yet been released by the Government. Instead, the proposed Trade Union and Labour Relations Act, which is to replace the Industrial Relations Act, appears in some respects to be even less favourable to trade unions. It is hoped that the Government will limit compulsory labour to services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population. However, a certain tendency on the part of the Government of Mauritius to use labour legislation to block trade union recognition and dismiss workers is noted.

- Austria, ICESCR, E/1995/22 (1994) 50 at paras. 256 and 262.

### *Paragraph 256*

It is of concern that workers in small businesses (with five or fewer employees) seem not to enjoy adequate protection against the threat of dismissal or termination on the grounds of trade union activities. Similarly, the representation of workers on works councils is not sufficient to ensure a balance of interests.

### *Paragraph 262*

Efforts should be continued to ensure the exercise of all the rights recognized in article 8 of the Covenant, in particular for workers employed in small businesses.

- Republic of Korea, ICESCR, E/1996/22 (1995) 24 at paras. 71, 72 and 80.

### *Paragraph 71*

Restrictions concerning the right to form trade unions are not consistent with the obligations under article 8 of the Covenant. There is no apparent reason for the ban on the formation of trade unions by groups such as the teaching profession, particularly where the prohibition does not apply to other groups, including workers in the defence industry. Similarly, the regulations concerning the right to strike are excessively restrictive and would appear to leave to the authorities an almost absolute discretion in the determination of the legality of incidents of industrial action. Cultural traditions, including the high esteem in which teachers are held, are a wholly unacceptable basis on which to defend the excessive limitation on the freedom of significant sectors of society to enjoy the basic right to belong to unions of their choice.

### *Paragraph 72*

Reports of dismissals for engaging in industrial action and of police attacks on trade unionists

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

engaged in peaceful activities are greatly disturbing.

### *Paragraph 80*

Measures should be taken to ensure that teachers, civil servants and others have the right to form trade unions and to take strike action.

- Suriname, ICESCR, E/1996/22 (1995) 37 at paras. 158 and 165.

### *Paragraph 158*

The inconsistent protection of the rights of workers, depending on their membership in trade unions, is noted with concern. Workers who are not covered by collective bargaining agreements are not guaranteed a minimum wage, are not covered by occupational safety clauses and receive little or no protection in the event of illness. Women workers who are not members of trade unions receive little or no maternity benefits and may be dismissed if they become pregnant. Further concern is expressed about the inadequate protection of immigrant workers.

### *Paragraph 165*

Legislation should be enacted to protect workers who are not covered by collective bargaining agreements, in order to ensure them a minimum wage, health and maternal benefits, safe working conditions, and other guarantees that meet international standards for conditions of work. The Government is encouraged to extend such protection also to immigrant workers.

- Colombia, ICESCR, E/1996/22 (1995) 41 at paras. 188 and 197.

### *Paragraph 188*

Serious concern is expressed about the violation of the right of many workers to form and join trade unions and to participate in collective bargaining and strike action. The restrictions placed by law on the right to strike are far too extensive and cannot be justified by reasons of national security or public order.

### *Paragraph 197*

The State party should adopt all necessary measures to harmonize in practice its legislation on trade union freedom and collective bargaining with its international obligations in this regard.

- Norway, ICESCR, E/1996/22 (1995) 45 at paras. 224 and 227.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 224*

Concern is expressed about the provisions in the Labour Disputes Act enabling the Government, with the agreement of the Storting, to end a strike by the enactment of a bill imposing compulsory arbitration, even though the Government has only very seldom made use of this power.

### *Paragraph 227*

In the process of revising the Labour Disputes Act, the need to protect the right to strike should be fully taken into account.

- Ukraine, ICESCR, E/1996/22 (1995) 50 at para. 264.

Concern is expressed at the excessive number of industries and other employment activities in which the organization of trade unions is prohibited. Workers in civil aviation, communications and other sectors are subject to such prohibition. In this connection, the draft law which would restrict the sectors under prohibition to those in which a cessation of operation would disrupt the whole economy or threaten national security or public order is noted.

