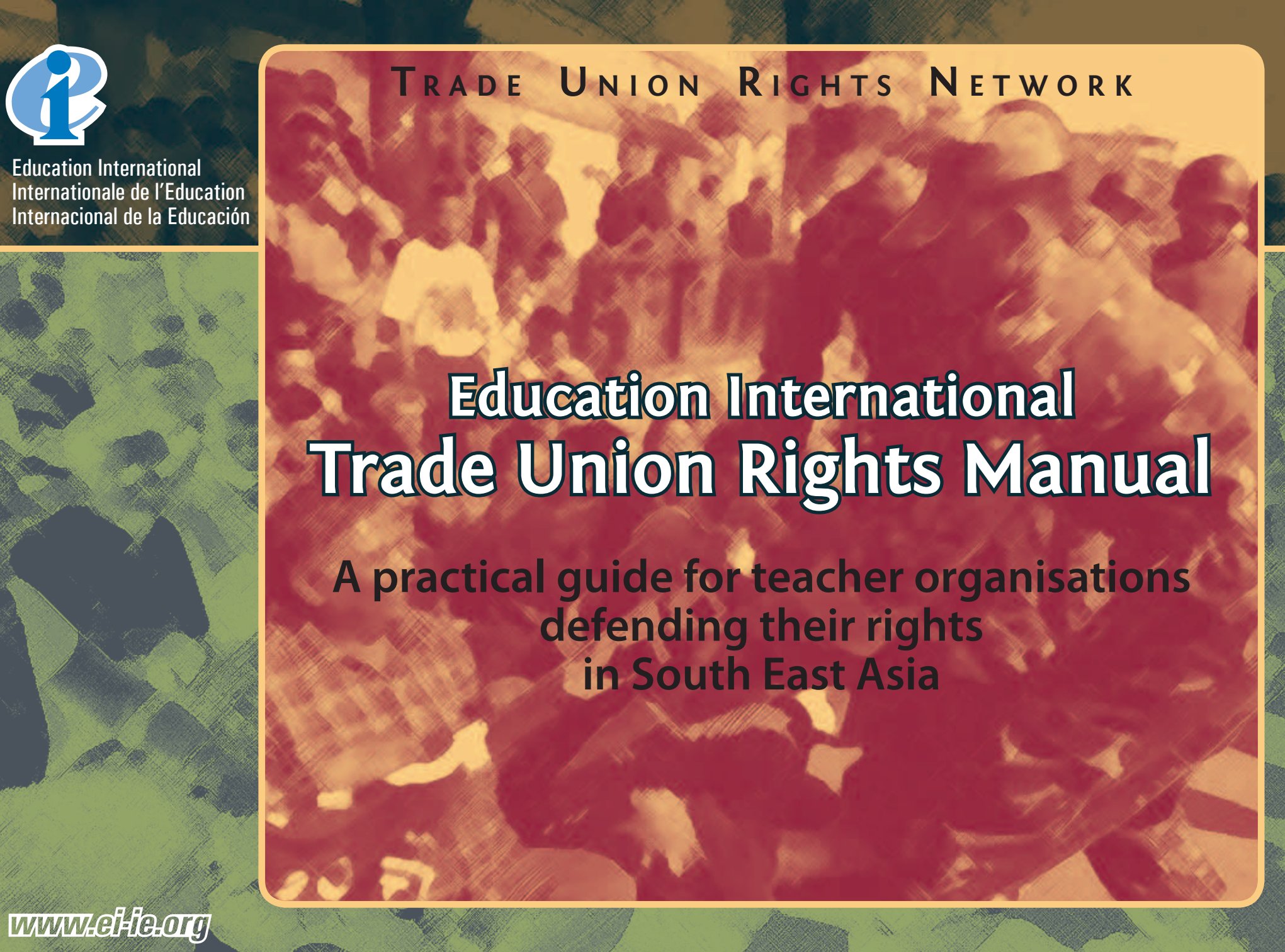

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TRADE UNION RIGHTS NETWORK

Education International
Trade Union Rights Manual

A practical guide for teacher organisations defending their rights in South East Asia

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Table of contents

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Introduction

Trade union rights are human rights and are considered as such and protected by human rights treaties. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the Charter of the Association of Southeast Asian Nations, and other agreements cover freedom of assembly and of association, workers' rights to collective bargaining and action, and workers' rights to information and consultation.

Through such international and regional instruments, states have committed themselves to ensuring that trade union rights can be exercised. And yet, teacher organizations and trade unions in general are facing increasingly sophisticated attempts by governments to restrict their operations through a wide variety of legal, administrative, and informal measures.

Governments in the five countries selected for the Trade Union Rights Network (Cambodia, Indonesia, Malaysia, Philippines and Thailand) are not showing a clear dedication to implement human and trade union rights. When international human rights instruments have been ratified, their principles and values are not reflected in national constitutions or laws. Another important challenge is the persecution of union members and human rights activists. The targeting of labour activists in Asia particularly in Cambodia and the Philippines, and the number of assassination of union members, is of increasing concern to the international trade union community.

In 2008, EI launched, with 13 teacher organisations in Cambodia, Indonesia, Malaysia, Philippines and Thailand, the Trade Union Rights Network (TURN). With the support of the Friedrich Ebert Stiftung and ILO ACTRAV, the TURN project aims to provide teacher representatives in those five countries a perspective on the trade union rights issues both at national and regional level and a better understanding of ILO instruments and supervisory mechanisms. The establishment of a network also provides opportunities for sharing good practices and experience.

Purpose of this manual

This manual provides basic information to member organizations about their rights and on ways to convince states to implement trade union rights for teacher organizations and to spread best practices. At the same time, the manual helps the reader understand both the impressive number and competence of international organizations devoted to protecting their rights as workers and union members and the role of EI as the leading international advocate for teaching personnel.

EI believes that greater awareness of the existence of the international labour standards and supervisory mechanisms will result in a better identification and reporting of human and trade union rights violations.

International supervisory mechanisms are available to be used when a country fails to live up to its commitments guaranteeing workers' rights. This manual describes how teacher organizations can appeal to these mechanisms when states seek to hamper or prevent teacher unions from working on behalf of their members. It is a practical resource book on the rights of teacher organizations to exist, operate, and represent their members. The focus is on organizational rights and actions, not on the options open to individual activists or on the filing of grievances on behalf of individual members. In certain cases human rights bodies allow only individuals and not organizations to lodge complaints, and this manual shows how teacher organizations can be requested to assist their members in such an undertaking.

The strength of unionism lies in the capacity of trade union organizations to translate the rights into a living reality for their members. The country chapters describe the environment in which EI member organizations in Cambodia, Indonesia, Malaysia, the Philippines and Thailand are operating. It gives details about the structure of the teacher organisations. It also provides an overview of the national regulations concerning freedom of association and the right to collective bargaining, with a particular focus on the implementation of those rights for teacher organisations.

The goals of Education International

Education International is the world's largest global union federation. It is the voice of 30 million teachers and education workers from pre-school to university. EI's 401 member organizations operate in 172 countries and territories. Its role can be expressed in terms of its principal aims:

Education and social goals

- to promote the right to education for all persons in the world, without discrimination through the establishment and protection of open, publicly funded and controlled educational systems, and academic and cultural institutions, aimed at the democratic, social, cultural and economic development of society and the preparation of every citizen for active and responsible participation in society;
- to promote the political, social and economic conditions that are required for the realization of the right to education in all nations;
- to foster a concept of education directed towards international understanding and good will, the safeguarding of peace and freedom, and respect for human dignity;
- to promote peace, democracy, social justice and equality through the development of education and the collective strength of teachers and education employees;
- to combat all forms of racism and of bias or discrimination in education and society due to gender, marital status, sexual orientation, age, religion, political opinion, social or economic status or national or ethnic origin;
- to give particular attention to developing the leadership role and involvement of women in society.

Professional goals

- to enhance the conditions of work and terms of employment of teachers and education employees, and to promote their professional status in general, through support for member organizations;
- to support and promote the professional freedoms of teachers and education employees and the right of their organizations to participate in the formulation and implementation of educational policies;
- to further the cause of organizations of teachers and education employees;
- to build solidarity and mutual cooperation among member organizations;
- to encourage through their organizations closer relationships among teachers and education employees in all countries and at all levels of education;
- to promote and to assist in the development of independent and democratic organizations of teachers and education employees, particularly in those countries where political, social, economic, or other conditions impede the application of their human and trade union rights, the advancement of their terms and working conditions, and the improvement of educational services.

Union movement goals

- to promote unity among all independent and democratic trade unions both within the educational sector and with other sectors; and thereby contribute to the further development of the international trade union movement;
- to seek and maintain recognition of the trade union rights of workers in general and of teachers and education employees in particular.

Under the heading of human rights, EI promotes education rights, children's rights (including the fight against child labour), academic freedom, equality and non-discrimination on the basis of gender, national or ethnic origins, sexual orientation or identity,

In 1998, the International Labour Organization adopted a Declaration on Fundamental Principles and Rights at Work which declares as follows: all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote, and to realize … the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

disability, age, religious beliefs, and political beliefs. Under the heading of trade union rights, EI encourages the ratification and implementation of international conventions on the protection of core labour standards: the freedom to form and join unions, the freedom to strike, and right of collective bargaining.

The TURN Project

This project proposes to equip EI member organisations in the 5 countries of the ASEAN sub region with the tools and skills that will enable them to influence public policy through exchange of experience, solidarity and advice via a strong sub regional trade union network.

TURN is envisaged as a four-year programme 2008/2011 with three components of trade union education: training, research and network. It is achieved at all levels: national and sub regional, and possibly local. Union leaders are trained in international labour standards, supervisory mechanisms, children rights, equality issues, data collection and analysis, awareness raising, communication, advocacy and network. Trained participants are expected to replicate training and to disseminate the TURN manual in order to have a cohort of trained members.

Defending the trade union rights of teacher organizations

In the area of focus of this manual – the defence of the trade union rights of teacher organizations – EI assists its member organizations to become aware of their rights, to adopt strategies to extend the scope of trade union rights in their country (through lobbying for the ratification by their country of internationally binding instruments such as human rights treaties and ILO conventions), and to make their country accountable in respecting core labour rights.

When member organizations are confronted with violations of their trade union rights, EI's first objective is to restore a dialogue at the national level. By extending international support to its member organizations and by putting a spotlight on a country, EI sometimes succeeds in restoring a dialogue between authorities and teacher organizations. EI has also helped member organizations to structure themselves in networks to allow a rapid exchange of information and efficient trade union response and support.

When all avenues for dialogue with the authorities have failed, EI supports its members through protest letters, Urgent Action Appeals, investigation or support missions, audiences with embassies, networking, and eventually complaints with intergovernmental bodies such as the ILO, the Committee of Experts, CEART, the Council of Europe, and other agencies described in this manual.

In addition to the permanent flow of emergency requests for support from member organizations, EI focuses on countries which present long-term and/or systematic challenges through defence actions and organizational support.

EI also collaborates with ACTRAV (the Workers Bureau of the ILO), with the International Trade Union Confederation (ITUC), with other Global Union Federations, and with Human Rights groups such as Amnesty International, Human Rights Watch, the International Federation of Human Rights (FIDH), and others.

The effectiveness of international mechanisms

The international supervisory mechanisms are used when countries are not living up to the commitments they have made in ratifying international and regional treaties guaranteeing workers' rights. In some countries, international treaties take precedence over national law; in other countries a specific law may be required to give a ratified international treaty the force of a national law. In either case, states that have ratified or acceded to an international treaty usually must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

What does this statement mean for teacher unions who find themselves in extreme situations? These include the following: harassment, detention, and sometimes murder of trade union members, refusal of union registration, favouritism of yellow unions, refusal to negotiate, interference in union activities, suspension or disruption of union statutory meetings, occupation of union offices, professional sanctions against teacher union leaders, refusal to

enter into collective bargaining, compulsory arbitration, imposition of contract, violent suspension of strikes, and so on.

Unfortunately, international supervisory mechanisms do not supply a quick fix. International complaint procedures are time-consuming, because they involve consultation mechanisms of all parties (including governments, because these bodies are all intergovernmental). The existence of teacher organizations cannot always survive a confrontation with the authorities for the two or three years it usually takes for international procedures to be followed through.

However, a resort to international mechanisms can be used by teacher organizations to put pressure on governments to stop anti-union practices, enter into negotiations, and respect their international commitments. Governments hate to be put in the spotlight. Few governments accept with equanimity the prospect of being summoned by international institutions, such as the ILO, to respond to serious allegations by their own citizens.

International sanctions for trade union rights violations do not hurt countries economically nor pose serious political threats. But they do hurt the pride of countries and constitute a potential embarrassment. The name-and-shame tactic is sometimes very powerful. In recent years, only Zimbabwe, under the rule of President Robert Mugabe, and, in a contrasting category, Australia under the conservative government of John Howard, have been willing to contest the status and judgment of the international institutions. Most countries challenged by the ILO formally agree to respect trade union rights. It is then up to worker and teacher organizations to help persuade the governments to fulfil their guarantees or to seek redress in national law.

Trade union rights

International and regional instruments protect a number of key trade union rights.

Right to freedom of association

Individuals have the right to "associate" together to form and join workers organizations to promote their common economic and social interests. Some states have attempted to curtail the activity of teacher organizations by imposing reprisals on individuals for joining an organization of their choice or by forcing them to join a state-approved association.

In a number of countries, categories of workers are excluded from enjoying freedom of association by national legislation. Teachers as civil servants may be forbidden to form trade unions and allowed only to form professional associations. This is contrary to the provisions of ILO Convention 87. The ILO Committee of Experts has repeatedly stressed that the only exceptions authorized by Convention 87 are members of the police and armed forces. Reacting to country reports submitted by Education International, the ILO Committee of Experts stressed that "teachers in public schools should be provided with a legal framework to exercise their right to form trade unions."

However, governments in Lesotho, Eritrea, and Ethiopia forbid teachers employed in the public sector to form or join trade unions. China, India, and Iran have not ratified Conventions 87 and 98 and strictly curtail the rights of millions of teachers. Though Pakistan ratified Convention 87, teacher organizations can only register as professional associations. In Thailand, civil servants can join associations but without the right to bargain collectively. In Bangladesh, under the Industrial Relations Ordinance, workers in the public sector (including teachers) are forbidden to form trade unions.

When teachers employed by the state are deprived of trade union rights and are, at best, only guaranteed the right to form professional associations but prohibited from collective bargaining, their governments are guilty of restricting the rights of those they directly employ.

Some countries also have sought to hamper the ability of individuals to form associations by imposing cumbersome and partial registration processes, by imposing high minimum levels of membership, by classing worker organizations as political associations, and by denying legal personhood, which is a prerequisite for day-to-day operations and for the ability to enter contractual relationships. The latter, which gives an association the right to open a bank account, to hire employees, and to rent or own premises, is essential to effective operations. Refusal to grant it can therefore effectively undermine the right of association. Yet the relationship between forming an association and obtaining legal person status is not a straightforward one. Wide disparities exist

in national law. The ILO provides strong support for the view that the right to legal personhood is inherent in the right to freedom of association and has stated that it is one of the conditions which enable a union to function legally.

The right of association also covers the right of national worker organizations to interact broadly, such as to be members of national and international federations. In some countries the authorities have sought to hinder external contacts. Participation by trade unionists in international trade union meetings is a fundamental trade union right, which governments at times violate by such measures as withholding travel documents.

The right to freedom of association also covers the right of worker organizations to draw up their own rules and constitutions, elect their representatives, decide on programmes and plans, and undertake legitimate and peaceful activities. Teacher organizations in a number of countries have suffered hostile and intrusive interference by government in their internal governance. In various cases, the ILO has considered that the removal by the government of trade union leaders from office is a serious infringement of the free exercise of trade union rights. Suspension of legal personhood and dissolution of a union should be subject to appeal to an independent and impartial judicial tribunal. Eviction from premises and loss of government-paid jobs have also been considered as hostile intervention by the government in union internal affairs.

Right to peaceful assembly

The right to peaceful assembly should not be denied except in situations of national security or public safety. The right to violent assembly is not upheld. However, international standards limit the use of force by authorities in controlling peaceful or non-peaceful assemblies. International standards require that law enforcement officials should use force only as a last resort, in proportion to the threat posed, and in a way to minimize damage or injury.

Right to strike

This is not an absolute right, because other social interests may be affected. This is especially so where public employees are providing essential services, the disruption of which may threaten the life, health, and safety of the population. Firefighters, for example, are prohibited from striking in some countries. Governments have attempted to hinder the right to strike through a variety of strategies. For example, some countries adopt a "permanent replacement" doctrine whereby striking employees are replaced by new employees loyal to the employer who then vote the union out of existence. Such practices contravene international law.

The right to strike is often banned in the public service or obstructed in general by cumbersome procedures. Governments may include schools and universities within the scope of "essential services". Germany, for instance, persists in its longstanding denial of the right to strike of all civil servants, including teachers, despite repeated ILO criticism. In Japan and Korea, public employees are banned from striking.

> EI member organizations are invited to first seek advice from EI on whether there is possible cause for complaint. EI will check whether similar violations have already been filed by other professional organizations or by the trade union centre within the country. EI will also check the jurisprudence (interpretation) of the ILO regarding the matter raised.

Practices and strategies

Support from the International Labour Organization

In principle, a teacher organization identifying a trade union violation begins its opposition by using all procedures available at the local level. If these are ineffective and the organization wishes to denounce the violation, it lodges a complaint with the International Labour Organization, whose standards uphold the rights of workers and employers to form organizations and to bargain collectively.

Over the years, the ILO has developed extensive and detailed decisions about what the freedom of association means, what the limits are, and what elements of the right are so critical that, if denied, they effectively deny the right itself. For example, the International Labour Conference has pointed out that "the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek,

receive, and impart information and ideas through any media and regardless of frontiers constitute civil liberties which are essential for the normal exercise of trade union rights". The ILO also considers that "a trade union's activities cannot be restricted solely to occupational questions". Thus, for example, when a teacher organization arranges a march to request a national government to invest more money in public education, this activity is within the framework of legitimate trade union activities.

In cases where trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security, or for common law crimes, the ILO has always followed the rule that governments should submit the most precise information possible concerning the arrests, and especially detailing the legal or judicial proceedings that are in place to make a proper examination of the allegations. The ILO Committee on Freedom of Association has pointed out that, where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside its competence. But it has emphasized that the decision whether a matter relates to criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned. This is a question also to be determined by the ILO Committee itself after examining all the available information and, in particular, the text of the judgment.

Regarding registration and dissolution of worker organizations, the ILO has concluded that if a minimum number of members is required to achieve union registration, this number should be low, and that consideration of applications should not be unduly delayed. The ILO has stated that to make the right of association subject to authorization granted at the discretion of a government department is incompatible with the principle of freedom of association, as is state legislation imposing unity within the trade union movement.

In principle a worker organization can only be dissolved by a sovereign decision of its members. The ILO also recognizes that a union can be dissolved by judicial decision. However, if a Ministry of Education, of Labour, or of the Interior decides to suppress the registration of a teacher organization, the ILO Committee on Freedom of Association considers that ILO Convention 87 on freedom of association has been violated. The Committee has also noted that negotiations are not to be conducted on behalf of worker organizations by representatives appointed by or under the domination of employers or their agencies.

Some governments have also sought to restrict the flow of funds to associations, particularly funds from abroad. In cases involving trade unions, the ILO has held that laws requiring official approval of funds from abroad may be incompatible with Convention 87.

The ILO stresses that the right to strike and to organize union meetings are essential aspects of trade union rights.

The ILO also considers that successive governments in a state cannot escape the responsibility to address allegations of events or situations that occurred under a former government. The new government should take steps to remedy any continuing effect of the facts contained in the complaint.

Support from CEART and regional institutions

The Joint ILO/UNESCO Committee CEART can be used when the teacher organization feels that the status and working conditions of teachers are not respected and fall short of what is provided by the 1966 ILO/UNESCO Recommendation on the Status of Teachers and the 1997 UNESCO Recommendation on the Status of Higher Education Teaching Personnel. For example, if in one country, the teachers do not receive a wage but are paid with food (a sheep, say), CEART may be consulted. The list of issues which can be addressed is very broad, ranging from training (or lack thereof), to career (transfers, promotion, tenure), conditions of service (status, salaries, academic freedom), rights and responsibilities of teachers, teacher shortage, and so on.

A regional body can generally be approached by organizations from the region.

How to use this manual

The information provided in this manual will guide national teacher organizations in bringing forward to international institutions evidence of violations of trade union and human rights in their country. There is nothing to prevent the teacher organization from directly approaching any or all of these institutions on its own initiative. However, for the greatest effectiveness in gaining a hearing, it is recommended that the teacher organization begin by contacting Education International.

First, EI can help by assessing the complaint, pointing out any additional information desirable, and generally fostering the most persuasive submission.

Second, EI can help by recommending which institution(s) to approach, and in what order, and with what emphases.

Third, an endorsement by a trusted international trade union federation such as EI can be very powerful in ensuring a prompt hearing and favourable consideration. Furthermore, EI can seek endorsement by the International Trade Union Confederation.

These considerations are especially important for submissions to the ILO and CEART.

At the same time, the national teacher organization can also forward a complaint submission to a regional intergovernmental body when one is available. And it can simultaneously submit its complaint to UN Special Rapporteurs, such as those on Right to Education, Torture, Extrajudicial, Summary or Arbitrary executions, Racism, Racial Discrimination, Xenophobia and Related Intolerance, Minority Issues, Indigenous People, Internally Displaced Persons, Migrants, Violence against Women, and Trafficking in Persons.

It is always beneficial for EI to be kept informed and involved. Not only can EI provide direct assistance with these submissions as well but also EI will then be better prepared to respond if one of these adjudicative institutions approaches it for consultative reference and background information.

Texts of pertinent international conventions

The texts of international declarations and conventions relating to trade union rights and human rights are presented at the end of this manual in a set of appendices. Text discussions are accompanied by appropriate appendix references.

1. International Labour Organization (ILO)

The ILO is an agency of the United Nations, and is in fact its only "tripartite" body, that is, jointly representing workers, employers, and governments. Created in 1919 by the Versailles Peace Treaty, the ILO was originally part of the League of Nations in Geneva. After the United Nations was established in 1945 to be located in New York, the Geneva-based ILO came to be incorporated within it to focus on fostering humane working conditions and combating injustice, discrimination, slavery, forced labour, and so on. Those aims remain valid today, though the field of activities has expanded to include such issues as equality, child labour, and HIV/AIDS. The ILO is significant to this manual because it is the UN body competent to set and deal with international labour standards.

ILO structure

Within the UN system, the ILO is unique in being a tripartite body. This means that its constituencies include representatives of governments and of worker and employer organizations. The annual International Labour Conference consists of two government delegates, a worker delegate, and an employer delegate from each member country. It elects the Governing Body, an executive council, which meets three times a year to make decisions on budgets and programmes to set before the annual Conference for approval. The Governing Body selects the Director-General for a five-year term to head the permanent secretariat which applies the policies and programmes decided on.

Currently, 182 countries are members of the ILO. By freely joining the ILO, all member countries endorse the principles and rights set out in its Constitution. All members, even if they have not ratified specific conventions, have an obligation as members to respect, promote, and implement the ILO's Declaration of Fundamental Principles and Rights at Work, which outlines principles related to:

- freedom of association and the effective recognition of the right to collective bargaining,
- the elimination of all forms of forced or compulsory labour,
- the effective abolition of child labour,
- the elimination of discrimination in respect of employment, occupation, and remuneration.

The ILO has a Standing Committee on the Application of Labour Standards, which analyzes and evaluates cases brought before it at the request of the worker and employer groups on the basis of reports from the ILO Committee of Experts.

In relation to trade union and human rights, the various deliberative bodies and mechanisms of the ILO generate a series of responses aimed at persuading member states to respond to identified issues and improve implementation of the standards.

The role of employer and worker organizations

Organizations representing employers and workers play an essential role in the system of international labour standards. These organizations participate in selecting subjects for new ILO standards and in drafting texts, and their votes can determine whether or not the International Labour Conference adopts a newly drafted standard. If a convention is adopted, employers and workers can encourage a government to ratify it. As discussed later in this booklet, if the convention is ratified in a country, the government is required to report periodically to the ILO on how it is being applied in law and practice. The government reports must also be submitted for review and comment to employer and worker organizations in the country. Employer and worker organizations can also supply relevant information direct to the ILO. They can initiate representations for violations of ILO conventions in accordance with procedures under Article 24 of the ILO Constitution. Employer and worker delegates to the International Labour Conference can also file complaints against member states under Article 26 of the Constitution.

International labour standards

The ILO's standards are called international labour "Conventions" and "Recommendations." The ILO Conventions are international treaties, subject to voluntary ratification by ILO member States. The Recommendations are non-binding instruments setting out guidelines on subjects covered by the Conventions. Both are intended to have a concrete impact on working conditions and practices in every country of the world.

The ILO has adopted more than 180 conventions and 185 recommendations covering a broad range of subjects. A two-thirds majority of the votes cast by the delegates present at the International Labour Conference is necessary for the adoption of a convention or recommendation. Each adopted convention is then communicated to all ILO member states for "ratification," that is, to obtain the consent of the legislative authority within whose competence the matter lies. Member states undertake to bring the convention into their legislation within 18 months from the closing of the session of the Conference.

If ratification and implementation are not obtained, no further obligation rests upon the member except to report as follows: the member will report to the ILO Director-General, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the convention, showing the extent to which effect has been given to any of the provisions of the convention by legislation, administrative action, collective agreement, or otherwise and stating the difficulties which prevent or delay the ratification of the convention.

ILO Declaration on Fundamental Principles and Rights at Work

In 1998, the Governing Body of the ILO decided that eight conventions should be considered fundamental to rights at work, irrespective of the level of development of individual member States. These "Fundamental Conventions" became part of the ILO Declaration on Fundamental Principles and Rights at Work, a promotional instrument (see Appendix E). Another four conventions concerning matters of essential importance to labour institutions and policy were classed as "Priority Conventions."

ILO member states are required by Article 22 of the ILO Constitution to report regularly on the measures they have taken to give effect to conventions to which they are party. However, the ILO considers that, regardless of ratification, a member state does have an obligation, deriving from its membership in the ILO and its acceptance of the ILO Constitution, to abide by the principles expressed in the ILO Declaration on Fundamental Principles and Rights at Work as well as to the four priority conventions. The result is that reports are requested every two years on a group of 12 leading conventions, and every five years on other ILO Conventions.

Fundamental Conventions

Eight conventions are collectively referred to as the ILO Declaration of Fundamental Principles and Rights at Work.

C87 Freedom of Association and Protection of the Right to Organize Convention, 1948

Workers and employers may establish and join organizations of their own choosing without prior authorization (Appendix F). Such an organization has the right to draw up its own constitution and rules, to elect its representatives, to organize its administration and activities, and to formulate its programs. Public authorities are not allowed to intervene in the conduct of its internal affairs. Worker and employer organizations have "the right to establish and join federations and confederations." All ILO members must take appropriate measures "to ensure that workers and employers may exercise freely the right to organize."

C98 Right to Organize and Collective Bargaining Convention, 1949

All workers are to "enjoy adequate protection against acts of anti-union discrimination in respect of their employment" (Appendix G). The protection applies to "acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership" and to "acts calculated to cause the dismissal of/or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours." The protection also applies against "any acts of interference by anyone in their establishment, functioning, or administration."

The right to bargain freely over conditions of work constitutes an essential element in freedom of association. Trade unions must

have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom they represent. All public service workers should enjoy collective bargaining rights, and priority should be given to collective bargaining to settle disputes arising in connection with the terms and conditions of employment. Both employers and trade unions are to bargain in good faith and make every effort to reach an agreement.

C29 Forced Labour Convention, 1930

Forced or compulsory labour is prohibited (Appendix H). Forced or compulsory labour is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The convention does NOT apply to the following:

- "compulsory military service laws for work of a purely military character,"
- "any work or service which forms part of the normal civic obligations of the citizens,"
- "any work or service exacted from any person as a consequence of a conviction in a court of law,"
- "any work or service exacted in cases of emergency" (e.g. earthquakes, disease epidemics, floods).

C105 Abolition of Forced Labour Convention, 1957

Every country ratifying this convention (Appendix I) commits itself to "suppress and not to make use of any form of forced or compulsory labour:

- as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system;
- as a method of mobilising and using labour for purposes of economic development;
- as a means of labour discipline;
- as a punishment for having participated in strikes;
- as a means of racial, social, national or religious discrimination."

C138 Minimum Age Convention, 1973

Every signatory "undertakes to pursue a national policy designed to ensure the effective abolition of child labour and raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons" (Appendix J).

C182 Worst Forms of Child Labour Convention, 1999

Measures to prohibit and eliminate the worst forms of child labour, such as slavery, the sale and trafficking of children, prostitution, debt bondage and serfdom, forced recruitment of children in armed conflict, and work "which is likely to harm the health, safety or morals of children." The convention (Appendix K) applies to "all persons under the age of 18."

C100 Equal Remuneration Convention, 1951

Demands "the application to all workers of the principle of equal remuneration for men and women workers for work of equal value" (Appendix L). This means equal salary for work of equal value and any additional benefits to every worker without discrimination based on gender or any other reason.

C111 Discrimination (Employment and Occupation) Convention, 1958

Each ratifying country "undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination" (Appendix M).

Priority Conventions

In 1994, the ILO Governing Body designated another four conventions as "priority" instruments because of their importance for the functioning of the international labour standards system, thus encouraging member states to ratify them.

C81 Labour Inspection Convention, 1947

Ratifying countries must "maintain a system of labour inspection in industrial and commercial workplaces."

C122 Employment Policy Convention, 1964

Ratifying countries must pursue "an active policy designed to promote full, productive and freely chosen employment, to ensure that there is work for all who are available for and

seeking work, such work is as productive as possible, and that there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction, or social origin."

C129 Labour Inspection (Agriculture) Conventions, 1969

Each signatory agrees to maintain "a system of labour inspection in agriculture."

Trade unions worldwide continue their efforts to promote the ratification of the ILO Conventions. EI regularly encourages its member organizations to lobby their governments to ratify the Fundamental Conventions, as well as other conventions which have an impact on the daily lives of education personnel, such as Convention 183 on maternity protection and Conventions 107 and 169 on indigenous peoples.

C144 Tripartite Consultation (International Labour Standards) Convention, 1976

Each signatory undertakes "to operate procedures which ensure, for ILO matters, effective consultations between representatives of the government, of employers and of workers. The representatives of employers and workers will be freely chosen by their representative organizations and they will be represented on an equal footing on any bodies through which consultations are undertaken."

ILO supervisory mechanisms

The ILO Conventions represent intentions and commitments. The implementation and enforcement of the convention commitments are up to the signatory member countries.

To strengthen the implementation and enforcement of the conventions, whether or not member states have ratified them, the ILO has developed a broad set of mechanisms for investigation and reporting of working conditions in member countries. These fall in several groups:

- regular reports conducted by member countries,
- forms of technical assistance provided by specialists in labour standards located in ILO offices around the world,
- supervisory committees to analyze information generated and to receive and assess complaints,
- commissions of inquiry under Article 26,
- direct interventions.

Users of this manual will want to be familiar with all these mechanisms to be able to take advantage of them when situations arise.

Regular reports

The country reports

Each member state reports at scheduled intervals on the measures which it has taken to give effect to the provisions of ILO conventions which it has ratified. Under article 19 of the ILO Constitution, member states also report, at intervals as requested by the Governing Body, on the position of its law and practice in regard to the matters dealt with in conventions they have not yet ratified.

Every two years, governments have to submit a report explaining the measures they have taken to effectively apply the Fundamental and Priority Conventions.

Over five years, governments have to submit reports on implementation of all conventions. Governments are expected to consult worker and employer organizations when they draw up their report. If they do not, trade union centres can send their own contributions to the ILO. EI liaises with the International Trade Union Confederation (ITUC) to make sure that the relevant comments are received from the teacher organizations.

In 2008, the Committee of Experts requested a total of 2,477 reports from governments on the application of conventions ratified by member states (article 22 of the Constitution). The Committee received 1,611 reports, over 65% of the number requested. This percentage remains stable over the years.

The reports due on ratified conventions should be sent to the ILO secretariat between 1 June and 1 September of each year. This is the opportunity for worker organizations to play an important role in the tripartite system, by calling the attention to, for example, new legislation that is contrary to the principles of a convention or to the lack of government action for effectively enforcing ILO core conventions.

The schedule for regular reports is available at http://webfusion.ilo.org/public/db/standards/normes/schedule/index.cfm.cfm?lang=EN

The global report

Each year, the ILO releases a thematic report on one of the four principles contained in the Declaration (and therefore on two of the basic conventions):

- 2010: Child Labour (C138 and C182)
- 2009: Forced Labour (C29 and C105)
- 2008: Freedom of Association (C87 and C98): Lessons Learned"
- 2007: Non discrimination (C100 and C111): "Equality at work: Tackling the challenges"
- 2006: Child Labour (C138 and C182): "The End of Child Labour is Within Reach"
- 2005: Forced Labour (C29 and C105): "A global alliance against forced labour"
- 2004: Freedom of Association (C87 and C98): "Organizing for social justice"
- 2003: Non discrimination: "Time for Equality at Work"
- 2002: Child Labour: "A Future without Child Labour"
- 2001: Forced Labour (C29 and C105): "Stopping Forced Labour"
- 2000: Freedom of Association (C87 and C98): "Your Voice at Work."

International trade unions participate in the preparation of this report. (EI member organizations can submit reports until the month of June of the previous year as contributions to the global report of the following year.) The ILO global report, always the result of lengthy fact-finding work, is submitted to the annual Conference, where in a special session it is discussed in a tripartite manner. The discussion enables the preparation of a plan of action for the next four years. In 2006, a representative of EI took the floor during the special session on child labour.

ILO technical cooperation

The ILO does not only supervise the application of ratified conventions. It also provides different forms of technical assistance in which ILO officials or other experts help countries address problems in legislation and practice in order to bring them into line with the obligations under ratified instruments. One form of technical assistance consists of advisory and direct contact missions, during which ILO officials meet government officials to discuss problems in the application of standards with the aim of finding solutions. Another form of assistance consists of promotional activities, including seminars and national workshops, with the purpose of raising awareness of standards, developing national actors' capacity to use them, and providing technical advice on how to apply them to the benefit of all. The ILO also provides assistance in drafting national legislation in line with its standards.

Many of these technical assistance activities are carried out by the ILO's international labour standards specialists who are assigned to ILO offices located around the world. Standards specialists meet government officials and employer and worker organizations to provide assistance with new ratifications of conventions and reporting obligations, to discuss solutions to problems raised by the supervisory bodies, and to review draft legislation to ensure that it conforms with international labour standards. In 2008, at the initiative of EI and other international and national trade union organizations, direct contact missions were sent to Djibouti, Cambodia, and Ethiopia.

International labour standards specialists are stationed in the following regions:

- Africa: Addis Ababa, Cairo, Dakar, Harare, Yaoundé
- Americas: Lima, San José, Santiago
- Caribbean: Port of Spain
- Arab States: Beirut
- East Asia: Bangkok, Manila
- South Asia: New Delhi
- Eastern Europe and Central Asia: Moscow

These ILO international labour standards specialists are also available to assist trade unions and teacher associations and may be called on for clarification, information, and support.

In addition, the International Training Centre in Turin, Italy, offers training on international labour standards for government officials, employers, workers, lawyers, judges, and legal educators, as well as specialized courses on labour standards, productivity improvement and enterprise development, international labour standards and globalization, and the rights of women workers.

Supervisory committees

Committee on Freedom of Association (CFA)

As described earlier, basic union rights are guaranteed in two ILO Fundamental Conventions, C87 (ratified by 149 countries) and C98 (ratified by 159 countries). The ILO created the Committee on the Freedom of Association to examine complaints lodged by worker and employer organizations against states which violate one or both conventions. As a tripartite body, the CFA is composed of an independent chairperson and three government, three employer, and three worker representatives.

Since its creation, the CFA has met three times a year and examined more than 2500 cases and has developed jurisprudence or legal precedents. More than 60 countries on all continents have taken measures following recommendations formulated by the Committee.

National, regional, or international trade unions (whether they are trade union centres, sectoral unions, or associations) can file complaints with the Committee on the Freedom of Association on non-compliance with ILO Conventions 87 and 98. Complaints can be lodged even if the country concerned has not ratified the said Conventions. A complaint cannot be filed against a worker or employer organization. Even when the alleged violation has been done by an employer, any complaint is filed against the government, on the ground that it is the government's responsibility to make sure all ratified conventions are implemented.

(See below: *Making Submissions to the ILO*.)

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The ILO Committee of Experts is a global committee of labour lawyers and legal academics whose task it is to advise the ILO constituents (governments, employers, and unions) on the interaction between legislation in a country and ILO conventions and recommendations.

The ILO Committee of Experts was created in 1926 to examine the growing number of government reports on the ratified conventions. (The CEACR is not to be confused with the Joint ILO/UNESCO Committee of Experts on teachers' issues, CEART, described below.) Today, the CEACR is composed of 20 independent legal experts appointed by the Governing Body for a renewable three-year term of office. The experts come from different geographic regions, legal systems, and cultures. The CEACR is a technical committee that provides an unbiased and technical assessment of the application of international labour standards through an analysis of the various country reports described earlier. The CEACR report examines the impacts of conventions and recommendations, analyzes the barriers to their implementation as indicated by governments, and suggests means of overcoming these barriers.

The comments of the experts are the starting point for compiling the list of cases that trade unions wish to bring to the attention of Conference Committee on the Application of the Standards in June.

Conference Committee on the Application of the Standards (CAS)

A standing committee of the annual ILO International Labour Conference, the CAS addresses worldwide progress in the application of labour standards. A tripartite body, it is composed of government, employer, and worker delegates.

The CAS deals with three main areas: evaluation of standard setting policies, a global survey of developments in all countries, and special inquiries into priority issues identified by the Workers' Group.

The annual report of the Committee of Experts is examined by the CAS on the basis of a list of countries and cases drawn up by the Workers' and Employers' Groups.

The governments implicated in the comments are invited to reply before the CAS and to provide information on the matter. In many cases, the CAS formulates conclusions, inviting the governments either to take specific measures in order to solve the problem or to accept missions or technical assistance from the ILO.

The debates and conclusions on the cases examined by the CAS are published in its report. Particularly worrying cases are highlighted in special paragraphs. The report is on the site of ILO in the space reserved for the International Labour Conference. It is activated a few hours or days (dependent on the language) after the closure of the discussions, in the section on "provisional reports": http://www.ilo.org/public/english/standards/relm/ilc

Fact-Finding and Conciliation Committee on Freedom of Association

The Fact-Finding and Conciliation Commission on Freedom of Association is a permanent body and is the highest instance of the special machinery for the protection of freedom of association. It was established in 1950 and is composed of independent persons. Its mandate is to examine any complaint concerning alleged infringements of trade union rights which may be referred to it by the ILO Governing Body. Although it is essentially a fact-finding body, it is authorized to discuss with the government concerned the possibilities of securing the adjustment of difficulties by agreement.

Commissions of inquiry under Article 26

Under Article 26 of the ILO Constitution, a Commission of Inquiry can be requested when a member state is accused of serious and repeated violations and has refused repeatedly to do anything about them.

A complaint by virtue of Article 26 can be filed by:

- another member state which also ratified the same Convention,
- a delegate to the International Labour Conference in June,
- the Governing Body in its own capacity.

Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken by the country in question to address the problems raised by the complaint.

A Commission of Inquiry is the ILO's highest-level investigative procedure. To date, 11 Commissions of Inquiry have been established. In 2004, an ILO Commission of Inquiry stated that trade union independence had been undermined in Belarus. In 1998, such a Commission revealed widespread and systematic use of forced labour in Burma (Myanmar). Earlier, delegates at the 1982 International Labour Conference filed a complaint under Article 26 against the Polish government, which, under declaration of martial law, had suspended the activities of the Solidarnosc trade union and detained or dismissed many of its leaders and members. On the basis of the Commission's conclusions, the ILO and numerous countries and organizations put pressure on Poland to redress the situation. Lech Walesa, Solidarnosc leader and President of Poland, noted that "the Commission of Inquiry created by the ILO after the imposition of martial law in my country made significant contributions to the changes which brought democracy to Poland."

At the International Labour Conference in June 2008, the Workers' Group called for an official ILO Commission of Inquiry into Zimbabwe to look into the reports of torture and murder of trade unionists by security forces and thugs linked to the Mugabe regime.

The **CEACR annual report**, submitted to the ILO Governing Body at its March meeting, is divided into three parts:

Part I is the general report describing the extent to which member states have fulfilled their constitutional obligations in relation to international labour standards;

Part II contains observations about particular countries on the application of ratified

conventions presented by subject: freedom of association and collective bargaining; equality of opportunities; child labour; forced labour, occupational safety and health; wages; maternity protection; indigenous rights; migrant workers; and so on.

Part III contains an in-depth general survey of member states' performance on a particular subject area. In recent years, areas covered have been labour clauses in public contracts (2008); Forced Labour (2007); Labour Inspection (2006) and Hours of Work (2005).

(The CEACR annual reports from 1987 to the present are accessible at the following address:
http://www.ilo.org/ilolex/english/ceacrrepsq.htm

Direct Interventions

Action under Article 33

When a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can take action under Article 33 of the ILO Constitution. This provision states that "in the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith." In the year 2000, Article 33 was invoked for the first time in ILO history when the Governing Body asked the International Labour Conference to take measures to lead Burma to end the use of forced labour.

Request for a direct intervention by the ILO Director General

In case of a violation of C87 or C98, the ILO Director General can be requested to intervene without delay with the authorities of the country concerned. In order for this to happen, the facts must be particularly serious and require an urgent intervention (e.g. arbitrary detention of trade unionists, death threats).

Making submissions to the ILO

There are two main channels through which national worker organizations can inform and seek support at the ILO: the Committee of Experts and the Committee on Freedom of Association.

While the case is pending before the CFA, the national union can put pressure on the government in a number of ways.

For example, it can use its media channels to publicize:

- the fact that a case has been submitted to the CFA,
- the fact (if it is so) that the government has not replied to requests for information from the CFA,
- in due course, the recommendations of the CFA, requesting the government to act on them.

Comments to the Committee of Experts on the Application of Conventions and Recommendations

ILO member governments are required to submit reports to the CEACR on regular schedules and from time to time on special requests. In adherence to the tripartite principle, governments are expected to involve both workers and employers in drafting these submissions both by consultations and by encouraging commentaries on the submitted reports. In cases where governments ignore their social partners, international union organizations such as Education International and the International Trade Union Confederation (ITUC) will help coordinate the transmission of comments to the Committee of Experts.

The deadline for sending comments to the ILO in the context of the annual report is the end of August of each year. This is the time for a national organization to play an important role in the tripartite system, by calling the attention to, for example, new legislation that is contrary to the principles of a convention or to the lack of government action for effectively enforcing the ILO core conventions. National governments are supposed to stick to the principles of the Fundamental Convention even when they have not ratified them. Therefore, the active contribution of teachers and their unions in the elaboration of the ILO report is a great opportunity for the unions to raise issues that are relevant to education workers.

Complaints to the Committee on Freedom of Association

As described earlier, this committee receives and assesses complaints against any member government (as the responsible guarantor) by worker or employer organizations.

A complaint to the ILO should be filed only after a national worker organization has used all the resources available at the local level.

To put together a strong case, EI strongly advises that teacher organizations consult or liaise with EI before sending the complaint. This is not only because the procedure is complex, but also because EI can endorse the complaint and make contact with ILO officers for follow-up. EI can also coordinate with the ITUC for additional

support. Ideally, a complaint submitted by a national teacher organization should be endorsed by the national trade union centre, by EI, and ultimately by the ITUC.

If the CFA deems the complaint admissible, that is, determines that the facts described by the complainant organization clearly allege a violation of C87 or C98 or both, it contacts the government of the country concerned to confirm the facts. The CFA will inform your national government that your organization has filed a complaint, and the government will be given some time to make comments in connection to the issues raised by your union. Meanwhile, your organization will have a chance to provide additional information that is relevant to the case. If the CFA concludes that standards or principles have indeed been violated, it draws up a report for the ILO Governing Body and formulates recommendations on how to remedy the situation. The government is then invited to give an account of the implementation of these recommendations.

The union can also report back to the CFA on any actions, or lack of action, by the government on the recommendations.

Submission and follow-up

The complaint must be filed by post. If it is transmitted by fax, the original should be sent by post immediately. Complaints by e-mail are not admissible.

Once the complaint has been received by the CFA, your organization will receive communication from the ILO acknowledging receipt of the documents. At the same time, a case number will be assigned to the complaint. It is of great importance that your organization keeps track of the case number, for further reference and follow-up. If you have not received such a number promptly, please read the reply of ILO attentively or contact EI to assist.

It is essential to follow up on a complaint once it is filed. The ILO Freedom of Association Department may ask you for additional information. Please be attentive, as the absence of a reply on the part of the complainant is usually taken as a negative sign. At any time additional information can be submitted, citing the number of the complaint.

You will have access to the conclusions and recommendations of the Committee on the Freedom of Association in its reports. These reports are published three times a year, after each meeting (in March, June, and November).

Complaints should be sent to the following:

International Labour Organization (ILO)
Mr Juan Somavia
Director General
International Labour Organization
4 route des Morillons
1211- Geneva
SWITZERLAND
FAX: +41.22.799.85.53

2. CEART (Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel)

CEART was created to monitor the implementation of the ILO/UNESCO Recommendation on the Status of Teachers adopted in 1966. In 1999, its mission was extended to monitoring the UNESCO Recommendation on the Status of Higher Education Teaching Personnel adopted in 1997.

Neither of the 1966 and 1997 Recommendations is legally binding, and the role of the Joint Committee is not judicial. Nevertheless, an important function of CEART is the consideration of problems associated with the application of the Recommendations, and the encouragement of governments and employer and teacher organizations to adopt measures to enhance the status of the teaching profession.

CEART is composed of 12 independent experts appointed by UNESCO and the ILO for renewable mandates of six years. The members act in their personal capacity. The criteria for selection include: independence from government, employer, or trade union organizations and competence in the recommendations' core fields. Furthermore, there is an attempt to achieve a balance of geographic regions, education systems, spheres of expertise, and gender.

The CEART examines the reports and studies presented by governments, by national organizations representing teachers and their employers, by ILO and UNESCO, and by intergovernmental or non-governmental organizations such as EI, which drafts a report on the themes of the agenda for each meeting.

The committee sessions are held every three years, alternating between UNESCO headquarters in Paris and the ILO in Geneva. Sessions vary in length from three and a half to five working days. These sessions are closed to the public but since 2000 involve interested stakeholders, including EI representatives, by invitation of the Joint Committee.

Reports published since the 1997 session may be consulted on the CEART website: http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart/docs.htm

Reports in print may also be requested from the joint secretariat. Information on non-compliance can be submitted to the CEART by teacher organizations in case of non-respect of the provisions outlined in either of the two Recommendations.

1966 Recommendation on the Status of Teachers

This Recommendation, adopted on 5 October 1966 by member states of UNESCO and ILO, sets common standards for the status of teachers, irrespective of the diversity of national legislation, regulations, and traditions.

Since the education sector in general is subjected increasingly to market pressure and the threats of commercialization, this recommendation remains pertinent. EI believes that the implementation of the 1966 Recommendation's provisions should be compulsory in all countries.

Highlights of the 1966 Recommendation

The 1966 Recommendation sets the standards for the status of teachers on some key aspects of the profession:

Preparation for the profession

Policy governing entry into preparation for teaching should rest on the need to provide society with an adequate supply of teachers who possess the necessary moral, intellectual, and physical qualities and who have the required professional knowledge and skills. (Art. 11)

The 1966 ILO/UNESCO Recommendation on the Status of Teachers

- is the only international standard applicable to *all teachers in both public and private schools up to the completion of the secondary stage of education whether nursery, kindergarten, primary, intermediate, or secondary, including those providing technical, vocational or art education. (Article 2)*
- was adopted by consensus on 5 October 1966 in Paris by an intergovernmental conference convened jointly by the ILO and UNESCO.
- includes 146 articles, grouped in 13 chapters, that set standards, particularly in the following fields:
  - Preparation for the profession
  - Further education for teachers
  - Employment and career
  - Entry into the teaching profession
  - Advancement and promotion
  - Security of tenure
  - Disciplinary procedures related to breaches of professional conduct
  - Part-time service
  - Rights and responsibilities of teachers
  - Conditions for effective teaching and learning
  - Teacher salaries
  - Teacher shortages.

For the full text of the Recommendation, see Appendix N.

EI believes that a quality education can only be achieved with quality teachers who receive initial education adapted to current needs followed by life-long learning, in-service training, professional development, integrating new technologies, and team working. The requirement for quality teachers is repeated several times in the Recommendation.

The teacher shortage

It should be a guiding principle that any severe supply problem should be dealt with by measures which are recognized as exceptional, which do not detract from or endanger in any way professional standards already established or to be established and which minimize educational loss to pupils …

Recognizing that certain expedients designed to deal with the shortage of teachers, such as over-large classes and the unreasonable extension of hours of teaching duty, are incompatible with the aims and objectives of education and are detrimental to the pupils, the competent authorities as a matter of urgency should take steps to render these expedients unnecessary and to discontinue them. (Art. 141)

EI recognizes that teacher shortages can have long-term negative effects on the quality of education given to pupils. To combat this situation, EI recommends making a teaching career more attractive by improving the status of teachers by improving salaries and conditions of work and providing quality initial training for all teachers. No teacher should be in front of pupils without having initial training in higher education and on-the-job support.