- Paraguay, ICESCR, E/1997/22 (1996) 22 at paras. 74 and 87.

### *Paragraph 74*

While it is recognized that the right to form and join trade unions is established by law, the excessive number of cases of discriminatory practices by employers against unionized workers, including wrongful dismissal for trade-union activities, is of concern. While aware of the impact of decades of dictatorship on the culture of entrepreneurs, it is pointed out that the free exercise of trade-union rights is one of the fundamental rights of workers, as elaborated in article 8 of the Covenant.

### *Paragraph 87*

Urgent measures should be adopted, *inter alia* by increasing the awareness of employers, labour judges and the police, in order to guarantee the full implementation of the right to engage in trade-union activities and the right to strike.

- Guatemala, ICESCR, E/1997/22 (1996) 29 at para. 142.

It is urgently recommended that the effective implementation of trade-union rights and labour laws be addressed. The protection of such rights requires that particular attention be accorded to the enforcement of labour laws, consistent with the provisions of the Covenant, especially in view of the considerable need of indigenous and other disadvantaged groups in society to enjoy economic opportunities and social mobility.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

- El Salvador, ICESCR, E/1997/22 (1996) 34 at paras. 165 and 178.

### *Paragraph 165*

The legal restrictions on trade-union freedom and the right to strike are far too extensive. The prohibition on aliens occupying positions of responsibility within a trade union is contrary to the Covenant. The numerous reports received regarding the violations with virtually total impunity in enterprises located in duty-free zones of the rights contained in articles 7 and 8 of the Covenant, are of concern.

### *Paragraph 178*

The necessary measures should be taken by the State party to bring its legislation on trade-union freedom, collective bargaining and the right to strike into line with its international obligations.

- Guinea, ICESCR, E/1997/22 (1996) 39 at para. 201.

The right to strike is not being observed. The Government has intimidated, and even arrested, strikers on several occasions.

- Dominican Republic, ICESCR, E/1997/22 (1996) 44 at para. 230.

It is noted with alarm that, 30 years after the first industrial park was established in a free-trade zone in the Dominican Republic, unacceptable working conditions and abuses against workers' rights under articles 6, 7 and 8 of the Covenant persist.

- Portugal (Macau), ICESCR, E/1997/22 (1996) 48 at paras. 251 and 262.

### *Paragraph 251*

It is noted with concern that labour regulations are not enforced effectively in Macau, resulting in workers having to work under unfavourable and repressive conditions without access to legal recourse. Protective measures on working conditions and social security for non-resident workers are still lacking. Measures protecting the right to strike, the right to organize trade unions and the right to collective bargaining are also lacking.

### *Paragraph 262*

The Portuguese Administration should promote appropriate policies to facilitate the right to form labour unions, the right to engage in collective bargaining and the right to strike, so as to fill the gap

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

between domestic law and the Covenant.

- Belarus, ICESCR, E/1997/22 (1996) 51 at paras. 284 and 289.

### *Paragraph 284*

The legal status of trade unions in Belarus, particularly the shortcomings of the legislation regulating their activities and the existence of certain legislative provisions which restrict freedom of association, is of concern. It is also noted with concern that a number of formerly recognized major trade unions, all of which have been required to register again under the new legislation, appear to have been prevented from applying for re-registration with the Ministry of Justice.

### *Paragraph 289*

The Government's attention is drawn to the need to update the legislation governing the freedom of activity of trade unions and the need for legislation on the right to strike. Such legislation should accord with the provisions of the Covenant and with ILO Conventions No. 87 (Freedom of Association and Protection of the Right to Organize Convention, 1948) and No. 98 (Right to Organize and Collective Bargaining Convention, 1949). Consideration should be given to limiting the number of sectors in which workers do not have the right to strike to no more than those authorized by relevant international standards, such as the armed forces, the police, etc.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICESCR, E/1997/22 (1996) 58 at paras. 343 and 358.

### *Paragraph 343*

It is of concern that trade-union rights are unduly restricted in Hong Kong. Restrictions applied to affiliation with international trade-union organizations, the prohibition on the formation of federations of trade unions from different industries, and the legal right of employers to dismiss persons involved in strike activities are incompatible with the Covenant.

### *Paragraph 358*

The Government should lift the repressive provisions and limitations in relation to trade-union federations, including the prohibition on establishing international affiliation.

- Zimbabwe, ICESCR, E/1998/22 (1997) 24 at paras. 74 and 83.

### *Paragraph 74*

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

It is regretted that public servants, teachers and nurses cannot join unions, and that doctors and nurses who have organized strikes have been subjected to arrest and dismissal.

### *Paragraph 83*

A constitutional reform is recommended to allow public servants, teachers and nurses to organize in unions, in keeping with article 8 of the Covenant, and to enable them to bargain collectively and to strike.

- Russian Federation, ICESCR, E/1998/22 (1997) 27 at paras. 104 and 119.

### *Paragraph 104*

The State party has not taken adequate steps or devoted sufficient funding to find ways of addressing the refusal of some employers to recognize or deal with new, “alternative” unions and the fact that some employers take adverse action, including dismissal, against union activists.

### *Paragraph 119*

The State party should take steps to accelerate further the development of trade unions by, *inter alia*, removing the practical constraints on the right to freedom of association, to ensure that management is separated from official unions as part of a bargaining unit, and, generally, to enable the unions to function more effectively.

- Peru, ICESCR, E/1998/22 (1997) 33 at paras. 148 and 162.

### *Paragraph 148*

The ineffectiveness of labour legislation to protect trade-union rights, including the right to strike is of concern. As a result, the basic rights of workers are frequently violated.

### *Paragraph 162*

Urgent steps should be taken, in particular by raising the awareness of employers and State agents, with a view to guaranteeing fully the right to engage in trade-union activities and the right to strike.

- Libyan Arab Jamahiriya, ICESCR, E/1998/22 (1997) 38 at paras. 183 and 189.

### *Paragraph 183*

Efforts need to be undertaken so that practice conforms to existing legislation in the field of labour rights, notably concerning trade-union activity, the right to strike and the right to conduct free collective bargaining. The freedom of workers to form independent trade unions to protect and advance their interests and ultimately to have recourse to strike is an indispensable right under the

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

Covenant.

### *Paragraph 189*

Energetic efforts should be undertaken to close the gap which still exists between the aims and purposes of legislation and the reality of its application in labour matters, in particular with regard to trade-union rights, the right to strike and the right to free collective bargaining.

- Dominican Republic, ICESCR, E/1998/22 (1997) 43 at paras. 219 and 236.

### *Paragraph 219*

Reports of extremely unsatisfactory working conditions in the free-trade zones are of concern. Concern is expressed that workers in the free-trade zones are allegedly discouraged from joining or forming trade unions and that the regulations concerning the right to strike in the Labour Code are not complied with by employers.

### *Paragraph 236*

It is recommended that workers in the free-trade zones be allowed to form and join trade unions, that their right to strike be acknowledged, that the minimum standards with regard to working conditions be respected, and that inspection mechanisms be set up with full freedom to carry out their tasks in these zones.

- Iraq, ICESCR, E/1998/22 (1997) 50 at paras. 259, 260, 275 and 276.

### *Paragraph 259*

Concern is expressed that it is possible to condemn a person to compulsory labour, as part of a prison sentence, in cases of expression of political opinions or ideological opposition to the political, social or economic system, for breach of labour discipline or for participation in strikes. This practice is designed to prevent or inhibit free expression in relation to policies and practices which have a direct bearing on the enjoyment of economic, social and cultural rights.

### *Paragraph 260*

In contravention of the provisions of article 8 of the Covenant, independent trade unions are not permitted in the State party, since the Trade Union Organization Act establishes a single trade-union structure, centralized within the General Federation of Trade Unions, which is in turn controlled by the ruling Ba'ath Party. It is noted that public-sector workers and workers in State-owned enterprises are not allowed to join trade unions. Furthermore, it is noted with concern that the above Act does not recognize the right to bargain collectively and that severe restrictions, including penal sanctions, are imposed on the right to strike.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 275*

It is recommended that Law No. 104 of 1981 and the Penal Code, which provide for compulsory labour in cases of expression of political opinions or ideological opposition to the political, social or economic system, for breach of labour discipline or for participation in strikes, be reviewed and brought into conformity with article 6, paragraph 1, of the Covenant and ILO Convention No. 29 (Forced Labour Convention, 1930).