Employment and career

Stability of employment and security of tenure in the profession are essential to the interests of education as well as to those of the teacher; they should be safeguarded even when changes in the organization of or within a school system are made. (Art.45)

EI favours job security and professional stability as the surest ways of helping teachers to work calmly, with a sense of security, providing continuity and high quality education, free from unnecessary pressure of any kind.

Collective and social dialogue

Teacher organizations should be recognized as a force which can contribute greatly to educational advance and which therefore should be associated with the determination of educational policy. (Art. 9)

Machinery should be established whereby the right of teachers to negotiate through their organizations with their employers, either public or private, is assured. (Art. 83)

EI considers failure to consult teacher organizations in general to be a clear infringement of Article 9 of the Recommendation. It is critical for teachers to be able to negotiate their working

conditions and strive for the highest education standards through their representative organizations. For this reason, EI calls on all governments to recognize teacher unions established in compliance with international and national standards. The views of such unions are, as a general rule, the outcome of a democratic process that determines a policy which is then presented by the elected representatives.

The rights and responsibilities of teachers

Every possible effort should be made to promote close cooperation between teachers and parents in the interests of pupils, but teachers should be protected against unfair or unwarranted interference by parents in matters which are essentially the teacher's professional responsibility. (Art. 67)

Every teacher should exhibit irreproachable personal behaviour and the highest standards of professional ethics with regard to pupils, other members of the staff, parents, and the community. EI sets out these essential principles in a Declaration of Professional Ethics adopted in 2001. This declaration constitutes an individual and collective commitment of teachers to all those involved in education and to society as a whole. These duties, however, must be balanced by the assurance that teachers can exercise their profession without interference in the areas that fall within their professional domain and educational responsibility, while recognizing parents' legitimate right to information and the legitimate exercise of their parental responsibilities.

Finally, EI is in favour of the adoption of clear standards in all countries, allowing a balanced partnership between teachers and parents while respecting teachers' need to fulfil their professional responsibilities.

1997 Recommendation on the Status of Higher Education Teaching Personnel

The 1997 Recommendation represents the formal acknowledgement by UNESCO's member states of the need to address common issues in the status of higher education teaching personnel in all countries, through the application of common regulations without exceptions, despite the diversity of laws, regulations, and traditions.

The fact that the higher education sector is at present susceptible to market pressures and threats of commercialization calls for the urgent widespread distribution, publicity, and application of the Recommendation.

EI urges that the 1997 Recommendation be implemented in all countries.

Highlights of the 1997 Recommendation

The UNESCO 1997 Recommendation highlights particularly:

Academic freedom

Higher education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship, and freedom to participate in professional or representative academic bodies. (Art. 27)

Academic freedom is an essential criterion for the development and circulation of knowledge. Both the State and the society must ensure that academic personnel enjoy the conditions which allow them to exercise their mission without fear of repression and risk of losing their independence, their careers, and their lives. Such conditions require the existence of a democratic environment.

Collegiality

Higher education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution. (Art. 31)

EI believes that the system of collegiality should be maintained even if opening up to free-market forces is essential. EI opposes the general belief that universities can no longer be run by a collegial system of governance and regrets the direct appointment of rectors, deans, and heads of department.

The UNESCO 1997 Recommendation concerning the Status of Higher Education Teaching Personnel

- is the only international norm that applies to higher education teaching personnel, defined as *all those persons in institutions or programmes of higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large. (Article 1f)*
- was adopted by consensus by the UNESCO General Conference on 11 November 1997, following years of joint preparation by UNESCO and the ILO.
- includes 77 articles, in 10 chapters, that cover the following areas:
  - Rights and freedoms:
  - Academic freedom
  - Self-governance and collegiality
  - Duties and responsibilities of personnel
  - Conditions of employment:
  - Entry into the profession
  - Security of employment
  - Evaluation and discipline
  - Negotiation of conditions of employment
  - Salaries, workload, social security benefits, health, and safety.

For the complete text of the Recommendation, see Appendix O.

Security of employment

Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher education teaching personnel ... Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education. (Art. 46)

EI is concerned about the proliferation of short-term contracts and supports the decision of the Supreme Court of Canada, which ruled that "academic staff should have a strong security of employment in order to enjoy the freedom required to maintain academic excellence, which is or should be distinctive of the university."

Collective bargaining and social dialogue

Organizations which represent higher education teaching personnel should be considered and recognized as a force which can contribute greatly to educational advancement and which should, therefore, be involved, together with other stakeholders and interested parties, in the determination of higher education policy. (Art. 8)

Higher education teaching personnel should enjoy the right to freedom of association, and this right should be effectively promoted. Collective bargaining or an equivalent procedure should be promoted in accordance with the standards of the International Labour Organization. (Art. 52)

EI considers the lack of consultation with teacher organizations to be a clear violation of Article 8 of the Recommendation. It is essential that academic staff be able to bargain their conditions of employment based on existing provisions.

Procedure concerning allegations and reports

In order to monitor the implementation of these two Recommendations, CEART has established a procedure that permits national and international teacher organizations to submit communications concerning the non-application of the provisions of those Recommendations in a given country.

On receipt of any communication that it considers to contain an allegation and is considered within its competence, the secretariat of CEART may request additional information from the submitting organization. It will then send the allegation to its permanent working party on allegations.

The original communication and any supplementary information will be referred to the government of the country in question for its comments within a specified period of time. Comments received

will in turn be sent to the submitting organization for additional observations, and these in turn shall be returned to the government for its final remarks, if any. In the event that a government which has been requested to make observations on an allegation submitted by a teacher organization fails to respond within a reasonable time following the original communication and a reminder, the allegation may be submitted to CEART with a note that the government in question has failed to respond.

The original communication and all observations of the parties are then submitted to CEART for examination at its next session. Where appropriate, information related to its consideration of allegations is sought from sources that are available in accordance with its mandate. CEART's summary views will in turn be published as part of its report.

Submission of the report

CEART's reports are submitted to the Governing Body of the ILO, with a request that the reports be transmitted to the Committee on the Application of Conventions and Recommendation of the International Labour Conference, and to the Committee on Conventions and Recommendations of the Executive Board of UNESCO, for transmission to the General Conference.

Sometimes the final draft of a report on an allegation received after the last CEART session may be ready more than a year before the next scheduled meeting. With CEART's approval, the working party which has prepared the report is authorized to transmit it, as a full CEART report, for consideration by the Governing Body of the ILO and the Executive Board of UNESCO. Such a procedure has been followed twice to date: in 1999 in the case of the Czech Republic; and in 2005 in the case of Japan.

EI strongly advises that a teacher organization consult or liaise with the EI's Education and Human Rights and Equality Units before sending any such complaints in the form of allegations on non-compliance with either of the two Recommendations in your country. This is not only because the procedure is complex, but also because EI can endorse the complaint and help to follow it up with the CEART.

Contacts are as follows:

CEART

International Labour Organization
Education sector specialist
Sectoral Activities Department
International Labour Office
CH-1211 Geneva 22
Switzerland
Tel: +41.22 799-7143
Fax: +41.22 799-7046

or

CEART

UNESCO
Chief of Section
Section for Teacher Education
Division for Higher Education UNESCO,
7, place de Fontenoy
75352 Paris 07 SP
France

To be admissible for examination by CEART, an allegation must be related to the provisions of either Recommendation, must emanate from a national or international teacher organization, and must not fall within the competence of other bodies of the ILO or UNESCO established to monitor conventions or other international instruments.

3. UN High Commissioner for Human Rights

The United Nations system for the promotion and protection of human rights is based in the Office of the UN High Commissioner for Human Rights (OHCHR). This agency's work is to lead the UN role on human rights issues, emphasizing the importance of human rights at international and national levels, stimulating and coordinating action for human rights throughout the United Nations system, and supporting human rights organizations and treaty monitoring bodies. The OHCHR's priorities follow the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights, as well as the Charter of the United Nations.

Structure of the OHCHR

The OHCHR is headed by a High Commissioner with the rank of Under-Secretary General and has its headquarters in the historic Palais Wilson building in Geneva, Switzerland. The High Commissioner – currently Ms. Navanethem Pillay, who was appointed on 28 July 2008 – is responsible for all the activities of the OHCHR, advises the UN Secretary General on the policies of the United Nations in the area of human rights, represents the Secretary General at human rights events, and ensures that substantive and administrative support is given to the projects, activities, organizations, and bodies of the human rights programme.

The OHCHR, in addition to the Executive Office of the High Commissioner, is composed of four branches and a number of units and a service agency that report to the Deputy High Commissioner:

- Treaties and Commission Branch,
- Special Procedures Branch,
- Research and Right to Development Branch,
- Capacity Building and Field Operations Branch.

OHCHR has regional representatives in Thailand, Chile, Ethiopia, Kazakhstan, Lebanon, South Africa and Cameroon. Offices with monitoring mandates can be found in Afghanistan, Colombia, Cambodia, Burundi and the Democratic Republic of the Congo, amongst others.

Human Rights bodies

The United Nations system for the promotion and protection of human rights consists of two main types of body: bodies created under the UN Charter, including the former Commission on Human Rights, and bodies created under the international human rights treaties. Most of these bodies receive secretariat support from the Treaties and Commission Branch of the OHCHR.

Charter bodies

- **Human Rights Council (HCR), formerly Commission on Human Rights (CHR)**
- **Special Procedures established by the Commission on Human Rights**
- Universal Periodic Review

Treaty bodies

There are eight human rights treaty bodies that monitor implementation of the core international human rights treaties:

- **Human Rights Committee (HRC)**
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)

- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)

The three bodies **highlighted** are of potential interest to manual readers, and they will now be described.

Human Rights Council

On 15 March 2006, Resolution 60/251 of the UN General Assembly replaced the Commission on Human Rights with the Human Rights Council (HRC). The new HRC is a subsidiary organ of the General Assembly and has to promote universal respect for the protection of all human rights and fundamental freedoms while also addressing any situation of violations of human rights and making recommendations thereon. The new HRC reaffirms the indivisibility, universality, and interdependence of all human rights.

Upon the creation of the HRC, former UN Secretary General Kofi Annan stated: *The Council's work should mark a clean break from the past, and that should be apparent in the way it developed and applied the universal periodic review mechanism; and in its willingness to confront hard issues and engage in difficult discussions, where these were necessary to remedy or to prevent human rights violations. The Council should never be allowed to become caught up in political point-scoring or petty manoeuvres; it should always think of those whose rights were denied.*

The Council is composed of 47 member states who are elected for a term of three years by the General Assembly. African States have 13 seats; Asian States, 13, Eastern Europe, 6; Latin America and Caribbean, 8; and Western Europe and other States, 7 seats. The HCR's current President is Mr. Doru Costea, Permanent Representative of Romania to the UN. http://www.ohchr.org/english/bodies/hrcouncil/

Special Procedures

Special procedures are the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 29 thematic and 9 country mandates. The OHCHR provides these mechanisms with personnel, logistical, and research assistance to support them in the discharge of their mandates.

The UN special procedures system has been able to bring the intergovernmental debate on human rights closer to the reality on the ground. During recent years, the United Nations human rights experts have brought to the attention of the international community many issues of concern, such as police brutality, summary executions, the killing of women in the name of honour, the suffering of street children, the persecution of ethnic minorities in many societies, the role of non-State actors in human rights violations, the link between extreme poverty and respect for human rights, and the impact of human rights violations on civil society.

Special procedures are either an individual – called Special Rapporteur, Special Representative of the Secretary-General, Representative of the Commission on Human Rights, or Independent Expert – or a working group, typically composed of five members. The mandates of the special procedures are established and defined by the resolution creating each of them. Mandate-holders of the special procedures serve in their personal capacity and do not receive salaries or any other financial retribution for their work. An independent status for the mandate-holders can help guarantee of their impartiality.

Among their activities, most mandate-holders receive information locally on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification. In 2005, more than a thousand communications were sent to governments.

Mandate-holders also carry out country visits at the request of the relevant special procedure, at the invitation of the country concerned, or on the basis of a standing invitation. As of August 2008, 62 countries had extended standing invitations to the special procedures. After such visits, special procedures' mandate-holders issue a mission report including their findings and recommendations.

Thematic and Country Mandates

Currently, there are 38 Special Rapporteurs, Special Representatives, Independent Experts, and working groups who serve under the following country and thematic mandates:

Countries

- Burundi - Akich Okola, Independent Expert on Human Rights (2005-)

- Cambodia - Yash Ghai, Special Representative of the Secretary-General for Human Rights (2005-)
- Haiti – Michel FORST, Independent Expert on human rights (2008-)
- Liberia - Charlotte Abaka, Independent Expert on human rights (2003-)
- Myanmar - Tomas Ojea Quintana, Special Rapporteur on human rights (2008-)
- North Korea - Vitit Muntarbhorn, Special Rapporteur on human rights (2005-)
- Palestinian Territories - Richard Falk, Special Rapporteur on human rights (2008-)
- Somalia - Shamsul Bari, Independent Expert on human rights (2008-)
- Sudan - Sima Samar, Special Rapporteur on human rights (2005-)

Themes

- Adequate Housing - Raquel Rolnik (2008-)
- People of African Descent - Peter Lesa Kasanda (2002-)
- Arbitrary Detention - Manuela Carmena Castrillo (2003-)
- Sale of Children, Child Prostitution and Child Pornography - Najat M'jid Maala (2008-)
- Right to Education - Vernor Muñoz Villalobos (2004-)
- Enforced or Involuntary Disappearances - Santiago Corcuera (2004-)
- Extrajudicial, Summary or Arbitrary executions - Philip Alston (2004-)
- Human Rights and Extreme Poverty - Magdalena Sepúlveda Carmona (2008-)
- Right to Food - Olivier De Schutter (2008-)
- Effects of Foreign Debt and Other Related International Financial Obligations of States on Human Rights - Cephas Lumina (2008-)
- Freedom of Opinion and Expression – Frank La Rue Lewy (2008-)
- Freedom of Religion or Belief - Asma Jahangir (2004-)
- Physical and Mental Health – Anand Grover (2008-)
- Human Rights Defenders - Margaret Sekaggya (2008-)
- Independence of Judges and Lawyers - Leandro Despouy (2003-)
- Human Rights of Indigenous People - James Anaya (2008-)
- Human Rights of Internally Displaced Persons - Walter Kälin (2004-)
- Use of Mercenaries to Impede the Right of Peoples to Self-Determination - José Luis Gómez del Prado (2004-)
- Human Rights of Migrants - Jorge Bustamante (2005-)
- Minority Issues - Gay McDougall (2005-)
- Racism, Racial Discrimination, Xenophobia and Related Intolerance – Githu Muigai (2008-)
- Contemporary Forms of Slavery - Gulnara Shahinian - (2007-)
- Human Rights and International Solidarity - Rudi Muhammad Rizki (2005-)
- Promotion and Protection of Human Rights while Countering Terrorism - Martin Scheinin (2005-)
- Torture - Manfred Nowak (2004-)
- Human Rights and the Illicit Movement of Toxic Waste - Okechukwu Ibeanu (2004-)
- Trafficking in Persons – Joy Ngozi Ezeilo (2008-)
- Human Rights and Transnational Corporations and other Business Enterprises - John Ruggie (2005-)
- Violence against Women - Yakin Ertürk (2003-)

Submitting complaints under special procedures

Mandate-holders are entrusted by their mandate to receive information from different sources: governments, intergovernmental organizations, NGOs, alleged victims of human rights abuses, and witnesses. When they receive credible information about a human rights violation that comes within the scope of their mandate, they intervene directly with the government. The intervention can relate to a human rights violation that has already occurred, one that is ongoing, or one that will very likely take place if no action is taken. The decision to intervene is at the discretion of the mandate-holder.

The admissibility criteria will generally relate to the reliability of the source, the internal consistency of the information received, the precision of the factual details included in the information, and the scope of the mandate itself. However, it must be emphasized that the criteria and the procedures involved in

responding to an individual complaint vary, so it is necessary to submit a complaint in accordance with the specific requirements established by each mandate-holder.

A complaint need not take any particular form. Teacher organizations should assist their individual members to file such complaints. The claim should be in writing and signed. It should provide basic personal information – name, nationality and date of birth – and specify the State party against which the complaint is directed. A claim brought on behalf of a person should provide proof of their consent or state clearly why such consent cannot be provided. All the facts on which the claim is based should be set out in chronological order. It is crucial that the account be as complete as possible and that the complaint contain all information relevant to the case.

The steps the organization has taken to exhaust the remedies available in the country should be detailed. It should also be stated whether the case has been submitted to another means of international investigation or settlement. This information should be provided in one of the secretariat's working languages, that is, English, French, Spanish, or Russian. In addition, all documents relevant the claims and arguments, especially administrative or judicial decisions on the claim by national authorities, should be submitted. It is also helpful to provide copies of relevant national laws.

If the complaint lacks essential information, the secretariat will request additional details. The process is confidential except for a complaint that is eventually referred to the Economic and Social Council. Thus, if a pattern of abuses in a particular country remains unresolved in the early stages of the process, it can be brought to the attention of the world community through the Economic and Social Council.

A complaint can be submitted to:

OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland
fax to +41 22 917 90 06
urgent-action@ohchr.org

The reader is strongly advised to consult or liaise with EI before sending any such complaints. This is not only because the procedure is complex, but also because EI can endorse the complaint and help to follow it up within the mandate of the Special Procedures.

Human Rights Committee

The Committee is one of several UN-linked human rights treaty bodies. The Human Rights Committee is a group composed of 18 experts that meets three times a year in Geneva or New York to consider the five-yearly reports submitted by United Nations member states on their compliance with the International Covenant on Civil and Political Rights (Appendix C) and with the Second Optional Protocol to the Covenant, on the Abolition of the Death Penalty. Furthermore, the Committee has the competence to examine inter-state and individual complaints related to alleged violations of the Covenant by state parties to the Protocol.

The Human Rights Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work.

The HRC may consider individual communications relating to State parties to the Optional Protocol to the International Covenant on Civil and Political Rights. The Protocol was opened for signature at New York on 19 December 1966. 109 UN Member States are party to the Optional Protocol, while 35 of them are signatories. List of ratifications: *http://www2.ohchr.org/english/bodies/ratification/5.htm*

Other treaty bodies

The other Treaty Body Committees are:

Committee on Economic, Social and Cultural Rights

This committee monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. State parties have to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years.

Committee on the Elimination of Racial Discrimination

CERD is a body of independent experts that monitors implementation of the Convention on the Elimination of All

Forms of Racial Discrimination by its state parties. States must report initially one year after acceding to the convention, and then every two years. Besides the reporting procedure, the convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints, and the examination of individual complaints.

Convention on the Elimination of All Forms of Discrimination against Women

CEDAW (Appendix D) defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. By ratifying this convention, states are obliged to undertake a series of measures to end discrimination against women in all forms. Countries that have ratified or acceded to the convention are committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Committee against Torture

CAT monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its state parties. All state parties must report initially one year after acceding to the convention and then every four years. Additionally, CAT may also, under certain circumstances, consider individual complaints or communications from individuals claiming that their rights under the convention have been violated, undertake inquiries, and consider inter-state complaints.

Committee on the Rights of the Child

CRC monitors implementation of the Convention on the Rights of the Child (Appendix B) and two other optional protocols to the Convention, on involvement of children in armed conflict, sale of children, child prostitution, and child pornography, by its state parties. All state parties must report initially two years after acceding to the convention and then every five years.

Committee on Migrant Workers

CMW is a body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its state parties. All state parties must report initially one year after acceding to the convention and then every five years.

4. Asian Human Rights Bodies

Asia is the only region in the world that lacks a region-wide human rights commission and human rights court. The region has the fewest nations ratifying the Rome Statute of International Criminal Court of any of the regions in the world.

ASEAN Charter

ASEAN adopted its Charter on November 20, 2007 as a binding legal document. All ten member nations subsequently ratified the Charter. The Charter establishes promotion of human rights as one of the purposes and principles of ASEAN. Specifically, the Charter states ASEAN is to "strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms..." The Charter further commits ASEAN to "enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare, and justice." One of the principles of ASEAN is "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice." On issues of education, the Charter sets that one of ASEAN's purposes is to "develop human resources through closer cooperation in education and life-long learning… to the empowerment of the peoples of ASEAN…"

Unfortunately, many of these commitments are undermined by other provisions of the Charter. ASEAN clearly continues its policy of non-interference in the so-called "internal affairs" of its member states. Specifically, the ASEAN Charter requires "non-interference in the internal affairs of ASEAN Member States" and adds that ASEAN must have "respect for the independence, sovereignty, equality, territorial integrity, and national identity" of its member states. The Charter does not provide a definition for what constitutes "internal affairs", leaving this to the discretion of each member government. The non-interference in internal affairs doctrine has long been used by member states of ASEAN to frustrate international efforts to promote trade union and human rights in the nations of ASEAN.

ASEAN Intergovernmental Human Rights Commission (AICHR)

There is still a lack of effective mechanisms in ASEAN to ensure compliance with the human rights obligations in the Charter. The ASEAN Intergovernmental Human Rights Commission (AICHR) will be launched at the 15th ASEAN Summit in October 2009 but serious doubts have been raised about the forthcoming AICHR's mandate, independence from governments, and structure and personnel arrangements.

The ten governments of ASEAN established the ASEAN Inter-Governmental Commission on Human Rights (AICHR) pursuant to article 14 in the ASEAN Charter calling for the creation of an ASEAN human rights body. The discussions about "Asian values vs. universal human rights standards" did not re-surface because the AICHR bases its future work on international standards, including the Universal Declaration on Human Rights (UDHR), the Vienna Declaration and Program of Action from the World Conference on Human Rights (1993), and the international human rights conventions ratified by the ASEAN members states. The AICHR's terms of reference (TOR) also calls for upholding the UN Charter and international law and adds it shall have "respect for international human rights principles, including the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms…"

But similar to the Charter, the AICHR's terms of reference (TOR) contains contradictory principles side-by-side. One of the purposes of the AICHR is to promote universal standards of human rights but this provision is placed next to strong reaffirmations of ASEAN's non-interference principle. For example, the AICHR will be guided by "non-interference in the internal affairs of ASEAN Member States", "respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion"

and "respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States."

The apparent ambivalence some of the ASEAN governments feel towards the AICHR is reflected in some of the cautious language inserted in its mandate. For example, the TOR dictates that the AICHR will "promote human rights within the regional context" but then creates safeguards that a nation can invoke by requiring AICHR to bear in mind "national regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities." If this was not clear enough, the TOR adds clear restrictions on the AICHR's operational mandate, requiring that AICHR take an "evolutionary approach" in its work and "pursue a constructive and non-confrontational approach and cooperation to enhance promotion and protection of human rights." Most importantly, the national governments are clear that they are not ceding control of the human rights agenda to AICHR when they dictate that AICHR will recognize "…that the primary responsibility to promote and protect human rights and fundamental freedoms rests with each Member State."

The AICHR has been criticized by ASEAN trade union and NGOs for lacking a mandate to take action beyond broad promotion of human rights principles. Despite advocacy by ASEAN human rights and labor rights groups, specific demands to set up systems to protect human rights – such as a mandate to receive individual complaints, conduct on-site investigations, and conduct regular reviews of national human rights practices – were disregarded by the ASEAN Foreign Ministers as they drafted the TOR. So at this time, there is no formal process or mechanism for a trade union with a human rights grievance to take a case to the AICHR, or seek an investigation.

Fully 12 out of the 14 mandates of the AICHR are focused solely on promotion of human rights awareness. Human rights promotion by the AICHR is to take place through public awareness building (through education, research and distribution of information), capacity building, dialogue and consultation with other ASEAN bodies, studies on thematic human rights issues, and other strategic planning and collaborative efforts. The only avenues for possible human rights protection activities are contained in article 4.10, which gives the AICHR the right to obtain information from national governments, and article 4.12, which grants authority for the AICHR to undertake "studies on thematic issues of human rights in ASEAN." Presumably, the right to education or other similar topics of interest to teachers could be raised under this mandate.

Human rights education is only mentioned briefly in the TOR. Specifically, it is rolled into a larger mandate for promoting awareness set out in article 4.3, which states the AICHR is to "enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information…" Importantly, article 8.6 allows funding and other resources can be provided by non-ASEAN member states for human rights promotion, including education and capacity building.

ASEAN civil society groups, NGOs and trade unions are also expressing serious concerns about the potential lack of independence of the ten representatives on the AICHR. Each ASEAN member government appoints one member to the AICHR, and selects their representative according to their own nationally-determined procedure. The TOR explicitly states the representative shall "be accountable to the appointing Government." The term of office is three years but the rules permit Governments to replace their representative "at their discretion" before that, thereby further eroding any possibility of independence of the AICHR commissioners.

Qualifications for the commissioners urge (but do not require) member states to consider persons with "integrity" and "competence in the field of human rights" and procedures provide that the government can consult with other stakeholders (such as civil society groups) at its discretion, but there is no requirement for them to do so.

The names of the individual commissioners to the AICHR have not yet been revealed because the Commission will be formally launched on October 23, 2009, at the 15th ASEAN Summit meeting to be held in Hua Hin, Thailand. Many observers expect appointment of current or retired government civil servants, especially from governments with poor human rights track records and/or restrictive political systems such as Brunei Darussalam, Burma, Cambodia, Lao PDR, Singapore, and Vietnam.

Operationally, the AICHR Secretariat will be based at the offices of the ASEAN Secretariat, further eroding any possible independence from the governments. A separate budget allocation for the AICHR has not been established, raising concerns that it will fall victim to the chronic lack of resources that plagues the ASEAN Secretariat.

The AICHR is still clearly a work in progress starting from a relatively low level threshold so trade unions and NGOs will have to decide how much time and effort they wish to commit to engaging with the Commission. As the first regional human rights commission in Asia, the course and results of early engagements between civil society and the AICHR will be important to ascertain the role that the AICHR will play.

South Asian Association for Regional Cooperation (SAARC)

The South Asian Association for Regional Cooperation (SAARC) comprises eight countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The SAARC Secretariat is established in Kathmandu, Nepal.

In 1985, the SAARC charter was signed by the governments of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The stated goals of the SAARC Charter are that the countries will work together, in a spirit of friendship, trust, and understanding, to improve the people's quality of life; to accelerate economic growth, social programs, and cultural development; to strengthen self-reliance among South Asian states; and to promote collaboration in economic, social, technical, and scientific fields. The notion of a "human right" is not even mentioned in the SAARC Charter, let alone the promotion of human rights as a goal.

Few attempts have been made by SAARC to discuss human rights issues. The SAARC member governments are wary of the term human rights, even though their representatives in international forums vouch for their commitment to promote and protect human rights. The SAARC countries have, for instance, signed the Convention on the Rights of the Child, and all except Maldives have signed the Convention on the Elimination of All Forms of Discrimination Against Women. Every SAARC member state's constitution guarantees fundamental rights for its respective citizens, but such constitutional rights are laden with contradictions and exceptions.

Indeed almost all South Asian countries have laws that do not respect essential notions of due process, often resulting in arbitrary arrests, assault, and the killing of innocent people. In light of these human rights problems, South Asia can ill afford to remain the only region in the world where there is no regional instrument to govern human rights.

5. TURN Project - Country Report for Cambodia

Country Description

The 1993 Constitution contains strong pro-education commitments to underpin the Royal Government of Cambodia's engagement on education. The Constitution stipulates the Government must "protect and upgrade citizens' rights to quality education at all levels and shall take necessary for quality education to reach all citizens" (Article 65) and that it "shall establish a comprehensive and standardized educational system throughout the country that shall guarantee the principles of educational freedom and quality" (Article 66). Provisions for free, compulsory education are also made in Article 68 requiring "The State shall provide free primary and secondary education to all citizens in public schools" and "Citizens shall receive education for at least 9 years."

According to the Ministry of Education, Youth and Sport (MoEYS), enrollment in the education system is 2.75 million primary school students (in 6000 schools), 600,000 secondary students (in 900 schools) and 45,000 university students (including 25,000 who are in public universities). This reflects a huge increase in enrollment, rising from 2.4 million students in 2000. At the start of the current Education Strategic Program (ESP) 2006-2010, net enrollment rates nationwide for primary school are 92% (91% for girls) but only 26.1% (24.8% for girls) for lower secondary school – yet this is a 66% increase since 2001.[1] The number of Government teachers is approximately 97,000, which is a significant proportion of the total number of civil servants, which stood 164,595 persons in 2005 according to the Council for Administrative Reform.[2] Clearly, one of the driving factors in the conditions of work for teachers is the growth in enrollment, which continues to expand. In fact, UNESCO found in 2007 that there is an average pupil to teacher rate of 50:1 at the primary level, which is quite high. In remote, rural areas, the number of students enrolled is generally lower – but so are the number of teachers, reflecting the difficulties in persuading teachers to locate to these remote areas, away from their home areas where land, family and social networks provide them with additional income generating opportunities.

UNESCO statistics indicate that public expenditure on education accounted for 12.4% of the overall expenditure in the year 2007.[3]

The Government has embraced an "Education for All" policy that emphasizes equity in the attainment of nine years of education, and taking serious steps to expand access for all children, especially those in poverty and vulnerable circumstances. Improvement of education quality at all levels, and increased engagement with private sector, are also major goals that are set out in the Prime Minister's Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia (issued as the pre-eminent policy statement presented in 2004 at the first sitting of the 3rd National Assembly). The Rectangular Strategy also provides for extensive provision of Government budgetary resources to the education sector[4], complimented by those acquired from the international donors. However, in reality, it has proved difficult for the Government to realize these resource mobilization goals.

Cambodia's education system is guided by the ESP process, with the current ESP running from 2006-2010. A complementary Government-education donor process, guided by an Education Sector Support Program (ESSP), provides financing for priority action programs identified in the ESP. The current ESP sets out goals that by 2010, all Cambodian children are completing primary school (6 years), and by 2015 all children are finishing basic education (9 years). In reaching these goals, gender inequalities will also be eliminated. The ESP focuses on equitable access to education, improving quality and efficiency of education services, and building institutional capacity for educational decentralization.[5]

Changes of policy and practice in each of these areas impact the lives and working conditions of teachers. For example, in improving access for all children to attend school, the ESP calls for a reduction of parental costs by eliminating informal payments by parents to school personnel – and then calls for increased budgets for schools and teachers' salaries to eliminate the demand for these payments. The Cambodian Independent Teachers' Association (CITA) is on the record as favoring elimination of such payments, but also correctly points out that the Government has failed to follow up and pay teachers a living wage. In fact, the CITA notes the poor salaries

paid to teachers are "*an obstacle for the effective implementation of the policies of the Ministry of Education*."[6] Plans are also set out for increased recruitment of teachers, use of multi-grade teaching to address shortages of qualified teachers in remote areas, and provision of one-off incentives for teachers to re-locate to remote areas – but so far, few teachers have agreed to take up these financial incentives to move to those areas.

The ESP designates there should be an increase in salary and incentives linked to performance of teachers, set out in 15% per year increases. Yet teachers say this increase is hardly enough to keep pace with increases in the cost of living. Reforms are also promised, with reviews of those reforms connected to increased efficiency and effectiveness of teachers, in 2008 and 2010. Other plans under the ESP include creating child-friendly schools, increasing school operational autonomy in terms of budget and operations (and evaluating them according to performance), setting out programs to improve pre-service and in-service professional development for teachers, and introducing staff appraisal plans at all levels of the education system.

Finally, the ESP sets out a policy priority of increased decentralization of the education system down to the provincial, district, commune and school level, and creates capacity building measures and targets for greater capacity in budgetary oversight, school management and human resources supervision at all levels. While de-centralization has yet to move forward in a significant way, these plans (when implemented) will pose challenges to public sector teachers in the future.

Private sector education has expanded significantly, especially in major cities such as the capital, Phnom Penh. According to an international expert from UNESCO, there are as many as 30 private universities, and 100 other private schools (ranging from kindergarten through primary and secondary, and including international schools). There is a Private University Association, which is an employers group, but the researchers were unable to find any trade union body which focuses significant attention on organizing private school teachers. CITA says it organizes private sector teachers but other observers report CITA is almost completely composed of Government teachers and there has been relatively little outreach by CITA to organize private sector teachers. Teachers at the private university level are often Government teachers who are teaching as adjunct professors. Pay rates between private and public teachers are quite different, with the UNESCO expert stating that Government teachers who earn $100 per month in their Government position are able to earn as much as $10 per hour as an adjunct professor.

Background on EI Member Organization

Legal status of EI member organizations participating in TURN

CITA's founding Congress was held on March 11-12, 2000. However, since then CITA has not been able to register as a trade union with the Ministry of Labour and Vocational Training (MoL) due to restrictions on public sector unions. The only avenue made available for registration was as an association with the Ministry of Interior (MOI). Even achieving this registration was a struggle that required an international pressure campaign, with interventions from EI, representatives of the UN, and other international organizations, to pressure the Government to agree to register CITA on July 17, 2001. Since CITA is an association, it is legally permitted to have members which are both from the Government civil service as well as private sector – but it is still remains to be seen whether CITA would be legally be permitted to include workers from both sectors if it was able to register as a union.

CITA is a member of the Cambodian Confederation of Unions (CCU), which has a website at www.the-ccu.org Other labour federations in that Confederation include the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC).

Basic information on structure and leadership

CITA holds monthly meetings of the leadership at its headquarters and regular meetings of its leaders at the provincial level in the 19 provinces (out of 20 provinces and four autonomous regions in the country) where it has organized presence.

CITA states that it has 6 employees and 12 volunteers. Governance is through an elected eleven member National Executive Committee, whose members serve in a volunteer capacity. There are also Provincial/Branch Executive Committees with 231 members, overseeing provincial office actions.

In terms of representation, the CITA Constitution sets out that CITA representatives are elected at the school level. All the dues paying members in a particular province, including the school representatives, are expected to meet at least every two years for a Branch Committee Conference. This meeting elects Branch Committee representatives, as well as delegates to the National Congress of the CITA (with number of delegates per province determined by proportional representation). Each Provincial/Branch Committee must have 11 officers and at least 50% of these officers are supposed to be women. Offices include Branch Chairperson, Vice-Chairperson, General Secretary, Vice General-Secretary, Treasurer, and 6 at-large general members. The Branch Committee is the work-horse of the organization, overseeing collection of dues from members, development of programs, and delivery of practical services (such as grievance-handling) to members.

After all Branch Conferences in a two-year cycle are held, the National Congress is held and this elects the new National Committee. The National Congress must be held at least every three years. The Congress elects all the members of the 11 person National Committee, including the President, Vice-President, General-Secretary, Vice General-Secretary, Treasurer, and 6 at-large members. The President is term-limited to two terms, per Article 35 of the CITA Constitution.

In all levels, the leaders are elected by secret ballot, based on nominations made by two members and seconded by members. Budgets and programs at both the Provincial/Branch and National levels are approved for periods of three years.

The National Executive Committee, drawn from the National Committee, is the highest executing authority of CITA and meets (at a minimum) every 2 months. Duties include preparing by-laws, establishing offices and hiring/firing staff, forming Sub-committees and other organizations to support its work, and clarifying the organization's Constitution when necessary.

Finally, there is a National Council of CITA, which meets every July of every year, and is comprised of the National Executive Committee and representatives of the Branch Committees.

In terms of its work, CITA has a number of important, inter-locking objectives, including to "*represent and promote the interests of Cambodian teachers*", to "*promote decent, safe and secure working conditions for teachers…*" and to "*improve teacher's standard of living by negotiating for a living wage.*" The major rallying cry for the CITA is continuous effort to persuade the Government to raise teacher's salaries to $US 100 per month, reiterating that a core element of CITA's appeal rests on the importance it gives to efforts to demonstrably improve public teachers' salaries and benefits. CITA also focuses on larger systematic issues in the education system, such as to "*improve the quality of education in Cambodia, and achieve education for all*" and "*support the professional development of teachers through training programmes.*" Finally, in the broader social sphere, CITA is committed to "support human rights, democracy and social development in Cambodia." [7]

Basic information on membership of CITA

CITA states it now has 8750 members and this membership is spread throughout its branches in the country.[8] Membership is approximately 30% female and 70% male.[9] CITA adds that it currently has 19 branches at the provincial level but these branches do not have formal offices. Membership applications are made and approved by CITA at the branch level.

Membership is open to both public and private sector teachers, school administrators/principals, and education staff, and involves education personnel at all levels, from kindergarten through university.

In terms of dues, there is a 1000 Riel ($US 0.25) application fee (stipulated in Article 7 of the CITA Constitution). Dues can be made monthly (500 Riel, $US 0.125) or annually (6000 Riel, $US 1.50). In terms of sharing the proceeds from dues, 70% is retained by the branch committee of CITA and the remaining 30% is remitted to the national committee. Non-payment of dues for more than one year is grounds for termination of membership.

National Context

Legal framework of TUR rights for teachers and for public servants

Freedom of association

The Constitution of 1993 grants freedom of association to all Cambodian citizens to form unions in Article 36, stating "*Khmer*

citizens of either sex shall have the right to form and to be member of trade unions." However, that right is qualified later in the same Article by requiring that regulatory laws on trade unions must be passed ("*The organization and conduct of trade unions shall be determined by law.*") The Constitution also contains another provision, Article 42, which could also be construed as supporting freedom of association. This Article states that "*Khmer citizens may take part in mass organizations for mutual benefit to protect national achievement and social order.*"

For public teachers, who form the vast majority of education personnel in the country, The Law on the Common Statute of Civil Servants of 1994 regulates their ability to associate. The reason the registration of CITA under the MOI is so critical is that enables public teachers to legally join the organization. The Civil Servants law clearly states in Article 36 that "*Any civil servant may join or participate in the management of an association authorized by law.*" The major restriction on this right is civil servants must remain neutral in political matters and cannot work for or against a political candidate or political party (Article 37). The fact that there is no labour law that covers public sector workers is the major impediment to formation of a union by public sector workers.

There is also a Cambodian Independent Civil Servant Association (CICA). According to the US State Department's latest human rights report on Cambodia, *"the CICA represented approximately 1,060 officials from ministries, provincial departments, and commune councils, out of approximately 160,000 civil servants nationwide."*[10] The CICA is a progressive organization that faces similar organizational limitations and restrictions on recognition by the Government as the CITA. The CICA President, Man Nath, was arrested in the same case as CITA Rong Chhun related to the petition against the Cambodia-Vietnam border treaty in October 2006.

However, the only actual law that provides for the organization and registration of trade unions is the Labor Law of 1997, and this law explicitly excludes civil servants. Article 1 states that it does not apply to "*persons appointed to a permanent post in the public service.*" Therefore, Cambodian civil servants of all types, including teachers, are legally without the right to form trade unions.

The Labor Law of 1997 does pertain to private sector teachers and education workers, and this is set out in specific terms. In addition to setting out the exclusions for the Law, Article 1 also provides definition of those occupations that are included in the Law's coverage. Article 1 declares that "*This law applies to every enterprise or establishment of industry, mining, commerce, crafts, agriculture, services, land or water transportation, whether public, semi-public or private, non-religious or religious; whether they are of professional education or charitable characteristic as well as the liberal profession of associations or groups of any nature whatsoever.*"

However, Article 268 set outs very clearly that for workers to form unions and enjoy the rights provided under the Law, they must follow the procedures, file the applications and received registration from the Ministry of Labour.[11] If the MOL does not respond with two months of the date of the application, the union is considered to be automatically registered – but in practice, this provision has not been commonly followed. There are onerous restrictions concerning the required characteristics of a union leader, specifically that s/he must have been already in the job for more than one year, and must be over 25 years of age.

So far, however, there is little indication that private sector teachers have taken advantage of their legal right to form trade unions.

Unions may affiliate freely, but the law does not explicitly address their right to affiliate internationally. CITA's membership in EI has not been challenged by the Government.

Collective bargaining rights

The Law on the Common Statute of Civil Servants of 1994 provides the overall legal framework for all aspects of work for all Government workers except judges and staff of the National Assembly. All aspects of civil servants assignments, transfers and dismissals, promotions, retirement, and wage classifications, are to be determined by law, decree, or announcement. Similarly, in Articles 9 and 10 of this Law, wages and allowances, allocations for family and other costs, and provision of benefits such as health, annual leave, and professional development are all set by Government guidelines developed in accordance with law. Similarly, all matters related to discipline of civil servants, including levels and steps in sanctions, appointment of the disciplinary council (all appointed by the Minister/senior officials), procedures of disciplinary proceedings, and results of disciplinary determinations are set by law.

CITA is neither recognized by the Government nor by MoEYS for the purposes of collective bargaining on behalf of Government teachers. The fact that civil servants are excluded from the

coverage of the Labor Law of 1997 means that they have no access to the collective bargaining procedures and mechanisms contained in the Law. The Government has continued to recognize CITA and has largely ignored its demands for salary increases for teachers. The recent statement by Prime Minister Hun Sen at a conference that the Government could not afford to increase teachers' wages was a good example of the Government's unilateral proclamations on key issues that should form the basis of a bargaining relationship with CITA and its members.

CITA sets out objectives in its Constitution which clearly envision a collective bargaining function by the union, including protecting the "material interest" of private and public sector teachers. However, much of the language of the Constitution is more generally worded, focusing on increasing the level of participation for teachers to determine their situation. The fact that CITA is speaking about "participation" is yet another clear indication of the lack of legal rights or avenues available to it to compel collective bargaining in the public sector, where it has the majority of its members.

Private sector teachers are covered by the Labor Law of 1997 and therefore have the right to form a union and avail themselves of the collective bargaining mechanisms in the law. Workers must have a labour contract (either written or verbal) in accordance with that law.

Right to strike

CITA maintains that it has the right to strike, as provided for in the Constitution of 1993, Article 37, which states "*The right to strike and to non-violent demonstration shall be implemented in the framework of a law.*"

Article 319 of the Labour Law of 1997 guarantees the right to strike for workers covered by that law. But in order to exercise that right, the dispute must have either gone through the process of Arbitration Council or one of the parties in the dispute has refused to enter the Arbitration Council process. Furthermore, Article 326 requires that while a strike is being conducted that enterprises must also maintain a minimum level of service, and this level of service must be negotiated between the workers and the employers, or failing agreement, imposed by the Minister of Labour. During a strike, those workers who are required to work in order to maintain minimum service but then opt to remain on strike are considered guilty of serious misconduct.

Requirements which must be fulfilled for a strike to be considered legal are also quite cumbersome. Disputes must be first subjected to labour conciliation conducted by an inspector of the MoL, who has 15 days to seek a settlement. If there is no mutually satisfactory result, the dispute must be submitted to the tripartite Arbitration Council for investigation and a decision, which also must come within 15 days of the dispute being referred to the Council. During the period when the Ministry is conciliating, or the Council considering the case, it is illegal to strike.

For a strike to be legal, the union must obtain a majority in a secret ballot of its members. The union must also provide seven days advance notice to the employer and the MoL. If the enterprise is engaged in what the Government considers an "*essential service*", and the strike could "*endanger or be harmful to life, safety, or health of all or part of the population…*", then the law stipulates the waiting period must be a minimum of 15 days.

CITA formally proclaims this right in Article 77 of the CITA Constitution, adopted on December 31, 2006, which states that "*In case there is an abuse or an impact on the interest of both private and public teachers in Cambodia, the CITA will lead a peaceful and non-violent strike as an option to improve and protect their interests. All strikes led by the association will be in accordance with Article 37 of the Constitution of the Kingdom of Cambodia which allows strikes as last means to protect the interest and freedom of the private and public teachers in line with all kinds of law, demand all the institutions follow the law of Cambodia, improve the exercise of democracy in Cambodia.*"[12]

Despite the fact that its Government school teachers are not covered by the Labor Law of 1997, provisions of the law only specifies that "*groups of workers*" can strike. Article 320 specifically adds that the right to strike "*can also be exercised, in a general manner, to defend the economic and socio-occupational interests of workers.*" However, other sections on procedures to conduct a strike legally set out that a secret-ballot strike vote must be taken in accordance with the union's procedures, implying that only unions can call strikes.

CITA does use temporary work stoppages and strikes to pressure school administrators, especially when anti-union discrimination occurs, or there is clear evidence of corruption by school managers. While such actions are in line with the CITA's view of strikes, and the Constitution provision allowing such actions, the legality of the strikes according to the Labor Law 1997 is a

matter of continuing dispute between CITA and MoL. CITA reports that teachers involved with organizing these strikes have faced retaliatory actions by education administrators at the school level, and within MoEYS.

Issues related to enforcement of legal and regulatory frameworks and courts

Freedom of association

Since its founding, CITA has been subjected to frequent Government campaigns of threats, intimidation, and anti-union discrimination. The most prominent example occurred in October 2005, when Rong Chhun, the President of the CITA, was arrested as he was trying to leave Cambodia. The reason for his apprehension was he co-signed a letter that publicly criticized the Government for the terms reached in a border agreement between Cambodia and Vietnam, an action which Cambodian Prime Minister Hun Sen publicly denounced as "*an act of treason*." Rong Chhun was imprisoned for a total of three months, prompting EI to launch a global campaign for his release which included letters to the Prime Minister and Urgent Action Appeals. He was released on January 17, 2006, after he wrote an apology letter to PM Hun Sen, withdrawing his allegations and personally thanking the PM for securing his release. Man Nath of the CICA was also incarcerated for co-signing the same letter – and was released on terms similar to those as Rong Chhun.

Government officials have also blocked CITA and affiliated federations, like the FTUWKC, from holding activities, including most prominently their May Day march in Phnom Penh on May 1, 2006.

CITA alleges it faces systematic opposition from local and provincial authorities controlled by the central Government who try to block or hinder CITA activities in their areas. For example, on June 15, 2008, CITA arranged a workshop (with financial support from the EU) on "Rights and Teachers' Duty" in Takmau district of Kandal province. However, local officials intimidated the owner of the venue (a restaurant) and he decided the morning of the seminar to not allow his restaurant to be used. The 48 teachers who participated and the CITA workshop were thus forced to hold their workshop outside, under several trees and the watchful gaze of local police and Government officials.[13] For its part, CITA is quite active in seeking out information and revealing corruption among school administrators and senior officials at the MoEYS, which may also spark retaliation.

Appointment of school principals and directors are done by direct appointment by the Government, and observers state that this appointment system is politicized. CITA alleges that these principals are the front-line protagonists against their members, practicing discrimination in appointments and promotions, blocking CITA activities, urging teachers to stay away from CITA (and/or join the ruling Cambodian People's Party), and depriving CITA members access to special education programs or activities (often funded by donor funds) which offer additional salary and benefits for teachers who participate.

A Khmer Teachers Association (KTA) also exists and according to Private Agencies Collaborating Together (PACT)/ILO researchers, it had more than 87,000 members in 2004. The researchers described it as a "voluntary benevolence association" for teachers and all public teachers are required to be members. Among the objectives described by KTA are building friendship among teachers, supporting efforts to increase teachers' knowledge, improving the education system in the country, improving communications between teachers and the international community, and finally, to "*materially and emotionally support teachers' living conditions*." Aside from a funeral benefit fund, it is unclear how the KTA helps teachers materially. Nor is it clear whether a public teacher can opt out of joining the KTA. The KTA leadership told the PACT/ILO researchers that the KTA is independent of the Government, but CITA disputes this.[14]

Collective bargaining agreements

CITA does not have any collective bargaining agreements with any agencies of the Government. Salaries, wages and other benefits for public teachers are unilaterally set by the Government.

The biggest issue identified by public sector teachers is the inadequacy of salaries when compared to living costs of teachers. CITA President Rong Chhun states that current salaries of teachers are approximately 100,000 Riel ($US 25) for primary school teachers, 200,000 Riel ($US 50) for lower secondary teachers, and 250,000 Riel ($US 65) for high school teachers.[15]

CITA states that it also continually raises specific issues of

concern to teachers in a public way, especially demands for wage increases and allowances. Larger social issues that affect teachers and their livelihoods, such as the rising cost of living, problems with corruption, and other matters are also raised by the CITA in their engagement with the authorities.

Public school teachers have many issues and concerns that they want to bargain about, despite the denial of this right. A comprehensive report on teachers' views done by VSO found that "*public school teachers perceive themselves to be underpaid, under supported and working in under-resourced schools*" and "*de-motivating factors were clearly identified by teachers. Ranked in order of significance, they were: low salary, closely followed by corruption and nepotism, poor leadership and a lack of voice*." [16]

CITA maintains today that the MoEYS does not reply to any correspondence that CITA sends to the Ministry. CITA states this is an indication of both the Ministry's lack of interest in bargaining with CITA, and the inability of CITA to compel the Ministry to enter into a bargaining relationship.

However, CITA claims that it is able to collectively bargain with private sector schools where it has members. However, no copies of collective bargaining agreement or other details on these agreements were provided to the researchers to substantiate these claims.

Government contracts and other arrangements with teachers

Government wage scales for teachers are set by the MoEYS. Teacher salaries range between $25 to $65 per month, and adjustments are made solely according to years of service, and broad classifications (i.e. primary school, lower secondary school, upper secondary school). Other than this, there is no determination of salary levels by other factors, such as educational attainment, nor specific or detailed classifications for Government teachers. However, there is a separate, higher pay scale for school principals which creates incentives for education personnel to seek appointment to job of principal – but as earlier noted, these appointment process of these positions is allegedly politicized, with the ruling Cambodian People's Party (CPP) involved in this process.

Treatment of teacher union leaders by Government and employers

The level of harassment of CITA members is significant enough that CITA explicitly sets out in Article 11 of its Constitution that members have the right to seek CITA support in grievances and protection against victimization by their supervisors in various disciplinary procedures. CITA alleges that there is discriminatory treatment against CITA members, including disciplinary actions, denial of promotions or access to special teaching programs, and verbal and other types of harassment.