### *Paragraph 276*

A thorough review of legislation governing trade-union rights, the right to strike and the right to bargain collectively should be undertaken as a matter of priority in order to comply with article 8 of the Covenant.

- United Kingdom of Great Britain and Northern Ireland, ICESCR, E/1998/22 (1997) 56 at paras. 294 and 306.

### *Paragraph 294*

The failure to incorporate the right to strike into domestic law constitutes a breach of article 8 of the Covenant. The common-law approach recognizing only the freedom to strike, and the concept that strike action constitutes a fundamental breach of contract justifying dismissal, is not consistent with protection of the right to strike. The proposal to enable employees who go on strike to have a remedy before a tribunal for unfair dismissal is not satisfactory. Employees participating in a lawful strike should not *ipso facto* be regarded as having committed a breach of an employment contract. The legally accepted practice of allowing employers to differentiate between union and non-union members by giving pay raises to employees who do not join a union is incompatible with article 8 of the Covenant.

### *Paragraph 306*

The right to strike should be established in legislation and strike action should no longer entail the loss of employment. The current notion of freedom to strike, which simply recognizes the illegality of being subjected to involuntary servitude, is insufficient to satisfy the requirements of article 8 of the Covenant. The right of employers to grant financial incentives to employees who do not join unions should be abolished.

- Azerbaijan, ICESCR, E/1998/22 (1997) 61 at para. 349.

The categories of workers prohibited from exercising their right to strike should be limited to only those fields where a strike would result in life-threatening situations.



## ASSOCIATION - FREEDOM OF - TRADE UNIONS

- Uruguay, ICESCR, E/1998/22 (1997) 67 at para. 367.

It is noted with concern that there has been a substantial decrease in the number of persons affiliated with trade unions.

- Saint Vincent and The Grenadines, ICESCR, E/1998/22 (1997) 72 at para. 426.

It is noted with concern that no law exists to recognize the right of workers to form and join trade unions, to organize and to strike, and that, as a consequence, the implementation of the rights under article 8 of the Covenant is left to the goodwill of employers.

- Sri Lanka, ICESCR, E/1999/22 (1998) 22 at para. 81.

It is of concern that the Constitution does not expressly recognize the right to strike and imposes vague restrictions on the right to form trade unions, which would lead to penalties being arbitrarily imposed on workers who exercise these rights.

- Nigeria, ICESCR, E/1999/22 (1998) 27 at paras. 109, 111, 112, 130 and 131.

### *Paragraph 109*

It is noted with concern that the military Government has decreased the number of labour unions from 42 to 29 and has prevented unions from associating with international federations of labour unions. In spite of repeated recommendations by the ILO, violations continue. In this regard, it is regretted that the Nigerian Government has refused to receive the visit of a direct contacts mission of the ILO to discuss these matters.

### *Paragraph 111*

Deep concern is expressed over repeated violations of the right to strike, wherein industrial action by workers seeking higher salaries has been repressed by the Government under the pretext of State security.

### *Paragraph 112*

The Government's policy of retrenchment aimed at dismissing up to 200,000 employees in the public sector, without adequate compensation is of concern. It is noted with concern that in 1997 the military Governor of the State of Kaduna issued a decree dismissing 22,000 workers of the Kaduna State civil service when they went on strike.

### *Paragraph 130*

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

The Government is called upon to restore a democratic political system and respect for the rule of law, which is a prerequisite for the development of a system of government which promotes full respect for economic, social and cultural rights. Respect for trade union freedoms and academic freedom should also be restored urgently.

### *Paragraph 131*

The rights of labour unions and syndicates should be restored and respected.

- Cyprus, ICESCR, E/1999/22 (1998) 50 at para. 292.