Social dialogue and tripartism

A comprehensive examination of teachers' participation by Private Agencies Collaborating Together (PACT) on behalf of the ILO found that there were instances of teachers' participation (usually in the context of large meetings/forums) in planning and reform initiatives of the education system. The problem is that this engagement seems to be process-specific, often driven by donor demands for involvement of all stakeholders, and does not seem to reflect a sustained commitment by Government planners to the importance of teachers' participation. The report stated clearly that "*This assessment found no consistent, identifiable presence representing a broad range of teacher interests, rights and responsibilities in the planning processes. There is no mechanism through which teachers are informed about upcoming initiatives or are able to convene, discuss and make recommendations as an organisation of professionals.*" The PACT/ILO report further added that these weaknesses in setting out avenues of participation raised concerns as de-centralization of the education system goes forward under the ESP. The report said that "*Mechanisms that include teachers' organisations become increasingly important as educational planning is decentralized and as multiple layers for communication and problem solving are established.*" [17]

The PACT/ILO report further found that "*Teachers have had input into many educational policies and strategies, but it has been difficult to confirm the extent or consistency of teacher involvement… however, this occurred during large-scale fact finding missions in which policy makers convened forums throughout the country and met with local educational leaders and teachers to assess issues and solicit opinions on their proposed solutions to improving the educational system.*" What this mean is that the consultation tends to be project-specific, sporadic, and not part of a sustained process.

In terms of tripartite bodies, the MoL chairs a tripartite Labour Advisory Committee (LAC) which is legally mandated under the Labour Law of 1997 (Articles 351-359), was established in 1999. Article 357 of the Law sets out that the LAC has the "*has the mission primarily to study problems related to labor, the employment of workers, wages, vocational training, the mobility of labor force in the country, migrations, the improvement of the material and moral conditions of workers and the matter of labor health and safety.*" More importantly, the LAC has the duty to make recommendations on the guaranteed minimum wage, and provide advice on any regulation relating to the conditions of work in a particular economic sector or profession. To date, the LAC has only set a minimum wage for workers in the garment sector, which is currently set at $US 50 per month, or more than most primary and lower secondary teachers earn. The researchers could not find any recommendations that the LAC has made regarding teachers or education personnel. The employee members of the LAC do not include teachers at this time.

The KTA maintains that it is consulted by the MoEYS, often in the process of Ministry planning on current and future education programs.

Education reforms and systematic changes impacting on teachers rights

The National Program for Administrative Reform, which is lead the by the Cabinet-level Council for Administrative Reform, sets out one of its core objectives as enhancing pay and employment for civil servants. This is critical since the Economic Institute of Cambodia found that in 2005, the average salary of a civil servant was equal to only 4.9% of average salary of a civil servant in the 1960's.[18] Adjustments in civil servant pay levels must be authorized by the Council for Administrative Reform, and these raises have generally failed to keep pace with inflation. CITA has continually demanded that pay levels be raised to US $100 per month, which a UNESCO expert indicated would return teacher pay to the levels that were paid in the 1960's.[19] Failure to provide adequate pay for teachers to cover their basic living expenses has a number of negative consequences. First, teachers dedicate less time and attention to teaching because they are compelled to seek alternative, "sideline" employment, either in the education sector or other sectors, to earn enough for them and their families to survive. According to CITA, more than 93% of public sector teachers must work another job to earn enough to survive, and an Education Partnership report found that 99% of teachers surveyed claimed their salary was not enough to live on.[20]

Second, especially in urban areas where living costs are high, teachers often are compelled by desperate circumstances to demand supplemental payments from the parents of school-children. Third, the best and brightest students are less likely to choose education as a career since they see clearly the lack of salary and status accorded to teachers by the Government.

Cambodia's education system has continually faced difficulties in meeting the demands experienced by teachers who daily face very large classrooms of pupils. Starting in the mid-1990s, and continuing through 2003, significant number of "contract teachers", hired through local appointment after appropriate approvals, helped fill in for the inadequate number of permanent Government teachers. While some of these contract teachers were made permanent, after 2003 there was significant cut-backs in their numbers in favor of requiring existing teachers to do more. For example, the system moved towards other methods to cover teaching loads, such as reliance on "double shift teaching", meaning that teachers are instructing students in two back-to-back four hour shifts.

Structurally, each of Cambodia's 24 provinces/municipalities has a Provincial/Municipal Office of Education which manages and oversees all the public schools in that area, including matters of teacher appointments, and development and implementation of policies. The provincial level exercises direct control over secondary schools, which oversight for primary schools is handled by the District Office of Education.

The over-arching "Rectangular Strategy" pronounced by Prime Minister Hun Sen to guide all aspects of Government policy includes "*establishment of social safety nets for civil servants, employees, and workers…*" as one of the core elements of one of the Private Sector Growth and Employment. The Rectangular Strategy also sets out that de-centralization and de-concentration of the civil service is one of the key aspects of the Governance Action Plan.

However, reforms of the education system in these two areas – remuneration and de-centralization – appear largely stymied at this time.

Available legal and social systems for redress by teachers

The Labour Law of 1997 sets out in Article 387 that Labour Courts will be created to resolve disputes related to labour contracts. The Labour Court system is supposed to be set up through passage of an additional law. However, more than a decade after the Labour Law of 1997 was passed, there has been no appreciable progress to create a Labour Court system. Legislation to develop a Labour Court system remains mired within the Government bureaucracy and there is little indication of any political commitment to seek passage of such legislation. In the meantime, labour disputes continue to get referred to the common courts, which are both ill-prepared to handle them and have demonstrated little interest or commitment to help resolve labour disputes in a timely way.

The Labour Law of 1997 establishes a Council of Arbitration to review the issues of a labour dispute, conduct investigations, and make rulings. The Council's process is time-bound and generally the Council's decisions have been viewed as independent and timely. However, either side to the dispute can object to the final ruling of the Council and said objection means that the Council's ruling has no legal weight. While the procedure ostensibly could be used by private sector teachers involved in a labour dispute, there is no indication that is has ever been used by teachers or education personnel.

At this time, there is no independent national human rights commission in Cambodia.

ILO Jurisprudence

The most relevant ILO case is no. 2222 filed with the ILO Committee on Freedom of Association (ILO CFA) by CITA in 2002. The issue in the case goes to the heart of the issue regarding a lack of freedom of association for civil servants. Specifically, the complainant alleged the Common Statute of Civil Servants violates both ILO Conventions 87 and 98 which have been ratified by Cambodia, and that actions were taken by authorities to prevent CITA from holding meetings or undertaking other union activities. The ILO CFA fully vindicated the union's position by calling on the Government to amend the Statute to bring it into compliance with the two ILO conventions. The ILO CFA further requested the Government to (1) take measures to ensure that Cambodian police cease actions that interfere in trade union matters and restrict trade union activities; (2) take actions to ensure that officials of local educational offices and school directors are educated about freedom of association and collective bargaining rights of teachers; (3) authorize local authorities to negotiate with CITA about how and where trade union meetings will be held; and (4) investigate the allegations in an impartial way. Despite the recommendations made by the ILO CFA, the Committee's calls were not heeded by the Government and the Statute remains unchanged.

Many of the recent ILO jurisprudence centers around the murder of Chea Vichea, the President of the FTUWKC and Ros Sovannareth, a FTUWKC factory-level union leader, in 2004. ILO CFA case no. 2318 was filed by ICFTU and raised failures by the Government to seriously investigate the murders, combined with the arrest and imprisonment of obvious scapegoats who had nothing with the killing of Chea Vichea. The ILO raised serious concerns about the inability of workers to enjoy fundamental labour rights in an atmosphere of such serious violence. The ILO Committee on the Application of Standards stated in June 2007 that the right of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of these organizations. The Committee stated that the Government must take all necessary measures to ensure respect for this fundamental principle and bring an end to impunity. An ILO fact-finding mission was sent to Cambodia regarding the case in April 2008. In its report issued in November 2008, the ILO condemned the failure of the Government to prevent violence against unionists and decried the lack of an independent judiciary in the country, which the ILO added encouraged impunity and obstructed efforts by workers to exert their trade union rights.

Other ILO cases have focused on specific labour disputes in garment factories or hotels, in which freedom of association was found by the ILO CFA to have been violated by the actions of the Government and/or the employer. These cases are relevant to unions organized under the Labour Law of 1997.

Ratifications of UN Conventions

Cambodia is one of the few Asian countries that has ratified all 8 of the core ILO Conventions.

Cambodia has ratified most of the major UN human rights conventions, including the International Covenant on Civil and Political Rights (CCPR); the International Covenant on Economic, Social, and Cultural Rights (IESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Convention on the Elimination of Discrimination Against Women (CEDAW); and the International Convention on the Rights of the Child (CRC).

Cambodia has signed, but not yet ratified, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It is one of the few Southeast Asian countries to do so.

Acronyms used in the Cambodia Report

CCU	*Cambodian Confederation of Unions*
CICA	*Cambodian Independent Civil Servant Association*
CITA	*Cambodian Independent Teachers' Association*
CPP	*Cambodian People's Party*
ESP	*Education Strategic Program*
ESSP	*Education Sector Support Program*
FTUWKC	*Free Trade Union of Workers of the Kingdom of Cambodia*
KTA	*Khmer Teachers Association*
LAC	*Labour Advisory Committee*
MoEYS	*Ministry of Education, Youth, and Sport*
MOI	*Ministry of Interior*
MoL	*Ministry of Labour and Vocational Training*
PACT	*Private Agencies Collaborating Together*

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6. TURN Project - Country Report for Indonesia

Country Description

Improvement of the education system in Indonesia has been a stated goal of both the government and teacher unions for many years. From the 1970s onwards there was a concerted effort to build schools across the country which resulted in a continuous increase in primary school enrollment. By 2007, the net enrollment rate was 97.22 percent for primary school, 86 percent for junior secondary school and 67.26 for senior high school.

In 2005, public and private schools at all levels enrolled 50.6 million pupils in 270,000 schools. There are an estimated 2.7 million teachers in Indonesia who make up nearly 70 percent of the national civil service.

Formal education in Indonesia begins with kindergarten (comprised of 2 years) followed by primary school, which is made up of the first 6 grades. Graduates from primary school continue with secondary education, divided into junior and senior secondary levels and comprised of 3 grades each. Graduates from senior secondary schools can continue to diploma or graduate programs or to other types of higher education. In 2005, the distribution of students was: 5 percent in kindergarten, 59 percent in primary education, 17 percent in junior secondary education, 13 percent in senior secondary, and 6 percent in higher education. Indonesia has set a target that by 2009 the country will achieve 100 percent enrollment rate at the primary school level and 96 percent at the junior secondary school level. Law Number 20/2003 on the National Education System sets that education is compulsory for children aged 7–15 years.

But there remain significant obstacles to achieving and sustaining universal primary and secondary education. While there are increases in enrollment at the national level, regional differences remain significant and some regions lag behind. Indonesia had a low student-teacher ratio compared with other Asian countries but this is offset by an unequal distribution of teachers, with some areas facing an oversupply of teachers while other remote areas must confront serious shortages of teachers. Challenges still exist which need attention, including the level of teacher qualifications, the structure of teacher compensation, class-room quality, and class size.

There are several different categories of teachers and many are not full-time or permanent staff, raising concerns about educators' employment security. The four main types of teachers are as follows:

- Public teachers are civil servants with licensed qualifications.
- Contract teachers are fixed-term teachers, often employed through donor-funded projects, who have the same qualifications as public teachers.
- Permanent teachers who are engaged by foundations to teach in private schools. These teachers' qualifications vary.
- Temporary teachers who work in private and public schools and are paid by foundations. These teachers vary widely in their qualifications, and their wages can be very low (less than Rp. 100,000 a month).

Regardless of the teacher category, teacher salaries are low in Indonesia, which in term contributes to low morale and status of teachers, and leads to difficulties in recruiting new teachers. The level of teacher salaries in Indonesia, adjusted for purchasing power, is considered lower than that of many other Asian countries. Indonesian teachers' average earnings are more than 20%lower than those of other paid worker with equivalent qualifications and more than 25%lower than other civil servants.

In the 1990s, a process of decentralization of the education system was strongly supported by the World Bank and embraced by the Ministry of Education. Follow up research found the reforms largely missed their targets due to factors including continuance of a system of powerful centralized government authority combined with lack of effective training for change and failure to provide proper incentives for teachers to work differently. Most importantly, teachers and their representatives were neither involved in goal setting nor decision making. The failure to systematically consult teachers is cited as one of the important reasons for the policy's general lack of success. Research studies also confirm that national teacher organizations have not been involved as they should be in raising professional development issues and developing plans.

Teacher unions recognize the need to be active in advocating on behalf of their members while also addressing the need to improve the educational system of Indonesia through promoting professional and trade union rights and the economic welfare of teachers. After a 7-year PGRI campaign using various strategies, the Teacher Law (No. 14/2005) was passed in 2005, addressing issues relating to profession, welfare, and social assurances, while setting out systems for teacher rights and obligations, including the right of teachers to organize and collectively bargain. This law also states that teachers and lecturers will receive functional, special area, and professional incentives. While the Teacher Law is providing the legislative basis for educational reforms and international donor programs, teacher unions still see there are gaps in the law and have been urging the government to issue corresponding implementing regulations on rights of teachers consistent with the Teacher Law.

According to the law, teachers should follow certification in order to get recognition and statutory pay. Following certification, teachers receive a 100% basic salary increase and teachers in remote areas get a 200 % increase. In the Teacher Law, teachers were supposed to have S1 degree to take certification, after a long negotiation and lobby from PGRI, it was accepted that teachers over 50 of age who had 20 years experience in teaching and employment rank minimum IV A, could follow certification. The PGRI proposal was endorsed in Government Regulation 74 article 66. Now, PGRI is fighting for government regulation on minimum wage for non permanent teachers such as honorarium teachers and contract teachers.

The issues relating quality of education and teaching reflect the inadequate level of education funding by the government, regardless of stated goals. There have been reports of instances when school officials were compelled to go as far as bribing ministry officials to secure funding. Since 2005, there has been a campaign to demand the implementation of a clause in the Constitution that requires 20 percent of the national budget be allocated to education. In past years, the government allocated only about 9 percent of the budget to education. However, funding for education was increased to 12 percent in 2007 the government was taken to the Constitutional Court.

PGRI appealed to the Constitutional Court for the government to abide by the constitution requirement for 20 % of the national and local budget to be earmarked for education. PGRI won three times. After a long fight, in 2008, the government started to implement the constitution at the national level. Unfortunately, this trend is not followed by all local governments. However, PGRI continues to argue that the quality of education remains low. PGRI advocates for quality education, student achievement, teacher professionalism, infrastructure and fulfilling the Education For All objectives.

Notable Education Legislation since 2002:

- Constitutional Amendment (2002): Education for human investment, strong commitment to compulsory basic education; 20% of national budget shall be allocated for education.
- New Law on the National Education System (2003): Free of charge basic 9-year education; provision of quality education for all; standardized education implementation; decentralization and community participation in educational management.
- Law on Teachers and Lecturers (2004): Recognition of teachers as professionals; setting teacher qualification and competence standards, detailing processes for certification and professional development; setting out incentive schemes for teachers.

Background on EI Member Organizations

Legal status of EI member organizations participating in TURN

The Teachers Association of the Republic of Indonesia - Persatuan Guru Republik Indonesia (PGRI)

PGRI was founded in November 25, 1945 just 100 days after the nation's proclamation of independence on August 17, 1945. PGRI maintains at its central principle the and philosophy of Pancasila and the 1945 Constitution. Under Suharto-era systems of centralization and control, the PGRI was made part of the the Indonesian Corps of Civil Servants (KORPRI), which was an association, not a trade union by law. However, during the *Reformasi* period, PGRI was able to register as a trade-union organization at Manpower Departement on August 10, 1999 (registration number: 370/M/BW/1999). PGRI has been guided in its work by the vision of becoming a trade union in all

aspects, going well beyond the confines of a purely professional association which it was before 1999.

However, because of the Decentralisation Law (Law 22/1999 which in turn was amended in 2004 and is now Law 32/2004), PGRI branches at the district level must also register as unions with local Ministry officials to receive legal status. Based on the Suharto-era arrangements, KORPRI claimed PGRI as an affiliate and has sought to maintain an automatic dues' deduction from teachers' salaries, despite a national PGRI decision to distance the organization from KORPRI. Resistance from KORPRI, combined with confusion and corruption by local Ministry of Manpower authorities, has been a consistent barrier to local level PGRI union registrations.

The PGRI has been successful in its 5-year campaign to have Parliament adopt a teachers' and lecturers' law in 2005 (No. 14/2005). This law No 14/2005 improves the benefits for teachers (by providing welfare and social assurances), and spells out the teacher rights and obligations. Language on freedom of association and the right to organize and collectively bargain was included in the law but in such a way so as to limit the rights of public teachers to form real unions and restrict them from being able to collectively bargain. The PGRI is critical of these provisions of the law and continues its campaign to amend the law so that the Government Regulation on Teachers is consistent with the new Law of Teachers and Lecturers.

Federasi Serikat Buruh Pendidikan, Pelatihan & Pegawai Negeri Sipil, FESDIKARI - SBSI

- Mr. Ir. Markus S. SIDAURUK, President
- Mr. Paulus GINTING, General Secretary

Basic information on structure and leadership

PGRI

As of the 20th PRGI Congress held in mid-2008, the President of PGRI is Mr. Sulistiyo and the General Secretary is Mr. Sahiriharmawan. There are executive boards at the National, Provincial, District/City, Branch and sub-Branch levels. The structures are:

- The National Executive Board consists of 25 national executive members and is located in the national capital, Jakarta.
- The Provincial Executive Boards each consist of 22 executive members located in the capital of each of the country's 34 provinces;
- The District or City Executive Boards each consist of 17 members located in the capital of each of the country's 496 districts/cities.
- The Branch Executive Boards exist at the sub-district level (or special working units), and there are 4.288 branches. Each Board consists of 12 executive members.
- The Sub-branch Executive Boards exist at the village level (or lowest working unit) and there are 68,139 sub-branches with each consisting of 9 executive members.

To support the implementation of tasks and programs, PGRI has the following institutions:

- YPLP-PGRI (Yayasan Pembina Lembaga Pendidikan PGRI) is the foundation for managing and developing PGRI schools at all levels. Currently, YPLP-PGRI is managing 903 kindergartens, 23 primary schools, 1829 junior high schools, 621 general senior high schools, 318 vocational senior high schools, and 58 higher education institutions (e.g. universities, institutes, academies, and colleges).
- LKBH (Lembaga Konsultasi Bantuan Hukum) is the organization which provides legal consultations and services for teachers/PGRI members.
- BP-GGI (Badan Pengelola Gedung Guru Indonesia) is the institution which manages the assets and property such as the Teachers Building and its facilities.
- Induk Koperasi PGRI (Central Cooperative of PGRI) is the cooperative institution dedicated to increasing members' welfare;
- Majalah Suara Guru (Teacher's Voice Magazine) is the monthly magazine that serves as the PGRI communication vehicle for all members including the executive board.

Basic information on membership

PGRI

To become a member of PGRI one must be a citizen of Indonesia and a teacher or staff person in the educational profession. The person applying must also be a voluntary applicant for membership and meet other qualifications according to PGRI regulations.

There are three kinds of PGRI memberships: regular, extra-ordinary, and honorary. Members can further be classified as teachers in 1) public service; 2) private teachers (under the employment of a foundation); 3) contract teachers; 4) honorary teachers (higher government, local government and school honoraries); 5) non-permanent teachers; and 6) voluntary teachers. It is worth noting that PGRI has been actively campaigning to get 400,000 temporary teachers confirmed as permanent government-employed teachers.

The current national membership of PGRI is approximately 1.93 million members, which accounts for about 80% of all the teachers in the country. The female to male ratio in the PGRI membership is 60:40. Broken down by school level, the membership consists of 50 percent primary teachers; 20 percent kindergarten teachers; 15 percent secondary teachers; 10 percent post-secondary teachers; and 5 percent university lecturers and staff.

Since 1999, dues are not allowed to be deducted directly from teacher's salaries, so all payment of union dues must be done voluntarily. Since then the collecting of dues has been problematic for PGRI as many teachers refused to pay. Thanks to an awareness-raising campaign on the importance of dues for trade unions, the number of dues paying members increased from around 130,000 teachers in 2006 to between 50-60 percent of membership now. The level of dues continues to be fairly low per member at Rp. 2000 per month (proceeds from which are broken down as follows by level of the union: Rp. 200 for the national level, Rp. 400 for provincial, Rp. 600 for district, and 800 for branch level). There is a 100%increase in dues that is a result of the resolution passed at the 20th PRGI Congress held in mid-2008. Following its Congress, PGRI is also committed to increase its dues to dues by $ 1000 every year for a 5-year period.

FESDIKARI - SBSI

The dues-paying membership which was declared to EI is 17,728 persons. The education sectors represented are Primary, Junior and Senior High, Training Centers, Universities, Non-Teaching Staff.

National Context

Legal framework of TUR rights for teachers and for public servants

Importantly, Indonesia has ratified all eight core ILO Conventions, including Conventions 87 (Freedom of Association) and 98 (Collective Bargaining). However, its national legislation does not yet meet those standards in many areas of the legal code, and in the application of the national labor legislation. Indonesia has not ratified ILO Convention No. 151 concerning the right to organize and procedures for determining conditions of employment in the public sector. As teachers, especially those in state schools are still considered civil servants this would be an important convention for PGRI and others to have ratified.

Freedom of Association

In general workers, including teachers, enjoy the right of freedom of association, but though it is quite easy for both government and employers to infringe on this right and restrict it.

In 2000, following the ratification of ILO Convention 87, Law No. 21/2000, the Trade Union Act, was implemented. The law allows all workers, including public servants and teachers, to join a trade union of their choice. Under the law, any 10 persons can form a union after notifying and registered the union with the Department of Labor. Private sector workers are by law free to form unions and draw up their own rules.

The Act allows for more than one union at a workplace and allows unions to form nationwide and across business sectors, not only at enterprise level. Employers who prevent a worker from joining a union are liable to a fine or imprisonment. The law also gives civil servants and public sector workers (including teachers) and state enterprise workers the right to organise.

The significant problem for public sector workers is while they have the right to organize to exercise this right is not as straightforward as for private sector workers. In the Trade Union Act of 2000, Section 44 proclaims that civil servants shall enjoy freedom of association but then it goes on to state that the implementation of this right shall be regulated in a separate Act. The problem is no such Act on public sector unionism has been

adopted by Parliament, and there is little sign that such an Act will be proposed by the Ministry of Manpower any time soon. The Teacher Law (14/2005) in theory covers freedom of association and the right to organize for teachers with article 14 (1h) stating that "in performing the task of the profession, teachers have the freedom of association through professional organizations." Article 43 of the law provides that the professional organization of teachers has the authority to set and enforce a code of ethics; to provide legal assistance to members; and to provide job protection. But these duties, as important as they are, alone do not guarantee and protect teachers' rights to join a trade union and collectively bargain and thus are in violation of C87 and C98. Despite these difficulties in law, the PGRI continues to be able to evolve and grow as a trade union organization.

However government intervention in determining employment terms, working conditions and other aspects of industrial relations remain present, as is seen in the ability to dissolve a union if it conflicts with the Constitution of 1945 or the state ideology of "Pancasila", and in the enactment of subsequent labor legislation. Once a union is dissolved, the leaders of the union at time of dissolution are barred from forming another union for three years.

The Trade Union Law 21/2000 also legalizes state interference in the internal affairs of the trade unions. Unions have to keep the government informed of nominations to, and changes in their governing bodies. If they do not, the union could lose official recognition and, therefore the right to represent its members in collective bargaining and other areas of union activity.

Preventing a worker from joining a union is subject to a fine or imprisonment but nevertheless, anti-union discrimination is widespread. The reason is actual legal procedures are very lengthy, sometimes taking up to six years, and observers report that bribery and corruption of judges is a problem.

The Manpower Act of 2003 contravenes ILO standards on fundamental human rights at work with Section 106 of the Act compels all companies with more than 50 employees to establish a "bipartite cooperation institution", with representation proportionate to the number of union and non-union workers in the factory and requiring that this "institution" be registered with local government authorities. The role of these institutions overlap with the representative role of unions, and can be used by employers to obstruct unions from fulfilling their duties. The Act also has specific restrictions on the right to strike, opens up the use of outsourcing and contract labor (now being abused with impunity by employers), a clause on the payment of wages during strikes over "normative" issues (management policy and a right guaranteed by law or a collective bargaining agreement), sets out a prohibition on replacement workers during legal strikes and provides higher pay if a worker is suspended during the labor dispute process.

Collective bargaining rights

Despite the ratification of C 98, subsequent legislation in Indonesia, especially provisions in Manpower Act 2003, has curtailed this right. Collective bargaining is practiced in the private sector. There are restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice, including public sectors and state-owned enterprises. For public servants, determination of wages and conditions of work is done by the Government.

In the absence of the needed language in the Trade Union Act, the Teachers Act (14/2005) covers both freedom of association and the rights to organize and collectively bargain. However, there is little evidence of collective bargaining within the state school system, though legally collective agreements could be negotiated (e.g. between the school branch and the district education office). The ACILS office in Indonesia reports there may be collective agreements by the FGII (Indonesian Independent Teachers Federation) and possibly by FESDIKARI, but again more research is needed These agreements would involve private schools and madrasas rather than state schools.

Under the Manpower Act, collective agreements for the private sector must be concluded within 30 days after the beginning of the negotiations or must be submitted to the Ministry of Manpower for mediation, conciliation or arbitration. About 25 percent of companies with over ten employees have a collective bargaining agreement but they rarely go beyond the legal minimum provisions. A collective agreement is valid for two years and may be extended for a maximum of one additional year. Article 119 of the Manpower Act states that in order to negotiate a collective agreement a union must recruit more than 50 percent of the total workforce in the enterprise, or receive more than 50 percent support of all workers in an enterprise in support of the union's demands. Only plant level unions have the right to collective bargaining – labor federations and confederations

are excluded from this right, which is another violation of Convention 98.

Right to strike

The Manpower Act (Law No. 13/2000), has been deemed as anti-labor for array of fundamental violations including restricting the right to strike to specific types of labor disputes; allowing employers to terminate workers who have been accused, but not convicted of a crime; sanctioning out-sourcing practices; and legalizing short-term contracts (i.e. expanded the use of temporary or non-permanent workers). Basically, Law No. 13/2003 re-regulated terms and conditions of work that had already been regulated elsewhere (e.g. Law No. 1 of 1951 on the Employment Act; Law No. 14 of 1969 on Fundamental Provisions of Labor; Government Regulation No. 8 of 1981 on Wages Protection, and others).

In 2004, Law No. 2 on Industrial Relations Disputes Settlement was passed. This new law requires the parties to attempt to reach an amicable resolution to any labor dispute by entering into negotiations in a long process of mediation, and ultimately, consideration by tripartite courts. However, the law appears to primarily cover the private sector and state enterprises, and there is no mention of Government civil servants, such as teachers, accessing these dispute resolution systems.

Public sector workers face significant restrictions on their right to strike. Research finds that the right to strike is not legally extended to public sector workers who are involved in providing "essential services" and at enterprises that serve the public interest. The ITUC and others have noted that Indonesia's definition of essential services goes beyond the definition of acceptable prohibitions on strike action by the ILO Committee of Freedom of Association, which has held that strikes may only be restricted where there exists "a clear and imminent threat to the life, personal safety or health of the whole or part of the population." However, the Manpower Act identifies certain categories of public services (hospitals, fire department, those providing railway service, those in charge of sluices, air traffic controllers, and those in charge of sea traffic, etc.) in the explanatory notes of Article 139 of the Act. This article provides specific restrictions which apply to categories determined by occupation: "the implementation of strike staged by the workers/labourers of enterprises that serve the public interest and/or enterprises whose types of activities, will lead to the endangerment of human lives, shall be arranged in such a way so as not to disrupt public interest and/or endanger the safety of other people." One possible positive interpretation is that beyond identifying special procedures for public officials whose strike could lead to "endangerment of human lives", Law No 13/2003 does not explicitly define which civil servants and public services workers may go on strike. In this way, there is an implication –though not systematically tested – that civil servants and public services employees, not mentioned in the above category, including teachers have the possibility of being able to go on strike.

According to one long-time observer, there have been many strikes by teachers, but they tended to be "wild-cat strikes" (i.e. often spontaneous and lacking formal authorization under law) concerning issues that are not related to wages. Often these strikes concerned either disputes of a personal nature or certain intolerable working conditions.

For the private sector, while in law the right to strike is recognized and permitted, the process for obtaining official approval is very cumbersome. The Manpower Act regulates workers right to strike and how strikes can be carried out by workers (Article 137 states that a "strike is a fundamental right of workers/labourers and trade/labor unions that shall be staged legally, orderly and peacefully as a result of failed negotiation.") For any strike to proceed, be it lead by a private sector union or public sector one (if not an "essential service", workers must give written notification to the authorities and to the employer seven days in advance for a strike to be legal, specifying the starting and ending time of the strike, venue for the action, reasons for the strike, and including signatures of the chairperson and secretary of the striking union. The same regulation also classifies strikes as illegal if they are "not as a result of failed negotiations" and gives employers leeway to obstruct a union's move to strike because failure is classified as negotiations that lead to a deadlock "that is declared by both sides."

In its language on the right to strike, the Manpower Act includes a specific statement, with regard to the use of outsourcing and contract labor, a clause on the payment of wages during strikes over normative issues, a prohibition on the replacement of workers during legal strikes and higher pay if the worker is suspended during a labor dispute process.

Issues related to enforcement of legal and regulatory frameworks, and the courts

Collective bargaining agreements

If Indonesia were to ratify ILO Convention 151, Article 7 would provide the basis for collective bargaining in the public sector, including teachers: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organization, or of such other methods as will allow representatives of public employees to participate in the determination of these matters."

The Indonesian Civil Servant Corps (KORPRI) is officially registered as a union (to which PRGI is still formally affiliated) but it does not function as a union. The director of each bureaucratic office automatically becomes the chair of the branch level of KORPRI. Theoretically, a branch level of KORPRI could negotiate a CBA with the mayor's office or regent's office within a municipality or district but there is no evidence this has happened.

Government contracts, arrangements with teachers

Education services are primarily delivered through and managed by the Ministry of National Education (MoNE).

The MoNE regulates both public and private education providers, as well as the public and private universities. It is also responsible for the formulation and execution of education development plans. At the central level, the organizational structure of the MoNE consists of the following units: the Secretariat General; the National Institute for Educational Research and Development; the Inspectorate General; the Directorate General of Basic and Secondary Education; the Directorate General of Higher Education; the Directorate General of Non-formal and Informal Education (formerly Directorate of Out-of-School Education); and the Directorate General of Culture. At the lower level, the MoNE is represented by a Provincial Office of Education in each of the provinces, and by a District Office in each of the districts within the provinces. Provision of higher education is managed by the MoNE through the Directorate General of Higher Education.

The MoNE regulates the salaries and wages for state teachers and addition to setting standards for certification and other items related to the teaching profession. PGRI has engaged with MoNE on issues affecting their membership from the education budget to assisting veteran teachers who do not qualify for certain pay grades because they lack university degree requirements. However, systematic collective bargaining on wages and conditions of work has not occurred.

Treatment of teacher union leaders by government and employers

Teacher unions have been able to engage with government authorities as well as private school authorities with varying degrees of success. PGRI represents the vast majority of state school teachers and has been able to become a more responsive and effective advocate on behalf of teachers as it become more autonomous from KOPRI and reorganized itself, especially at the district and branch levels where membership participation was originally weak. PGRI has had difficulties registering the branch unions with the local offices of Ministry of Manpower and Transmigration because of local authorities' interpretation of article 44 of the Trade Union Act in which they determined they could not register PGRI as trade union because its members are also civil servants. This reasoning went that since the Law required to be developed under the provisions of Article 44 has not been implemented, it was not possible to register PGRI. Under this interpretation, the PGRI unions were only entitled to register their members who were private or non-public teachers. PGRI along with EI and other international allies fought this interpretation and have sought their full rights as trade union organisations at all levels (i.e. national, provincial, district, branch and sub-branch).

For teachers there are a number of other restricting legal provisions and practices, including the fact that teachers are considered "professionals" and not "workers". All teachers and other civil servants are required by government to join KORPRI, the civil servant association. The majority of teachers belong to the PGRI, which is registered at the national level as a trade union; however, the PGRI branches at the district level must also register as unions with local Ministry officials in order to receive legal status per the Decentralisation Law (now No. 32/2004). KORPRI has continued to claim PGRI as an affiliate and still tried to maintain automatic dues from teachers' salaries which have caused confusion and delays in registering local PRGI unions. A concerted union education and capacity-building program in conjunction with EI for local unions has remedied the situation to a large extent. PRGRI is also reported

to have been able to remove a mayor who was against teachers being pro-active and demanding their rights.

As a result of PGRI's successful efforts to have the Teacher Law implemented, the PGRI has increased status with the government authorities as well as the international community. However in the campaign to have 20 percent of the government budget allocated for education, PGRI successful advocacy resulted in government retaliation. Since 2006, PGRI has been demanding the implementation of a clause within the constitution of Indonesia that requires 20% of the national budget to be allocated to education. However, after funding was increased to 12% in 2007 after PGRI took the government to the Constitutional Court and was twice successful in obtaining a positive decision requiring the Government to comply completely with the constitutional provision. Following the filing of a lawsuit by PGRI, the Ministry of Manpower cut off all communications with PGRI and began supporting three small non-PGRI teachers' unions.

Social dialogue and tripartism

While PGRI has not relied on tripartism structures, Indonesia has ratified ILO Convention 144 on Tripartite Consultation on October 17, 1990. The following tripartite bodies exist in Indonesia for the union movement to use (including PGRI directly or through their confederation the KSPI):

- National and Regional Tripartite Councils (LKS)
- Joint Secretariat of National and Regional Tripartite Councils
- Occupational Safety and Health Council (DK3N)
- National Wages Council (DPPN)
- National Training Council (DLKN)
- National Productivity Forum (DPN)
- Five Sectoral Tripartite Committees
- National and Regional Labour Dispute Settlement Committees

The LKS National Tripartite Council is an institution for deliberation, consultation and cooperation, which provides input, advice and opinions to the Minister of Manpower and Transmigration on a wide range of labor-related policies. LKS tripartite bodies exist at the national, regional and district levels. Prior to the adoption of the law on regional autonomy, there had been a link between the national, regional, and district tripartite bodies to ensure that the policies enacted at the national level were being implemented at the lower levels. With decentralization, this coordination has been seriously eroded, and policy making on labor issues is generally left to the discretion of the provinces.

The LKS National Tripartite Council was set up under Ministerial Decree 258/1983 (which has twice been amended and is now Government Regulation 46/2008). It is comprised of 40 representatives, with a ratio of 2:1:1, from government, employers and workers, respectively. Other actors, including legal advisors, academics and other professionals also take part in this tripartite forum. The body is chaired by the Minister of Manpower and Transmigration and it is administered by a secretariat known as SEKBER National. The secretariat is itself tripartite in composition, with a membership ratio of 1:1:1. On the national level, there are currently 12 tripartite committees (including five sectoral tripartite committees) that fall within the overall LKS tripartite structure dealing with a particular issue. Among the specialized bodies are those dealing with occupational safety, wages, training and productivity.

The tripartite composition of the membership of these bodies is not numerically specified by Ministerial Decree, but they are regulated to be "tripartite plus". Aside from the traditional partners, the others include professionals, such as lawyers (for legislative reform) and doctors (for safety and health), and NGOs (for the environment) and university academics. In the area of minimum wage each Governor decides what the minimum wage should be for the province upon the advice of a Regional Tripartite Advisory Council. This tripartite body researches the cost of living in the area, and uses this as the basis for its recommendation. Usually, the minimum wage is adjusted annually, except during periods of high inflation when it is increased more frequently. Collective bargaining negotiations frequently do not touch upon wages, although unions have been running political campaigns to gain increases in the minimum wage above what the Tripartite Council recommends.

In addition to the LKS national and regional tripartite bodies, there was also a Sectoral Tripartite Cooperation Institute formed under Ministerial Decree 98/1994, covering five major sectors of the economy: mining and energy; communication and transportation; plantations; financial institutions; and public works. However, a new sectoral tripartite forum is currently under development, following a tripartite agreement reached in February 2001 on the set up of a Sectoral National Tripartite Council.

Education reforms and systematic changes impacting on teachers rights

In the Teacher's Law (14/2205), enacted after a five year struggle, there are three underlying principles: professionalism, welfare and the protection of teachers. To ensure teacher professionalism, teachers should have minimum standard requirements and certification. Currently 78 percent of primary teachers are below the S1 (university) level. PGRI succeeded in forcing the government to launch a regulation (No 74/2008) to amend the Teachers Act. This will enable teachers who are at least 50 years old, with 20 years experience and a rank IV A to follow certification. It means that, even though they are not S1 yet, they have opportunity to apply for certification. After certification, their salary will increase 100 percent from their current base salary.

Over the past few decades, Indonesia has seen various multilateral and bilateral programs implemented and designed to improve the quality of education, universal access, infrastructure, school texts and other areas. The involvement of teacher unions in these programs in the past has been minimal. The PGRI involvement in passing the Teacher Law may signal a change in this trend. The World Bank in 2007 began supporting the a five-year US $68 million Better Education through Reformed Management and Universal Teacher Upgrading Project (BERMUTU - a program between Dutch Government, World Bank and MoNE targeting 75 districts/cities in 16 provinces) to improve the skills and performance of teachers, which the program considers as the key factor to improving education standards in Indonesian schools. This World Bank project is supposed to support the Teacher Law specifically by addressing:

- reforms for university-based teacher education, building capacity of the national accreditation board, and providing incentives to universities to train teachers through distance learning and scholarship programs.
- teacher absenteeism through reforming procedures for teacher accountability and policy incentives that promote performance and career advancement.
- low salaries by helping local governments upgrade systems for improving teacher's skills so that they are qualified to earn higher salaries with aim of doubling the number of teachers with the new standards mandated by the Teacher law to over two million in the next five years.
- monitoring and evaluation system through development of an improved teacher's database and a range of research and evaluation studies to document the effects of the project on teaching standards and performance of students.

The World Bank is currently supporting two other projects in the education sector, The US$ 67.5 million Early Childhood Education and Development Program which targets children of 0-6 year old age in the poorest districts and the US$ 80 million Higher Education program. In the BERMUTU project and other education sector programs (including those of ADB), it is unclear if the PGRI is significantly involved in design or decision making even though it is a now recognized as a pro-active advocate and representative of teachers.

The PGRI is cooperating with the ILO in a three-year program to address child labor through reducing school dropout rates called Mobilization and Capacity Building of the Teachers Trade Union and Wider Trade Unions in Combating Child Labor in Indonesia. Teachers are to receive training both to better understand child workers and to persuade parents to send their children to school. The union is urging the government to extend compulsory education through the 12th grade, with a goal of helping prepare students to enter the workforce after graduation partly through working with parents directly to inform them of the nation's nine-year compulsory education program. The ILO has recognizes that the PGRI could be a powerful agent for social change through its membership had the power to influence religious leaders and other community leaders.

Available legal and social systems for redress

The Industrial Disputes Settlement of Act 2004 went into effect in January 2006 and created a new system of tripartite labor courts. Settlement of industrial disputes is first to be sought through bipartite negotiation. If no resolution is reached at this level, a mediator or conciliator can be brought in within 30 days. If that too fails, the dispute can be brought before the Industrial Relations Court and a verdict should be issued within 50 working days of the first hearing of the case. This system may only be applicable for the private sector and public sectors union may not be able to use these tripartite courts. However, since PGRI is now separate from KORPRI, they could avail themselves of this settlement system or through their linkage with the KSPI.

ILO Jurisprudence

Indonesia has become the first country in Asia to ratify all 8 of the Core Conventions.

While there are no ILO active cases related to teachers, Public Services International submitted case on behalf of the Angkasa Pura I Airport Worker Union on violations by Angkasa Pura I management at the International Labour Conference. The Conference Committee heard how seven workers had been suspended without pay and one had been dismissed after taking part in strike action on 7–8 May 2008. The Conference Committee was told that this was further evidence of the Indonesian government's failure to protect the rights of trade unionists, in accordance with its obligations as a member of the ILO. It was also claimed that this ran against the right to freedom of speech for all Indonesians.

The ILO Committee of Experts did make the following recommendations on the Right to Organize of Civil Servants and Conditions for the Exercise of the Right to Strike (C 87):

- ***Right to organize of civil servants:*** The Committee requests the Government to indicate in its next report the steps taken for the adoption of an Act guaranteeing the exercise of the right to organize to civil servants pursuant to section 4 of Act No. 21 of 2000, and to indicate the manner in which civil servants organize in practice, while the adoption of legislation is pending, including statistics on the number of civil servants' organizations at various levels.
- ***Conditions for the exercise of the right to strike:*** The Committee requests the Government to indicate in its next report the measures taken or contemplated to amend section 4 of Ministerial Decree No. KEP. 232/MEN/2003 so that a finding as to whether negotiations have failed, which is a condition for the lawful staging of strikes, can be made either by an independent body or be left to the unilateral determination of the parties to the dispute.

Ratifications of UN Conventions

Indonesia has ratified the following international human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Convention Against Torture and Other Cruel, Degrading or Inhuman Punishment
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child

Acronyms used in the Indonesia Report

BERMUTU	*Better Education through Reformed Management and Universal Teacher Upgrading Project*
KORPRI	*Indonesian Corps of Civil Servants*
KSPI	*Kongres Serikat Pekerja Indonesia (Indonesian Trade Union Confederation)*
LKS	*National and Regional Tripartite Councils*
MoNE	*Ministry of National Education*
PGRI	*Persatuan Guru Republik Indonesia (Teachers Association of the Republic of Indonesia)*

7. TURN Project - Country Report for Malaysia

Country Description

Malaysia is a multi-racial, multi-cultural, multi-lingual and multi-religious country that is both a constitutional monarchy and a democratic government. The King, who has limited discretionary powers, is elected for a 5-year term from among the Conference of Rulers, which is composed of the 9 Sultans of the peninsular Malaysian states. The bi-cameral Parliament is made up of the House of Representatives and the Senate. Executive power is held by the Prime Minister, who is able to command a majority of the House of Representatives. At the state level each Sultan acts on the advice of a State Executive Council chaired by a Chief Minister.

The Constitution provides for equal protection in law and prohibits discrimination based on sex, religion, race, descent or place of birth. However a number of articles in the Constitution, especially Article 153, provide for the special position of *bumiputras* (ethnic Malays) and the indigenous peoples of the eastern states of Sabah and Sarawak. Affirmative action policies and legislation give preference to *bumiputras* in housing, home ownership, government contracts and scholarships. The Government continues to claim that the judiciary is independent, but major scandals involving Government influence on appointments of judges have occurred in recent years including serious questions following the first trial of former Deputy Prime Minister Anwar Ibrahim. Senior judges continue to be appointed on the recommendation of the Prime Minister.

The constitution provides for freedom of speech and of the press; however, in practice the government restricted has freedom of expression and intimidated journalists and others into practicing self censorship. The freedom of speech has been curtailed in the interest of security or public order, and dissent is restricted under the Sedition Act, the Official Secrets Act and criminal defamation laws. Books and films are censored. Internet access is not restricted, but the government has indicated it will punish the misuse of information technology.

The government has used the Internal Security Act (ISA), the Sedition Act, the Official Secrets Act, the Printing Presses and Publications Act, criminal defamation laws, and other laws to restrict or intimidate political speech and retaliated against those who criticized it. The ISA empowers police to arrest without a warrant and hold for up to 60 days any person who acts "in a manner prejudicial to the national security or economic life of Malaysia." The home minister may authorize further detention for up to two years, with an unlimited number of two-year periods to follow.

The Malaysian government has used to labour laws and legislation effectively to control and fragment the labor movement. The main labour laws affecting trade unions are the Employment Act of 1955 (EA), the Trade Union Act of 1959 (TUA) and the Industrial Relations Act of 1967 (IRA). These have subsequently been amended over the years, including as recently as 2008.

- The EA regulates the employment relationship as well as the terms and conditions under which employer and employees relationship (contract of service) exist, hours of work and wages, as well as other terms and conditions of employment and work.
- The TUA regulates trade unions and union federations. This Act defines trade unions, delineates their membership prescribes their registration, and describes their rights and responsibilities.
- The IRA regulates the relations between employers and workers and their trade unions, and provides for the prevention or the settlement of differences or disputes arising between them.

Provisions in these laws have been found to be in violation of ILO Core Labour Standards. In the past the ISA also was used to detain trade unionists whose activities were perceived to threaten the security of the nation or economy.

Under the Malaysian Constitution, labour matters, including industrial relations, fall to Federal Government, rather than to the State Governments. All three major labour laws are federal laws, and are administered by various departments in the Ministry of Labour (now the Ministry of Human Resources). However, the EA presently applies only in peninsular Malaysia, and within the peninsular, only

to the private sector; the TUA and IRA apply throughout the country, but while the former applies to both the public and private sectors, the latter applies primarily to the private Sector.

Aside from these restrictive labour laws, another tool the Malaysian government uses to control the labour movement is through procedure and regulations. In the Ministry of Human Resources (formerly the Ministry of Labour and Manpower), the Director General of Trade Unions (DGTU) under the TUA has very broad and discretionary powers to register or de-register a union. He can also suspend a union, effectively immobilizing it. There is no recourse of appeal in these cases.

There are three levels of government in Malaysia, but policy decisions regarding terms and conditions of public employment fall within the purview of the federal government. The public sector workforce has over 800,000 employees of all classes and trades which represent about 15 percent of the nation's labour force.

Public employees are not accorded the same privileges and rights under the law as private sector workers, including being covered by provisions of the IRA, although there has higher degree of unionisation in the public sector– nearly 35 percent compared with the overall national unionization rate of 9 percent. The relationship between public sector trade unions and the employer is set and regulated through executive and administrative orders. The public sector has 66 percent of all in-house trade unions in the country which has weakened the public sector trade unions overall. Public employees in the managerial categories have assembled themselves into various associations which are to promote their vocational and industrial interests. These associations, although not legally trade unions, are still incorporated into the National Joint Councils to represent the interests of their members.

Since Malaysia's independence in 1957, education has always been an integral part of the government's developmental policy with the education sector undergoing dramatic changes and developments over the years including the curriculum reforms in 1983, 1995, and 1999 and the increasing use of advances in educational technology to enhance the quality of education.

The Ministry of Education is organized into four distinct levels: federal, state, district and school. The education districts do not correspond to the administrative districts because they are based on educational rather than administrative needs. At the federal level, the Ministry of Education translates the National Education Policy into educational plans, programmes and projects in accordance with national aspirations and objectives. It also sets guidelines for the implementation and management of the educational programmes. The Ministry of Higher Education was created in 2004. Tertiary education in public universities is subsidised.

Education is provided through a system of publicly funded schools, religious schools and private schools or through home schooling. Over twenty-five percent of the total national budget is spent on education (about eight percent of GDP). Only 6 years of primary education is compulsory. Pre-school education is not universal, and many pre-school programmes are provided by religious groups. Some private schools have pre-school sections. Primary and secondary education is highly centralised and competitive, with frequent use of standardised tests. On completion of primary education, students will undergo the Primary School Evaluation Test.

In 2005, it was reported that tuition industry tutoring students for exams has reached RM 4 billion. Chinese and Tamil schools, known as vernacular schools, conduct classes in Mandarin and Tamil respectively; they also use the Primary School Evaluation Test, enabling their students to re-integrate into national schools for secondary education. There was concern that only about 2 percent of Chinese students attend national schools. The Education Department is considering the introduction of National Integration as a subject in the school syllabus. The funding of Chinese and Tamil schools remains contentious, though their attendance rates are high at 96 percent (primary) and 82 percent (secondary).

Students leaving mainstream secondary schools write the Malaysian Certificate of Education examination, which decides whether they will go into the Sciences or Arts at the tertiary level. Prospective tertiary students may apply for admission to a matriculation programme run by the Ministry of Education. Not all applicants are admitted, and the selection criteria are not publicly declared. A race-based quota is applied on the admission process, with 90 percent of the places being reserved for bumiputeras. In 2002 the government announced a reduction of reliance on racial quotas and a tilt toward meritocracy.

Levels of Education:

- Early Childhood Education (ECE)

  A 1-year programme begins at age 5. At this level 49 percent of education is private. The Net Enrolment Rate (NER) is 72 percent. There are 25,116 ECE teachers (99 percent female). The pupil/teacher ratio (PTR) is 23:1.

- Primary Education

  As of 2002 free education is compulsory for primary school students, beginning at age 6 and lasting six years (though it can be completed in five to seven years). At this level one percent of education is private. The NER is 93 percent (over 49 percent female). Of the over 3 million children enrolled in primary schools, at least 84 percent reach the last grade of primary school. At the end of the primary school, students take a Primary School Achievement Test. There are 159,041 primary teachers (68 percent female). The PTR is 19:1.

- Secondary Education, Vocational Education and Training

  Secondary education, which consists of two cycles, begins at age 12 and can last up 7 years. At this level three percent of education is private. Up to15 percent of students in upper secondary education cycle are in technical vocational programmes. The NER is 70 percent with about 2.3 million students enrolled (51.25 percent female). There are 129,856 secondary teachers, 77,081 (64 percent female) in lower secondary cycle and 52,775 (62 percent female) in upper secondary cycle. The PTR is 18:1 in lower secondary and 18:1 in upper secondary education.

- Tertiary/Higher Education

  There are 632,309 students (55 percent female) in tertiary institutions, for a Gross Enrolment Rate of 29 percent. At this level 32 percent of education is private.