All the necessary steps should be taken to improve understanding of the nature and scope of the problems faced by domestic workers, with a view to implementing fully existing laws. Emphasis is placed on the necessity:

- (a) To initiate campaigns to raise awareness of this issue among trade unions, women's organizations and communities in Cyprus to which the domestic workers belong;
- (b) To improve the system of complaints concerning abuse, with a view to protecting fully the rights of complainants.

- Germany, ICESCR, E/1999/22 (1998) 54 at paras. 318 and 330.

### *Paragraph 318*

It is noted that, with few exceptions, civil servants in Germany do not enjoy the right to strike.

### *Paragraph 330*

Civil servants not involved in essential services should be accorded the right to strike.

- Switzerland, ICESCR, E/1999/22 (1998) 59 at paras. 351 and 352.

### *Paragraph 351*

It is regretted that the right to strike still remains restricted for civil servants.

### *Paragraph 352*

The non-ratification by the State party of ILO Conventions Nos. 98 (1949) concerning the application of the principles of the right to organize and to bargain collectively and 174 (1993) concerning the prevention of major industrial accidents is of concern.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

- Canada, ICESCR, E/1999/22 (1998) 63 at para. 406.

Laws which deny workfare participants the rights to join a trade union, to bargain collectively and to strike are considered to be a clear violation of article 8. Measures should be taken to repeal the offending provisions.

- Denmark, ICESCR, E/2000/22 (1999) 29 at para. 118.

The State party should take the necessary measures to assure the right to strike to the teachers in the public sector, since they do not constitute an essential service.

- Ireland, ICESCR, E/2000/22 (1999) 33 at para. 141.

It is noted with regret that the procedures for trade unions to obtain a licence to conduct collective bargaining negotiations are cumbersome.

- Tunisia, ICESCR, E/2000/22 (1999) 36 at paras. 167, 177 and 178.

### *Paragraph 167*

With regard to article 8 of the Covenant, the existence of only one confederation of trade unions is noted with concern. A single trade union confederation representing the diverse range of all workers may not be able to represent the plurality of their views. In particular, attention is drawn to the regulations requiring that all strikes be authorized by this single union, which severely curtails the rights to strike and to freedom of association.

### *Paragraph 177*

The State party should take the necessary measures to ensure that sentences of forced labour may not be imposed for crimes of conscience or for participation in strikes declared to be illegal.

### *Paragraph 178*

The procedures that have led to the association of trade unions within a single confederation should be reviewed with a view to guaranteeing, in law and in practice, the right to strike and protection against infringement of trade union freedoms.

- Bulgaria, ICESCR, E/2000/22 (1999) 46 at paras. 228 and 237.

### *Paragraph 228*

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

Limitations on the right to strike in the State party are noted, including the conditions for voting to exercise the right to strike in companies, and the prohibition on the right to strike for workers in the health services, energy production and communications system sectors.

### *Paragraph 237*

The State party should take the necessary measures to allow for the full exercise of the right to strike, and in particular to amend paragraphs 11 (2) and 16 (4) of the law of 1990 on collective labour disputes, concerning the right to strike.

- Mexico, ICESCR, E/2000/22 (1999) 62 at para. 385.

The fact that trade unionism in the public sector is not pluralistic, and that trade union officials are not elected by direct vote is regretted.

- Egypt, ICESCR, E/2001/22 (2000) 38 at paras. 147 and 160.

### *Paragraph 147*

The Committee welcomes the stand taken by the Constitutional Court of Egypt which invoked the provisions of the Covenant to acquit rail workers who had been prosecuted for going on strike in 1986 and declared that the Penal Code should be amended to allow the right to strike.

### *Paragraph 160*

The Committee is disturbed about the apparent inability of the Government to address the acute problem of unemployment in Egypt as well as the uncertainty of workers' rights as guaranteed under article 8 of the Covenant. In particular, it is noted with concern that in spite of the State Security Court's conclusion that the Penal Code should be amended to allow the right to strike, article 124 of the Penal Code continues to characterize strikes as criminal offences. In this regard, further concern is expressed about the new proposed labour law that reportedly contains provisions infringing upon the rights of workers, such as barring labour committees from negotiating collectively on behalf of workers and denying workers the right to strike without the approval of two thirds of a trade union's membership.