Malaysia still has many non-graduate teachers for primary schools and to a lesser degree for secondary schools. It has set a target of one hundred percent graduate teachers in secondary schools and twenty-five percent graduate teachers in primary schools by 2010. However observers have noted one area that needs immediate reform is the wage structure of for teachers in Malaysia if they are to attract these levels of graduate teachers. Teachers emerging from graduate programs are paid RM 1,200 (or slightly more) as a starting in public schools as opposed to RM 1,600 – 2,220 in the private sector.

The Universities and University Colleges Act (UUCA) restricts freedom of association for students, specifically prohibiting them from joining trade unions. . This act mandates university approval for student associations and prohibits student associations and faculty members from engaging in political activity and lists all faculty and staff as public servants. Many students, NGOs, and opposition political parties called for the repeal or amendment of the UUCA. A number of ruling coalition organizations and politicians also supported reexamination of the act, although the government maintained that the UUCA still was necessary. In December, Parliament amended the UUCA to allow students to be members of organizations outside the university.

The government placed some restrictions on academic freedom, particularly the expression of unapproved political views, and enforced restrictions on any teachers and students who expressed dissenting views. The government continued to require that all civil servants, university faculty, and students sign a pledge of loyalty to the king and the government. Opposition leaders and human rights activists claimed that the government used the loyalty pledge to restrain political activity among civil servants, academics, and students. Lecturers have been fired for failing to sign the loyalty pledge.

Academics sometimes criticise the government, but self-censorship among public university academics is said to be common. Private institution academics practise self-censorship in fear that the government might revoke the licenses of their institutions. The Universiti Kebangsaan Malaysia fired a professor who spoke against the political, social and economic policies of the governing coalition.

Background on EI Member Organizations

Trade unions represent about 9 percent of the national workforce. There are two national labor organizations in Malaysia. One is the Malaysian Trade Union Congress (MTUC) with a total membership of 500,000 represented in 218 private sector unions and 33 public sector unions. The other national organization is the Congress of Unions of Employees in the Public and Civil Service (CUEPACS), an umbrella federation of 127 public employee unions with approximately 300,000 members out of a total of 800,000 civil servants. Teacher unions account for 140,000 of CUEPACS' 300,000 members. According to one teacher union, there are five teacher unions in Malaysia along with nineteen teacher associations. EI has three affiliates.

Legal status of EI member organizations participating in TURN

National Union of Teaching Professionals (NUTP)

On June 27, 1975, the National Union of the Teaching Profession (NUTP) was formally organized and registered. The NUTP resulted from the merger of two pioneering teachers' unions, the National Union of Teachers (NUT) and the Union of the Teachers of National Schools (KKGSK).

NUTP is registered as a union with the Registrar of Trade Unions (RTU) under the Trade Unions Act. It is not only one of the biggest unions in the public sector, but also in Malaysia. It is affiliated to both the Malaysian Trade Union Congress (MTUC) and the Congress Unions of Employees in Public and Civil Service (CUEPACS). The NUTP has rights similar to other unions including the right to opt for industrial action, conduct pickets, negotiate terms with the government for better wages, allowances, bonuses and terms of service, and represent its members and ensure their welfare is protected.

As a result of a historic strike by NUT running from 1965 to1967, according to the NUTP teachers in Malaysia have achieved basic facilities such as:

- Permanent positions with pension; improved teacher/student ratios; housing and housing allowances; temporary leave/ marriage leave; health coverage and leave and access to medical facilities; increased number of faculty appointments to universities; salary parity with other civil servants; flexibility on the criteria for passing the Malay language proficiency in the promotion of permanent teachers; equal pay and permanent status for women teachers; flexibility on the criteria for passing the confirmation of teachers; consolidation of hundreds of salary schemes for teachers into two schemes; promotions for non-graduate and graduate teachers; recognition of Teachers' Day and salary increment incentives; salary for temporary trained teachers on maternity leave; working together with CUEPACS for salary adjustment for all civil servants and annual bonuses.

NUTP focuses on protecting teachers and improving the teaching profession and is concerned about the services of teachers, its business relationship, special privileges and other matters related to the teaching profession. It continues its struggle to improve conditions and facilities for teaching. Current campaigns for members focus on the issues of workloads, limited promotion prospects, too much clerical work, too many extra classes and too many superiors.

The NUTP has also come out against a textbook rental scheme stating that the existing system, which in which parents must compensate damaged or lost textbooks, was enough to ensure that the students would take care of the books pointing out that a rental scheme would be burdensome for low income families.

Malaysia Association of Education (MAE)

The Malaysia Association of Education (MAE) is an association registered union the Societies Act of Malaysia. The MAE was formed in 1968 with assistance from the NUT (predecessor of the NTUP) – in fact some of the founding leadership was from the NUT. It is not registered with the Registrar Trade Unions as it has members from both public and private schools nor does it function as a trade union. Thus it can not participate in demonstrations, strikes or even attempt to negotiate on behalf of its members. Rather it serves as a platform for teachers and other educators to come together focusing on issues of solidarity, social justice and promoting professionalism in the teaching profession.

The MAE has primarily served in a policy formulating and advocacy capacity, playing a role similar of a think-tank for teacher unions and associations. If the government proposes a new curricula initiative, the MAE will assess it and publicly issue a review. The MAE was quite pro-active in reviewing the most recent Education Act on behalf of trade unions. It does not wait to be consulted by the Government on these issues, and its policy work has helped teacher unions play a bigger role in formulating the policy on higher education and reviewing the draft national plan of the next twenty years of education in Malaysia.

Sarawak Teachers' Union (STU)

STU (Sarawak Teachers' Union) was officially registered by the Registrar of Trade Unions on March 29, 1965 with five branches (Kuching, Kuching Rural, Bau, Simanggang, Serian and Sibu) and a total of 600 members. In 1995, when the STU celebrated its 30th Anniversary, the union had a total of 9,000 members from nineteen branches. As of August 2009, the STU had about nearly 16,000 active members of which 9,792 are female teachers and 6,121 are male teachers serving in pre-school, primary and secondary

schools, teachers' colleges and polytechnics as well as supervisors in education offices throughout Sarawak. Currently it is the biggest union in East Malaysia. It is affiliated to CUEPACS and is one of the chartered members when Educational International was formed in1993. It was once affiliated to MTUC and it hopes to re-affiliate in the near future.

Basic information on structure & leadership

National Union of Teaching Professionals (NUTP)

The NUTP is a national level union and all its branches conduct union activities at the state level, thus facilitating administration at the national level and ensuring that everything works out effectively. Every Branch has its own administration office and its own local committee.

NUTP General Secretary is Ms. Lok Yim Pheng and the NUTP President Lt. Kdr Hashim bin Adnan. Other national officers include a Deputy President, five Vice-Presidents (each representing a language group and for women), two Deputy General Secretaries, a General Treasurer, and an Assistant General Treasurer. The NUTP General Secretary is on the executive council of the MTUC and plays a national leadership role in the Malaysian labour movement.

The NUTP headquarters is located in Jalan Ipoh, Kuala Lumpur. Currently, the NUTP has 12 branches in Peninsular Malaysia, from Perlis to Johor. Each state branch has its own office to act as a service centre for NUTP members. NUTP has 60 full-time staff (approximately 15 based at headquarters, the rest based in branch offices) to handle issues, concerns, and problems brought forward by NUTP. There is a strong focus in the union on representing its members, and delivering effective and timely services to them.

Malaysia Association of Education (MAE)

The MAE President is Tan Sri Prof. Dato' Dr. Awang Had Salleh and the General Secretary is Dr. Ibrahim Ahmad Bajunid. The MAE located in Petaling Jaya near Kuala Lumpur and has membership in all thirteen peninsular states (not Sabah or Sarawak). There are no full-time staff members and there are no state branches.

Sarawak Teachers' Union (STU)

The General Secretary of the STU is Mr. Thomas Huo Kok Seng and the President is Mr. William Ghani Bina. Both leaders have been in those positions since 1992. Additional updates will be sought from the STU.

STU restructured its organizational setup in 2003 by consolidating its twenty-six branches functioning in various districts into eleven Divisional Committees namely, Kuching, Samarahan, Sri Aman, Betong, Sarikei, Sibu, Mukah, Kapit, Miri, Bintulu and Limbang. The Divisional Committee are grouped into 3 zones (North, Central and South) and are supervised by 3 Vice Presidents. A post for a woman Vice-President was also created to look into affairs pertaining to women members in the union.

Recently the leadership of the STU came out in support of a recent government decision to increase Public Service Department scholarships for non-ethnic Malays from 10 to 45 percent.

Basic information on membership

National Union of Teaching Professionals (NUTP)

NUTP has a multi-ethnic membership of 140, 502 dues paying members (47,689 male and 92,813 female). It is by far the largest teacher union in Malaysia with 70 percent of the public school teachers who are organised as members. The membership is drawn from primary and secondary schools, officers of the Ministry of Education, lecturers and faculties of institutes, polytechnics, and community colleges and from school principals and senior assistants.

NUTP offers a range of services for its membership:

- Welfare Fund: The Fund was created in 2000 and by 2006 it has paid out in cash benefits a total of RM 3.4 million to members. It presently has collected a total of RM 4.8 million. Pay outs are made in cases of deaths due to accident and natural causes, death of a spouse, child and parents, retirement, critical illness and other benefits.
- Death Benefits: This fund has paid over RM 1.5 million in benefits, and it currently has a total of RM 4 million in funds.
- Counseling services for members in the following areas:

Appointments, Legal Aid, Confirmation in Service, Promotions, Transfers, Salary, Leave, Pension, Discrepancies in Service, Disciplinary Actions, Workload Matters, and Grievances/Mistreatment by Superiors.

- Other services include a Group Insurance Plan, a Co-operative, access to an information database, subscription to the *Guru Malaysia* (Malaysian Teacher) magazine, and participation in the educational activities organized by the NTUP (e.g. seminars, briefing, courses, and workshops)

Any public school teacher can become a member of NUTP (whether they have a graduate degree or not). Prospective members must fill in the membership form and send it to their respective branches. Membership fees, which amount to RM 5/month are compulsory and will be deducted through their salaries via ANGKASA (the National Co-operative Association). Retired teachers are able to be associate members of NUTP and can access the Welfare Fund and the Death Benefit Fund.

Malaysia Association of Education (MAE)

The MAE currently has 1970 members, and the membership is comprised of persons from public and private educational institutions that range from primary schools to universities and vocational institutes. The base membership dues are set annually at RM 25. Dues are collected through voluntary subscription since the MAE is not legally considered a union. One can become a lifetime member for RM 300 or an institutional member for RM 100. As the MAE is an association its members can belong to trade unions, and an estimated 30-35 percent of the MAE membership also belongs to a trade union.

Sarawak Teachers' Union (STU)

As of 2004 the declared membership of STU was 12,500 dues paying members. All sectors are represented including both teaching and non-teaching, except for pre-school teachers. As of 2000, the STU initiated a healthcare plan that members could join.

National Context

Legal framework of TUR rights for teachers and for public servants

Freedom of association

Malaysia has not ratified ILO Convention 87 on Freedom of Association. The labour laws in Malaysia in theory grant the right of most workers to form and join trade unions, but the 1959 Trade Unions Act and the 1967 Industrial Relations Act and subsequent amendments place extensive restrictions on freedom of association. The ILO Committee on Freedom of Association (CFA) has recognized this and found that many provisions of the Trade Unions Act violate the principles of freedom of association and noted in its 349th Report that recent amendments in the laws were done "without consideration" of the ILO's recommendations.

Public sector workers, including teachers and educational staff, are permitted to organise unions per ministry, department, profession or activity, as well as to join federations except those working for the defense sector, police force or prisons.

The labour relations process for public sector unions is governed by the Public Service Department since public sector employees are generally outside the coverage of the TUA and the IRA.

General unions are prohibited and mergers between unions in different professional sectors are practically impossible unless the new entity is registered as association, not a union. Trade unions from different industries which would include public and private sector workers may join in national congresses, but such congresses must register separately as societies under the Societies Act. The MTUC, which has both public sector and private sector union affiliates, is registered in this way. The MTUC can not engage in collective bargaining for its members – its affiliates (industrial unions and in-house unions) have individual CBAs. The same would be true for any teacher union having members from both public and private schools such as the MAE.

Private sector teachers and educational staff are covered by the IRA. This law ostensibly protects the right of every worker in Malaysia to join a trade union, and from being victimised by an employer for joining the union. However, the same section of

an act states explicitly that an employer may dismiss, demote, transfer or refuse to promote a worker on other grounds, and in practice, employers refer to these other grounds when explaining a dismissal – meaning the worker must prove their termination was connected to their union activities. The IRA allows employers to prohibit management, executives and those who work in a confidential or security capacity from joining a union. The definitions of these terms are left to the employers' discretion.[1] If the Director General of Industrial Affairs or Minister of Human Resources agrees with the definitions, then the decision is final and cannot be appealed.

A general practice is for unions to request recognition after obtaining more than 50% of the staff as their members. After that, the employer has 21 days in which to recognise the union. If the employer does not provide recognition within the stipulated period the matter will be taken to the Director General of Industrial Relations (DGIR) for arbitration. Should the DGIR fail to get both parties to reach an agreement, the matter will be referred to the Human Resources Minister. The minister will investigate and make a decision which may not be overturned by a Malaysian court. It is a common practice for such applications to be refused and unions can go unrecognized for up to four years at times. Under amendments to the IRA made by Parliament in 2008, if an employer does not respond to the union application within 21 days, the union must submit a written appeal to the director general of trade unions within 14 days. If the union fails to submit the appeal within the stipulated period, the union is automatically not recognized.

The IRA amendments in 2008 resulted in abandoning the practice of requiring officials to use the register of trade union members (which unions are required to maintain by law) to determine the legitimacy of challenges to employers' refusal to recognise a union. While requiring the practice of secret ballots is to be undertaken, but the amendment does not provide adequate safeguards against employer manipulation of the size of the bargaining unit (through addition of temporary or fixed-term contract workers) for the purposes of the election. The new IRA law also contains provisions that are biased towards recognition of enterprise-level unions as opposed to industrial unions and states that if the trade union fails to report to the Minister within 14 days about the employer's refusal to recognize the union, the Minister will consider the union's application for recognition withdrawn. Furthermore, the law now states that workers in a union that has its recognition withdrawn in this manner shall have no protection against dismissal.

Other laws also place restrictions on freedom of association. For example, the Malaysian Penal Code requires police permission for public gatherings of more than five people. The government bans membership in unregistered political parties and organizations. Other laws such as the ISA or the Sedition Act could be used if the government deems necessary. The Minister of Human Resources can suspend a union for up to six months if he determines that such action is in the interest of national security or public order.

Collective bargaining rights

While Malaysia has ratified ILO Convention on the Right to Collective Bargaining, there are still significant constraints for unions on this right.

Public school teacher unions do not have the right to collectively bargain. While a union of private school teachers only (i.e.with no public school teachers as members) should be legally allowed to collectively bargain, the researchers have yet to find evidence of any CBAs covering private sector teachers in Malaysia.

In the private sector, unions which represent more than 50 percent of the workforce in a particular category in an organisation can apply to be recognised as the bargaining agent. However, public sector unions are not extended the same privilege. There has been no formal collective bargaining in the public sector since the 1960s. Although the government deals with or consults the public sector trade unions on certain issues as the representative of the public employees in question, no recognition is given to the trade unions as legal bargaining agents. The labour-management relations in the public sector are primarily conducted on a sectoral or service-type basis. The terms and conditions of employment in the public sector are determined by the Government through or on the advice of the Public Services Department Cabinet.

Committees can periodically review public sector compensation and offer recommendations to the government. However this system effectively reduces the role of public sector unions to only being able to express suggestions on wages and working conditions.

For private sector unions, they may submit collective agreements on behalf of their members but the IRA (Part IV) forbids such

agreements to deal with any matter pertaining to promotion, transfers, and termination of service, dismissal and retrenchments. Furthermore, to start bargaining, the unions must have already obtained recognition by the employer. In the union if is not recognized, there could be a drawn out process before collective bargaining can begin which could benefit the employer.

A deadlock in collective bargaining is referred to the DGIR for arbitration. Failure to obtain compromise results in the case being referred to the minister who shall refer it to the Industrial Court at his discretion. Decisions of the Industrial Court may be challenged further in the high court, the appeals court and the federal court. The law allows for submission of a collective agreement three years from the resolution of the last one.

Right to strike

The right to strike is not specifically recognised, and legislative restrictions make it very difficult for workers to hold a legal strike as pre-strike authorisation procedures are cumbersome for the private sector and virtually impossible for the public sector.

A legal strike requires that the union have a trade dispute and two-thirds of the members of a trade union must vote in favour of a strike in a secret ballot, and the ballot must include a resolution that states "the nature of the acts to be carried out or to be avoided during the strike." The results of the ballot are passed to the DGTU for verification. Once all procedures have been complied with, a seven-day cooling off period is imposed. During the cooling off period, the Ministry of Human Resources' Industrial Relations Department can attempt conciliation and, if this fails, refer the dispute to the Industrial Court. While the dispute is before the Industrial Court, strikes and lockouts are prohibited. Trade unions in "essential services" must give at least 21 days' notice before going on strike with essential services being broadly defined and specifically including education.

If it is a public sector union then the Minister must refer the disputed matter to the Industrial Court but only can do so with the consent of the Agong (King) or the state ruler if the dispute involved a state body. In this system, where public sector unions have no bargaining power, the right to strike by public employees, including teachers, is negligible as it would be very unlikely the government [as an employer with no real limitations on its authority] would authorize a strike against itself.

Trade unions are not allowed to go on strike for disputes relating to trade union registration, non-recognition of the union by the employer, and illegal sackings. The IRA defines a "strike" in a sufficiently broad manner to include common union tactics, such as "work-to-rule" and "go-slow" actions. Specifically, the law states that "Any act or omission by a body of workers, which is intended or which does result in any limitation, restriction, reduction, dilatoriness in the performance of their duties connected to their employment". Furthermore, there are restrictions on types of strikes, with general strikes and sympathy or secondary strikes being classified as illegal.

Penalties for executive committee members of a union engaging in an illegal strike are severe, and include fines and imprisonment for up to one year. Rank and file workers who engage in an illegal strike are considered by the government to be automatically stripped of their union membership and cannot join another trade union in the future without the written approval of the DGTU.

Issues related to enforcement of legal and regulatory frameworks and courts

Collective bargaining agreements

For public school teachers, along with the rest of the public sector unions, there are no collective agreements. However the NUTP, which represents the majority of public sector teachers, is able to advocate on their members' behalf through various mechanisms. These include their role in both the pre-eminent national trade union bodies, MTUC and CUEPACS, their participation in the National Labor Council and the National Joint Council and through relationships with the Ministry of Education. Currently the NUTP's power to make wage and working condition demands is severely limited, with the government often unresponsive. They have been able to achieve some inclusion on specific education policy decisions such as the establishment of a separate higher education ministry.

Government contracts and arrangements with teachers

The Public Services Department (PSD) is the central personnel agency of the federal government and, functions as the chief representative and advisor of the government for public sector unions, including public teacher unions. The government (i.e. PSD) has the power (through legislative and/or executive authority) to

unilaterally change terms and conditions of employment for public sector workers. The Government also may unilaterally define negotiating structures, set out negotiable issues, and determined the composition of negotiating (staff) teams. Since Malaysia has a centralized education system, there is a national teacher salary scheme set by the government. Malaysia has created newly titled posts that are equated with promotion and increase in status (e.g., time-based promotion, excellent teachers, master teachers, excellent principals). Placement of teachers is an issue as many teachers continue to refuse to re-locate and serve in remote areas regardless of incentives. This has led to a policy stipulating that all new graduate teachers have to serve in remote areas.

Potentially public teacher unions could appeal the terms and conditions of employment to intermediate bodies such as Royal Commissions, Cabinet Committees and the Public Service Tribunal and potentially, the Industrial and Civil courts. However the government will most likely continue to wield undue power and influence in these areas.

The researchers could not find information available on private school union agreements, and hopes this will be addressed at the TURN Malaysia workshop.

Social dialogue and tripartism

Malaysia has ratified ILO Convention 144 on Tripartite Consultation and in 1996 created the National Labor Advisory Council (NLAC) which is a tripartite forum on labour issues, including policies and laws, aimed to promote better industrial relations and thus productivity. The tripartite committee of NLAC has the Human Resources Minister (or designate) as Chair with 14 government, 15 employer and 14 worker representatives. There are also tripartite committees on wages, retrenchment, and occupational safety and health. While individual public sector and teacher unions do not participate directly in the NLAC, they are represented by the MTUC and CUEPACS which are the main worker representatives. However the limits to the NLAC as a tripartite forum can be seen by the Government's action to table the 2008 amendments to the TUA and IRA without consulting the MTUC or any worker representatives. As a direct result, the MTUC announced that it would temporarily suspend its participation in all tripartite bodies to protest the government's unilateral action to legislate these anti-union amendments.

For the public sector, there is the Joint National Council (NJC), which is a tri-partite body where labor relations issues in the public sector can be raised and discussed. The constitution of the National Joint Council allows all trade unions and associations within each sector of the public service to be represented in the council. The union representatives from each sector elect a body/committee that will function as the worker side and subsequently make representations to the government. There are three separate NJCs representing three types of workers: managerial and professional, scientific and technological, and general (which includes clerical and support staff). To ensure there is coordination the NJCs have established a NJC Coordinating Committee which functions as a forum for three NJCs to discuss and present a common stand on labour-management issues.

However the NJC functions primarily as a consultative body and the government is under no obligation to accede to the demands of public sector workers. Thus public sector unions usually make their collective demands either on a sectoral basis or through their national union body (like CUEPACS) on issues like seeking a pay review and salary hike.

The NJCs were to be supported by Department Joint Councils at the lower levels of the public sector. A PSD service circular calls for a network of department joint councils to discuss issues within the power of the department heads. However most of the department joint councils are inactive and rarely meet.

Malaysia teacher unions have advocated a knowledge-based social dialogue, using research findings and evidence for the basis of the dialogue. This proposal believes that it can enable different parties to be engaged in a well-informed negotiation or consultation. To this end the teacher unions have formed a Consultative Council that meets twice a year to share information with other teacher unions and achieve common platforms.

Education reforms and systemic changes that impact on the rights of teachers

While there are mechanisms for consultation and input from teachers unions in policy and other matters affecting teachers, the NTUP sees the government as being unilateral in decision making, often to the detriment of teachers, on matters of wages, working conditions and other direct employment issues. When it comes to education policies, reforms and changes that are not about employment issues, the government seems more open to

discussion and teacher participation in decision-making.

The truth of this observation was borne out during the recent re-structuring of schools in which direct promotion was only given to teachers who taught Sixth Form students. This had the effect of creating dissatisfaction as Sixth Form teachers were being promoted to a grade which could be higher than that of a Senior Assistant. Another issue stemming from this restructuring was the fact that grades were being determined for teachers regardless of their teaching experience. This could mean that a teacher who paid for graduate studies at their own expense might receive a lower wage then prior to obtaining a degree. This is not an insignificant issue as up to 70,000 teachers are continuing graduate studies at their own expense. The NUTP was also not consulted on the decision made by PSD to stop the critical service incentive allowance (CSIA) to teachers who taught craftsmanship subjects or in the increased deduction for taxes from salaries (ranging from RM 200-1000 monthly).

However, there have been instances in the past where the government listened to the NUTP's recommendations. The government agreed to review and modify the Higher Education Policy based on the NUTP recommendations to up-grade and revamp the policy to enable Malaysia to produce and prepare adequate, relevant and qualified graduates to fill the manpower needs of the present and future in the country. The NUTP and CUEPACS have also submitted a memorandum to PSD to abolish a recently introduced evaluation examination to determine salary increments and promotions for teachers and other employees in the public and civil services. There has been no decision on the request.

Available legal and social systems for redress

If public sector unions want to seek redress for terms and conditions of employment, it is difficult to circumvent the PSD. The Royal Commissions or more recently, Cabinet Committees can periodically review public sector compensation and offer recommendations to the government. Salaries Committees are appointed by the Federal Government when it considers it necessary to review salaries and other terms and conditions of employment and the work of employees and to make recommendations. The reports and recommendations of these committees may or may not be accepted by the government, since the final say on all matters concerning the committees and their recommendations is left to the PSD and the Government.

Another avenue is for national unions can negotiate directly with the PSD and the ministries. The NUTP and the MOE did work out an agreement over the revamping of the teachers' schemes of service. The CUEPACS also holds talks with the government over issues common to all public employees.

The Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999. The initiative to set up a national human rights institution in Malaysia began with Malaysia's active participation in the United Nations Commission on Human Rights in 1993-95 when it was elected as a member of the Commission by the United Nations Economic and Social Council.