- Jordan, ICESCR, E/2001/22 (2000) 49 at paras. 238, 240 and 254.

### *Paragraph 238*

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

Concern is expressed that non-Jordanian workers are exempted from minimum wage provisions, are denied participation in trade union activities and are excluded from the social security system.

### *Paragraph 240*

Concern is expressed at the extent of the restrictions imposed on the right of public-sector employees, notably those working in the health and educational services, to participate in trade union activities. Furthermore, it is of concern that article 100 of the Labour Code pre-empts the right of workers to strike.

### *Paragraph 254*

It is emphasized that the right of trade unions to function freely shall be subject to no restrictions "other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others". It is recommended that the State party ensure that restrictions contained in the Labour Code are fully in line with article 8 of the Covenant.

- Kyrgyzstan, ICESCR, E/2001/22 (2000) 62 at paras. 343 and 356.

### *Paragraph 343*

The extensive limitations on the right to strike are regretted. The Committee is disturbed to learn that some employers are hampering the activities of trade unions and that trade union rights in general are not protected by law as vigorously as they should be.

### *Paragraph 356*

The State party is encouraged to review the limitations in the Labour Code on the right to strike with a view to bringing them into conformity with the Covenant. The State party is also urged to apply all legal means to put an end to the interference of employers with the freedom of trade union activity by discouraging workers from forming trade unions.

- Australia, ICESCR, E/2001/22 (2000) 66 at paras. 382 and 394.

### *Paragraph 382*

It is noted with concern that the Workplace Relations Act of 1996 favours individual negotiation with employers over collective bargaining, thereby reducing the role of the Australian Industrial Relations Commission. Concern is also expressed about the restrictions resulting from the Act with regard to the protection of wages, job security and temporary employment.

### *Paragraph 394*

It is recommended that the State party limit its prohibitions on the right to strike to essential services,

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

in accordance with ILO Convention No. 87, and, in the context of the civil service, to civil servants who exercise functions of State authority.

- Morocco, ICESCR, E/2001/22 (2000) 82 at paras. 533, 552 and 557.

### *Paragraph 533*

Concern is expressed about the continuing restrictions on the right to strike as laid down in article 8 of the Covenant, particularly under article 288 of the State party's Penal Code. It is regretted that the State party has not yet ratified ILO Convention No. 87 on the freedom of association and protection of the right to organize.

### *Paragraph 552*

The State party is urged to adopt the draft labour code and to ensure that the provisions thereof are in conformity with articles 6, 7 and 8 of the Covenant, as well as with the relevant ILO conventions to which Morocco is party. In this regard, the State party is strongly encouraged to ratify ILO Conventions Nos. 87 (on trade unions), 138 (on minimum age), 169 (on indigenous and tribal peoples) and 12 (on the worst forms of child labour).

### *Paragraph 557*

It is recommended that the State party undertake measures to eliminate excessive restrictions on the right to strike, in particular article 288 of the State party's Penal Code, which criminalizes certain forms of strike.

- Venezuela, ICESCR, E/2002/22 (2001) 29 at paras. 88 and 98.

### *Paragraph 88*

The Committee is concerned that following the National Referendum of December 2000 on trade union reorganization, the entire leadership of the country's union federations and confederations was dismissed while only union members can elect or remove their leaders.

### *Paragraph 98*

The State party is called upon to comply with the ILO recommendation requesting the revocation of the results of the Referendum on trade union reorganization and to refrain from making hostile declarations against independent trade union federations. It is recommended that the bill in preparation afford all workers trade union freedoms as required by article 8 of the Covenant.

- Honduras, ICESCR, E/2002/22 (2001) 33 at para. 125.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

Concern is expressed about the insufficient level of protection by the State party of trade unions to conduct labour negotiations with foreign employers, particularly given the large number of workers in unions. In addition, it is deeply regretted that the law prohibits the presence of more than one trade union in a single enterprise.

- Hong Kong Special Administrative Region (China), ICESCR, E/2002/22 (2001) 39 at paras. 188, 191 and 199.

### *Paragraph 188*

There is concern that the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8 (c) of the Covenant.

### *Paragraph 191*

The reservation on article 6 and the interpretative declaration replacing the former reservation on article 8 should be withdrawn.

### *Paragraph 199*

The Public Order Ordinance should be reviewed with a view to amending its provisions to ensure freedom of trade union activities as provided for under article 8 (c) of the Covenant.

- Republic of Korea, ICESCR, E/2002/22 (2001) 45 at paras. 229, 230 and 249.

### *Paragraph 229*

It is noted that teachers can legally enjoy their right under article 8 of the Covenant to form and belong to trade unions. However, it is of concern that they are still prevented from participating in collective bargaining and in strikes, a right guaranteed in both the Covenant and in the national Constitution (article 33). While cognizant of the elevated status that is traditionally bestowed on teachers in Korean society, it is considered inappropriate for the Government to assume the role of guardian of traditions that prevent the exercise of this fundamental right.

### *Paragraph 230*

Concern is expressed that the laws governing industrial actions are not transparent and appear to give the authorities inordinate discretion in determining the legality of strikes. In this regard, the approach taken to criminalize strike activities is entirely unacceptable. In addition, the Committee is deeply disturbed by the excessive police force used in recent labour demonstrations that had been set off by massive lay-offs. The Committee considers the combined effect of these circumstances to be a clear negation of the rights provided for in article 8 of the Covenant.

### *Paragraph 249*

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

The State party is reminded that the provisions of article 8 guarantee for all persons the right to freely form and join trade unions, the right to engage in collective bargaining through trade unions for the promotion and protection of their economic and social interests, as well as the right to strike. The State party is urged to desist from using criminal proceedings against trade unions for striking. The State party is also urged to refrain from using any force beyond what is absolutely necessary for the maintenance of public order. The right of teachers and other civil servants to form and join trade unions, to engage in collective bargaining and to strike should be guaranteed in law and in practice.

- Bolivia, ICESCR, E/2002/22 (2001) 52 at paras. 273 and 291.

### *Paragraph 273*

The Committee considers the excessively long procedure for declaring a legal strike to constitute a restriction on the right provided for in article 8(1)(d) of the Covenant. Similarly, concern is expressed that restrictions imposed in the General Labour Law on trade union rights infringe on the rights provided for in article 8(1)(a) of the Covenant.

### *Paragraph 291*

The State party is asked to ensure that the excessive time period for collective negotiation does not constitute an obstacle for the right to strike.

- Senegal, ICESCR, E/2002/22 (2001) 61 at paras. 348 and 370.

### *Paragraph 348*

Concern is expressed about the fact that an authorization from the Ministry of the Interior is needed before a trade union can be set up and that they can be dissolved by the Ministry. Moreover, it is a matter of concern that foreign workers are still not permitted to hold trade union offices, in spite of the previous recommendation to that effect.

### *Paragraph 370*

The State party is called upon to consider repealing the existing provisions of the Labour Code whereby (a) foreign workers are barred from holding trade union offices; (b) the Ministry of the Interior is able to dissolve trade unions; and (c) an authorization is required from the Ministry before a trade union can legally exist.

- Syrian Arab Republic, ICESCR, E/2002/22 (2001) 67 at paras. 410, 411 and 428.



## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 410*

It is of concern that the right to establish independent trade unions is obstructed by the State party, as trade unions are obliged to register with the General Federation of Trade Unions, which is closely linked to the governmental structure.

### *Paragraph 411*

Concern is expressed about the restrictions in practice reported by the ILO with regard to the right to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the obligation regarding article 8 of the Covenant.

### *Paragraph 428*

The State party is strongly urged to ensure that the right to establish free and independent trade unions is respected, and that the right to strike can be exercised without any form of intimidation

- Panama, ICESCR, E/2002/22 (2001) 73 at paras. 452, 453, 467 and 468.

### *Paragraph 452*

The limited applicability of labour laws in the Colón Free Zone and the resulting limits on the protection of workers against dismissal or trade union activity are matters of concern.

### *Paragraph 453*

Legislation that sets excessively high requirements for the establishment of employer organizations and trade unions or their branches is of concern.

### *Paragraph 467*

The State party is encouraged to take action to lower the requirements for the setting up of employer organizations or trade unions and their branches.

### *Paragraph 468*

It is recommended that the limited applicability of labour laws in the Colón Free Zone be reviewed.

- Ukraine, ICESCR, E/2002/22 (2001) 78 at paras. 497 and 508.

### *Paragraph 497*

There is concern about restrictions on trade union freedoms, including the right of everyone to join a trade union of his/her choice, as well as acts of intimidation by local authorities against independent trade unions and their leaders.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### *Paragraph 508*

It is emphasized that the right of trade unions to function freely shall be subject to no restrictions, other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. The State party should ensure that such restrictions contained in the labour law are fully in line with article 8 of the Covenant, and that acts of intimidation against trade unions and their leaders are prohibited.

- Japan, ICESCR, E/2002/22 (2001) 90 at paras. 600 and 627.

### *Paragraph 600*

There is concern about the general prohibition of strikes for all public employees and civil servants, even those not working in essential governmental services, including teachers. This contravenes article 8 (2) of the Covenant (to which the State party has made a reservation), and the ILO Convention No. 87 (1948) concerning freedom of association and protection of the right to organize, despite the existence of alternative systems of personnel committees.

### *Paragraph 627*

In line with the ILO, it is recommended that the State party ensure the right of civil servants and public employees not working in essential services to organize strikes.

- Germany, ICESCR, E/2002/22 (2001) 97 at paras. 664 and 682.

### *Paragraph 664*

Concern is reiterated, in line with the Human Rights Committee and ILO Committee of Experts, that the prohibition of strikes by public servants, other than public officials who do not provide essential services, such as judges, civil servants (*Beamte*) and teachers, constitutes a restriction of the activities of trade unions that is beyond the scope of article 8, paragraph 2, of the Covenant. The Committee disagrees with the State party's statement that "a strike would be incompatible with this duty of loyalty and would run counter to the purpose of a professional civil service", as this interpretation of "the administration of the State", mentioned in article 8, paragraph 2, of the Covenant, exceeds the more restrictive interpretations by the Committee, the ILO Convention No. 98 (1949) concerning the application of the right to organize and bargain collectively, and the Court of Justice of the European Communities.

### *Paragraph 682*

The State party should ensure that civil servants who do not provide essential services have the right to strike, in accordance with article 8 of the Covenant.

## ASSOCIATION - FREEDOM OF - TRADE UNIONS

### CEDAW

- New Zealand, CEDAW, A/49/38 (1994) 111 at para. 662.

It is noted with concern that changes in legislation are likely to weaken the trade union movement in New Zealand. Without strong union support, women in paid employment would lack the means to negotiate better employment conditions with their employers.

- China, CEDAW, A/54/38/Rev.1 part I (1999) 26 at para. 298.

The Government is urged to analyse, from a gender perspective, the effects of its economic policies, and to take steps to mitigate and counteract their negative effects on women. In addition to enforcing existing labour laws, the Government is invited to increase women's means of redress against discrimination and inequality at work, including by promoting the recognition of women's right to participate in workers' organizations and their right to strike.

- Belize, CEDAW, A/54/38/Rev.1 part II (1999) 49 at para. 55.

The Government is invited to ensure that women can fully exercise their right to unionize, and that all applicable legislation in this regard is enforced, including in special economic zones.

### CRC

- Turkey, CRC, CRC/C/108 (2001) 18 at paras. 117 and 118.

#### *Paragraph 117*

Concern is expressed that persons under 18 cannot join associations, including trade unions and non-governmental organizations.

#### *Paragraph 118*

In light of articles 13 and 15 of the Convention, the State party should ensure that children can form, join and leave associations freely and, in particular, that young persons who have reached the legal age for being employed can form, join and leave trade unions freely.