SUHAKAM has generally been considered a credible monitor of the human rights situation. However SUHAKAM is not empowered to inquire into allegations relating to ongoing court cases and must cease its inquiry if an allegation under investigation becomes the subject of a court case and came under criticism from The International Coordinating Committee for the Promotion and Protection of Human Rights (ICC) which expressed concern over SUHAKAM's ability to operate independently and free from government restrictions. SUHAKAM commissioners traveled throughout the country to educate community leaders, including police officials, on the importance of human rights. They repeatedly noted that a major unresolved challenge was the slow government response to their reports on major topics that touched on fundamental liberties.

ILO Jurisprudence

Malaysia has ratified the following ILO core conventions: C29 Forced Labour Convention; C98 Right to Organise and Collective Bargaining Convention; C100 Equal Remuneration Convention; C138 Minimum Age Convention and C182 Worst Forms of Child Labour Convention. Malaysia had ratified C105 Abolition of Forced Labour Convention, but later denounced this ratification.

Other ratified ILO conventions are: C7 Minimum Age (Sea) Convention; C11 Right of Association (Agriculture) Convention; C12 Workmen's Compensation (Agriculture) Convention; C14 Weekly Rest (Industry) Convention; C16 Medical Examination of Young Persons (Sea) Convention; C17 Workmen's Compensation

(Accidents) Convention; C19 Equality of Treatment (Accident Compensation) Convention; C45 Underground Work (Women) Convention; C50 Recruiting of Indigenous Workers Convention; C64 Contracts of Employment (Indigenous Workers) Convention; C65 Penal Sanctions (Indigenous Workers) Convention; C81 Labour Inspection Convention; C86 Contracts of Employment (Indigenous Workers) Convention; C88 Employment Service Convention; C94 Labour Clauses (Public Contracts) Convention, 1949; C95 Protection of Wages Convention; C97 Migration for Employment Convention; C119 Guarding of Machinery Convention; C123 Minimum Age (Underground Work) Convention and C144 Tripartite Consultation (International Labour Standards) Convention.

Ratifications of UN Conventions

Malaysia has ratified the following international human rights treaties:

- Convention on the Rights of the Child
- Convention on the Elimination of Discrimination against Women

Other international treaties Malaysia has entered into include:

- Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.
- Convention on the Prevention and Punishment of the Crime of Genocide,
- Geneva Conventions of 12 August 1949.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict.
- Protocol for the Protection of Cultural Property in the Event of Armed Conflict.
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Opened for Signature at London, Moscow and Washington.
- Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

Acronyms used in the Malaysia Report

ANGKASA – The National Co-operative Association
CUEPACS – Congress of Unions of Employees in the Public and Civil Service
DGIR – Director General of Industrial Relations
DGTU – Director General of Trade Unions
EA – Employment Act of 1955
ECE – Early Childhood Education
IRA – Industrial Relations Act of 1967
ISA – Internal Security Act
KKGSK – Union of the Teachers of National Schools
MAE – Malaysia Association of Education
MTUC – Malaysian Trade Union Congress
NER – Net Enrollment Rate
NJC – National Joint Council
NLAC – National Labor Advisory Committee
NUTP – National Union of the Teaching Profession
NUT – National Union of Teachers
PSD – Public Service Department
PTR – Pupil/Teacher Ratio
RM – Malaysian Ringit
STU – Sarawak Teachers Union
SUHAKUM – The Human Rights Commission of Malaysia
TUA - Trade Union Act of 1959

Endnotes Malaysia

1. In practice, some employers classify all clerical staff as working in a confidential capacity and production workers as working in a security capacity since they oversee their machines.
2. Besides the salaries commissions and committees, there are other constitutional commissions and councils whose function is to appoint, confirm, emplace, promote, transfer, and discipline public service workers over which these commissions and councils have been given jurisdiction by the Malaysian Constitution.

8. TURN Project - Country Report for the Philippines

Country Description

The Constitution of 1987 requires the Government to provide free public education in the elementary and high school levels and sets out that its citizens have the "*right (…) to quality education at all levels.*"

As of school year 2005-2006, there were 341,789 public elementary school teachers at 37,000 public elementary schools with a total of 12,913,845 elementary school students enrolled with a teacher-pupil ratio of 1:35. At the secondary level, there were 126,141 public secondary schools teachers at 4,915 public secondary schools with a total of 4,979,030 secondary student enrolled and a teacher-student ratio of 1:39. There are an estimated 102,300 private school teachers. In 2005-2006, a public school teacher in the entry level received a salary of PHP 9,939, making public school teachers among the lowest paid government workers. This low level of pay has translated into shortages of teachers in many regions and consequently teachers overall are working longer hours, often well beyond the 6 hours per day maximum set out in the 1966 "Magna Carta" for teachers. This has negative impacts, effectively diminishing the quality and amount of attention that can be provided by the teachers to the students. In fact, the Magna Carta or Republic Act 4670 has never been fully implemented since its enactment in 1966 nor has it been amended or sufficiently covered under the national budgets. Teacher unions have continued to campaign for implementation of the Act provisions including those on working hours, various special allowances, and medical leave and coverage.

According to figures from the Department of Labor and Employment (DOLE), teachers in the private sector receive an average monthly wage rate of PHP 14,991, which is still extremely low when considering the importance of the educational services they render.

Education as a percentage of the overall government budget dropped from 13.62 percent in 2004 to 11.30 percent in 2005. This weakness in government spending commitments in education, combined with the continued high population growth rates in the country leads to continuing shortages of teachers, classrooms, and other education facilities and resources. In 2005, the Alliance of Concerned Teachers (ACT) found a classroom shortage of 57,390 rooms and reported there were 49,699 fewer teachers than needed. A more recent estimate by Juan Miguel Luz, a former Undersecretary of Education who now works at the National Institute of Policy Study, found that even after three years of concerted construction of classrooms, the public school system still has to construct 27,124 classrooms to meet its current needs.[1] In addition there were shortages of basic elements of the classroom, like desks and chairs. The ACT estimated there was a need for 3.48 million more desk/chair sets to meet students' requirements.[2] More worrisome is a survey carried out by the Teachers' Assistance for Optimum Well-being which revealed that 55 percent of the 405,973 teachers told surveyors their schools lacked access to electricity; and in terms of basic hygiene, 84 percent of these teachers said their schools had no access to running water and only 38 percent said they have toilets.[3] In Metro Manila, the Under Secretary for Public Works reported that there is only one toilet for every 143 high school students, and one toilet for every 114 students in elementary school.[4]

Continued insufficient budgetary appropriations for education budgets mean that costs are being transferred over to students, through increased tuition or other educational fees. Teachers report that the Department of Education (DepEd) experiences significant corruption due to lack of transparency in the procurement and awarding of bids for everything ranging from textbooks to the construction of school buildings. This coupled with the general lack of resources is responsible for the problems such as poor quality textbooks in which teachers have found dozens, and sometimes hundreds, of factual and grammatical errors in texts used as part of the public school curriculum.

Background on EI Member Organizations

Legal status of EI member organizations participating in TURN

ACT is registered as a non-stock, non-profit organization under the Securities and Exchange Commission (SEC) in 1982. The ACT leadership says this was the fastest and least obstructed path at the time for a public sector workers union federation to acquire legal identity. The need to register in such a manner is prompted by the fact that there is no law or regulation for the registration of public sector federations with the Civil Service Commission (CSC), the body overseeing the public sector.

The National Alliance of Teachers and Office Workers (SMP-NATOW) is a registered national labor federation of teachers and education workers in the private sector. It has Registration No. 10176 – FED – LC (1970) with the DOLE. SMP-NATOW is affiliated nationally to the Trade Union Congress of the Philippines (TUCP), a labor national center.

The Teachers Organization of the Philippine Public Sector (TOPPS) is also registered under the SEC as a national federation of public teacher unions and associations. TOPPS is also accredited with DOLE as worker representative organization. At local levels, the TOPPS school unions are affiliated with the CSC. TOPPS recently left PSLINK, the public sector labor confederation, in order to exercise more self-determination in its policies and leadership.

The Teacher Federation VIII registered with the Department of Labor and Employment. It is affiliated to the Federation of Free Workers (FFW), a national service sector labour federation that includes teachers and non-teaching personnel and unions from hotel and restaurants, hospitals, and entertainment services.

Basic information on structure and leadership

The structure of ACT includes a National Council, a National Executive Committee, and a National Congress. There are nine regional chapters of ACT as well as provincial chapters and, for major cities like Metro Manila, city chapters.

SMP-NATOW's highest policy making body is the General Convention, which is composed of the official delegates of each local affiliate. The presidents of the SMP-NATOW affiliates comprise a National Council of Leaders. National conventions are held every three years to elect the National Executive Board. Offices include President, Secretary-General, two Vice-Presidents (for Teaching and Non-Teaching), three Deputy Secretary-Generals (whose duties are divided into the following categories: Education and Research; Information and Public Relations; and Organizing and Recruitment), Chairs of specialized Committees focusing on Women and Youth; and Chairs and Vice-Chairs of four geographically-based Committees (Luzon, Visayas, Mindanao and National Capital Region).

TOPPS has a 25-member National Executive Board that currently consists of 9 female and 16 male officers. The national officers are: President, Vice-President, General Secretary, Deputy General Secretary for Elementary, Deputy General Secretary for Secondary, Deputy General Secretary for Tertiary and Technical Vocational, 9 Chairpersons (Visayas: 3; Mindanao: 3; and Luzon: 3) and 3 Auditors (1 for each region). TOPPS also has the following national committees: women's, paralegal, education, collective negotiation, grievance, research and publications, external/internal information, campaign/lobbying and finance.

In the TF VIII structure, officers are elected from TF VIII union representatives during the FFW Convention which take places every five years. Elected officers will hold the position for five years or until the next election is conducted. The National officers include: Chairman, Vice-Chairman, Secretary and Treasurer. Within the unions affiliated to TF VIII, the same union structure is followed, and each set of local officers holding their positions above-mentioned period of time.

Basic information on membership

More than 90 percent of ACT's membership is composed of public sector teachers, and currently totals 25,000 teachers. The annual dues are PHP 100 per teacher and dues are collected at the school level. However, ACT reports that they must collect the dues directly from the members, and that not all the members have fully paid their dues.

The SMP-NATOW reports that at the end of December 2008, it had a total of 18,088 members (including school-based union and individual members) and at that time, 6,786 of the members (equivalent to 37.25 percent) are paying their dues. SMP-NATOW has a total of 72 local affiliates.

TOPPS has a current membership of over 7,000 union members in 145 unions. Its membership is restricted to only public sector schools. Members are teachers and staff from pre-schools and primary schools through tertiary and higher education institutions (state universities and colleges). However, teachers, administrators or staffs who are designated as either managerial or confidential in nature may not join the union. TOPPS members pay dues of 15 pesos a month. Currently there is no dues check-off and TOPPS must collect through the schools where it has union affiliates. TOPPS membership is present in selected areas in the 3 regions of the Philippines.

The TF VIII reports its current membership is approximately 3,000 persons and that it has a total of 29 teacher union affiliates.

National Context

Legal framework of TUR rights for teachers and public servants

Freedom of association

The Philippines Constitution of 1987 provides a number of clear-cut guarantees for freedom of association and assembly. Article 3 of the Constitution sets out a Bill of Rights which includes *inter alia* the right to peaceably assemble and freedom of association. Section 8 of the Bill of Rights states clearly "*The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.*"[5] This right is reaffirmed in other sections of the Constitution, such as Article 8, section 3, where it says the Government "*shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.*" Importantly, for the purposes of advocating for inclusion in setting wages and working conditions for teachers, section 3 continues and guarantees workers "*shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.*"

Article 9, Section B (5), of the Constitution provides that "*the right to self-organization shall not be denied to Government employees.*"

The right to freedom of association rights differs for public sector teachers and private sector teachers. For public teachers, there is Republic Act (RA) 4670, entitled the "Magna Carta for Public School Teachers", which pre-dates the 1987 Constitution and provides legal recognition for freedom of association. Section 27 of Act 4670 provides "*Public school teachers shall have the right to freely and without previous authorization both to establish and to join organizations of their choosing, whether local or national, to further and defend their interests.*" This guarantee in law is supplemented by Section 28 of RA 4670, which prohibits anti-union discrimination or any form of retaliation against teacher(s) for their union activities. Similarly, in Section 10 (3) of the Education Act of 1982, school personnel are granted the "*right to establish, join and maintain labor organizations and/or professional and self-regulating organizations of their choice to promote their welfare and defend their interests.*" The Education Act also provides them with freedom of expression and academic freedom, and legal assistance and protection against external proceedings against a teacher in cases where s/he was penalized as they were discharging their professional duties.

The Education Act also provides teachers with protections against compulsory assignments not related to their duties as defined by their appointment, and "*shall be deemed persons in authority when in the discharge of lawful duties and responsibilities, and shall, therefore, be accorded due respect and protection.*"

The implementing legislation for public sector employees is Executive Order 180 (EO 180): Rules And Regulations To Govern The Exercise Of The Right Of Government Employees To Self-Organization. EO 180 states that "*all government employees can form, join or assist employees' organizations of their own choosing for the furtherance and protection of their interests.*" There is a restriction on this right for high-level or managerial employees, and those employees whose work is considered 'confidential', and said workers are not permitted to join these employees' organizations. EO 180 sets out protections for workers' right to organize, including non-discrimination against employees involved in or leading the "*normal activities of the organization*" and prohibiting any requirements that force workers to relinquish membership in an employees' organization. EO 180 further prohibits Government authorities from interfering in the establishment, functioning or administration of an employees' organization for the purposes of putting the employees' organization under the control of the government body.

However, there is a requirement that the above-mentioned public sector employees' organizations must apply and receive formal registration from the DOLE and these applications must be processed in accordance with the Labor Code of the Philippines. Only after receiving the approval and registration certificate can a Government employees union or organization legally represent employees. In order to become registered, a union must have as members at least 30% of the employees in the organizational unit where the union will operate, and this must be certified by the Personnel or Administrative Officer of the organizational unit. Beyond Government registration, the workers must also obtain recognition from their employer. Employer recognition of registered public employee unions requires the union to sign up a majority of the employees for membership in the bargaining unit. When there is more than one union in the unit, there must be an election between the unions, with the winner granted exclusive representative status.

The Bureau of Labor Relations (BLR) reported 141 registered labor federations and 15,537 private sector unions. The 1.9 million union members represented approximately 5 percent of the total workforce of 36.45 million. The number of firms using contractual labor, primarily large employers, continued to grow. There were 1,693 public sector unions, with a total membership of 352,182 workers. According to a report submitted by TOPPS at an ILO/ ACTRAV workshop, approximately 12 percent of civil servants have been unionized (40 percent of the 1.4 million civil servants are teachers), and the rate of growth year on year has been significant, reaching 35 percent growth per year.[6]

While private and public sector unions can join together in coalitions, the legal framework does not permit private sector and public sector unions to join together to collectively negotiate. This particularly restricts teacher unions in representation and in achieving uniform conditions of services.

Private school teachers are covered under the Labor Code of the Philippines, which is President Decree 442 and also governed by the Manual of Regulations for Private Schools. The Code declares in Article 3 that among the basic policies of the Government is to "*assure the rights of workers to self-organization.*" In order to be recognized under the law and enjoy the rights provided to labour union organizations, the union must apply for and receive registration, which is conditional on having as members more than 20 percent of the employees in the bargaining unit the union wishes to represent. Federations are formed from 10 or more local or chapters of the unions, with each chapter being the recognized collective bargaining agent in the workplace where it is organized. Once a national union or federation is registered, it can affiliate locals and chapters without have to register each local or chapter with the Government. The Labor Code sets out that it is an unfair labor practice to "*restrain or coerce*" workers in their effort to exercise their right to self-organization, or to make employment conditional on withdrawal from the membership in the union or an undertaking not to join the union.

Article 248 of the Labor Code details violations of freedom of association which constitute unfair labour practices by the law. Actions which fall into this category are the following: "*to interfere with, restrain or coerce employees in the exercise of their right to self-organization*"; "*to require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs*"; "*to contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization*" and to "*discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization.*" However, penalties are woefully inadequate, ranging from only PHP 1,000 to 10,000 – so it is not surprising that unions report that employers regularly resort to unfair labour practices.

Collective bargaining rights

Article 276 of the Labor Code clearly places bargaining for public teachers under the purview of the National Assembly and the civil service administers. The section of the law states that "*the terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution.*"

Section 13 of EO 180 sets out that all terms and conditions of employment except those set out in law may be the subject of bargaining. Civil Service Commission regulations allow for negotiation of "Collective Negotiation Agreements" (CNAs – significantly different from Collective Bargaining Agreements) between an accredited union and the employer/management, but the list of topics on which negotiations can be conducted is extremely limited.[7] Those items that are explicitly excluded from

bargaining are virtually anything related to money – such as salary matters, allowances and bonuses, assistance/aid/insurance coverage, vehicle provision and travel expenses, health coverage and benefits, housing programs, and other benefits provided explicitly by law. Security of tenure is also not a negotiable matter. Therefore, for public teachers and education workers, virtually all the most important issues and concerns are off the collective bargaining table from the very start. Salaries and all forms of allowances as set in law and regulations are determined by the Civil Service Commission (CSC), meaning that teachers unions must lobby national, provincial and local legislatures to seek increases in pay and benefits.

A negotiated CNA must be ratified by the majority of members in the bargaining unit within 90 days of its signing with management, or it is considered null and void. The CNA must also be submitted for registration by DOLE.

The CSC also governs accreditation of public sector unions. However the Public Sector Labor Management Council (which includes the CSC) has not yet formulated a law enabling public sector national federations to register with DOLE, thus they can not engage in collective negotiations as federations. This obstacle explains why ACT and TOPPS continue to be registered with Securities and Exchange Commission (SEC). Only public sector unions who are registered with DOLE, through the BLR and accredited by the Civil Service Commission have CNA rights under EO 180.

ACT is demanding a raise of PHP 9000 per teacher, comparing the present salary grade of a new teacher with a private in the Armed Forces of the Philippines and noting that such levels of wages violates the RA 4670 (Magna Carta) which states that salaries are to be commensurate with the qualifications and skills need to be a teacher. ACT is aligned with several other public sector employee organizations in an alliance (All Government Employees Unity) for an immediate increase of PHP 3000 in minimum civil servant salaries, and opposition to the Malacanang-sponsored House Joint Resolution No. 24, "Joint Resolution Urging the President of the Philippines to Modify the Compensation and Position Classification System of the Government and to Implement the Same Initially Effective July 1, 2009, and Authorizing the Amendment of Existing Laws and Issuances Contrary to the Provisions of this Resolution," the so-called "Salary Standardization Law 3."[8]

In the private sector, teachers unions have the right to negotiate collective bargaining agreements covering all aspects of wages and conditions of work. The Labor Code sets out in Article 211 (A) (a) that it is the policy of the Government "*To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes.*" The enforcement of this right is contained in 211 (B) which prohibits the courts or administrative agencies of government from setting wages and pay rates, or determining hours of work and other conditions of employment, except through provisions set out in the Labor Code – meaning that these provisions must be set through bargaining where there is a union. Articles 251, 252, and 253 of the Labor Code further establish the duty of both sides to engage in substantive collective bargaining in timely way and in good faith.

Right to strike

The Constitution (in Article 8, Section 3) guarantees workers the right to undertake *"peaceful concerted activities, including the right to strike in accordance with law."* However, the implementing law to provide the right for public sector teachers and other civil servants to strike has not been legislated, effectively denying public teachers this right. According to ACT leaders, there is extensive Supreme Court jurisprudence stemming primarily from cases filed after teachers were suspended or terminated for involvement in teacher strikes held in 1989 and 1990. The courts have ruled that strikes or "concerted action" by civil servants, including teachers, are illegal in the absence of a law permitting those actions.

Section 14 of EO 180 endorses the significant limitations on both the right to strike and the undertaking of "concerted activities" which are contained in laws and regulations applying to the Civil Service. Section 2, Rule III of the "Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization", issued pursuant to the EO 180, states that "*the activities of the employees' organization shall not prejudice or disrupt public service.*"

The Civil Service Commission has broadened the definition of "concerted action" to include taking of "mass leave" in an attempt to thwart teacher unions from coordinating workers to take leave en masse in support of the union's demands. If five people in the same office take leave at the same time, the Civil Service

Commission considers "mass leave" to have occurred, thereby placing those leave-takers at risk of punishment. The result is that many of the public sector teachers' rallies and marches must occur on weekends, or after work hours, so that teachers are not penalized.

Many public teachers still worry about the consequences if they do strike. TOPPS reported an instance in 1990 where teachers went on strike and the strike leaders were terminated from their positions for striking during official hours. Those teachers appealed their case to the High Court. It took several years to resolve the case and those who were terminated were unemployed the entire period. Some teachers were reinstated after 5 to 6 years but the experience served as a disincentive for other teachers considering whether to go on strike.

In an interview, Antonio Tinio, the ACT Chairperson, reported that ACT and the Manila Public School Teachers' Association led a one-day strike in Manila in 2005 that had tremendous support among teachers, with over 60 percent participation. Significantly, he added, there were no repercussions from the government about this strike for salary increases. ACT is again threatening to lead a strike unless their demand for government passage of House Bill 5213, the Additional Support and Compensation Bill for Teachers, which will provide a PHP 9,000 raise for public school teachers is met.[9]

The FW VIII stated that since 2000, there have been two strikes by affiliated unions in different educational institutions – the first being the University of the Immaculate Conception and the second being the University of San Agustin. In the case of the University of San Agustin, all 15 union committee members leading the strike were terminated, and their case became the subject of a case filed by the FFW with the ILO Committee on Freedom of Association. Those 15 teachers have still not been reinstated and their case is still in the courts.

For unions in the private sector, the Labor Code provides the right to strike but requires the filing of advance notice of the strike (the duration of advance notice is 30 days for collective bargaining deadlocks and 15 days in cases involving unfair labour practices) and prior approval of a strike motion by more than 50% of the members in a secret ballot vote. The Secretary of Labor is empowered to intervene and "*assume jurisdiction*" over a dispute, and compel resolution of strikes if the action is taking place in a sector considered "*indispensable to the national interest*."

Legal strikes in the private sector can only take place after collective bargaining has been conducted. In most CBAs that are registered, a "no strike, no lock out" clause is stipulated. Such stipulations require that both the management and the union to exhaust all means of the grievance procedures before staging a strike. Provisions of law prohibit obstruction or interference of peaceful picketing activities, and outlaw use of replacement workers as strike-breakers. SMP-NATOW provided information that three of their affiliate schools have gone on strike in the past, including one strike (involving the José Rizal University Faculty Employees Union) which was among the longest teacher strikes in the country, stretching to six months before it was resolved. SMP-NATOW added however that this was the exception and usually teacher strikes are fairly short in duration because the DOLE considers teaching to fall within the category of national interest and is likely to issue an Assumption of Jurisdiction Order (AJO). Thus strikes having economic impacts are sometimes avoided. However, when an unfair labour practice is committed, a union may immediately go on strike but it must observe the requirements of the law.

Unions allege that issuance of AJOs by the DOLE has become increasingly systemized, with employers regularly requesting them and having them granted despite the fact that the dispute has no appreciable national impact. This effectively neutralizes one of the union's strongest tactics to compel recalcitrant employers to come to the bargaining table.

Issues related to enforcement of legal frameworks and courts

Collective bargaining agreements

SMP-NATOW reported that it has negotiated 14 collective bargaining agreements but added that some of its affiliates face difficulties in achieving new improvements in terms and conditions of work, and are being compelled to accept status quo agreements that simply extend the existing CBA. The union raised concerns about the lack of enforcement of key laws by the Government, noting difficulties to ensure that private sector school employers actually send the contributions they deduct from teachers' pay for social security, Philhealth, and PAG-IBIG (national savings fund for home/housing development) to the Government.

ACT did not report any collective bargaining agreements, reflecting the fact that its membership is overwhelmingly

composed of public sector teachers whose wages and conditions of work are set by national laws and civil service regulations. According to ACT, the process of recognition and bargaining with the Department of Education is largely ad hoc, depending on number of variables including the issue in question, the political leadership (the Secretary) and personnel involved, and the degree of mobilization/concern from the teachers. The significant limits on the areas of coverage for the CNAs means that much of the negotiations have to occur outside the formal bi-partite management-union bargaining process. The types of dialogue vary from formal participation on committees on education policy to specific discussions based on teachers' mobilization on a specific issue.

As an example, they cited a recent attempt by the Department of Education to provide a portion of the annual clothing allowance for teachers in kind instead of in cash. Strong opposition by teachers led by ACT brought about dialogue and negotiations between teacher organizations and the Department until the proposal was dropped.[10] Similarly, other types of consultations and bargaining depend on the local or regional situation. For example, cities have their own special education funds and some provincial governments can be lobbied or persuaded to provide allowances for teachers which can be authorized by the school board or city mayor and council. Local governments have also been approached for seed capital to start teachers' funeral funds which are then later sustained by teachers' own contributions. The ACT Chairperson said that consultations and bargaining often are happening on a "*case by case, issue by issue basis*."

TOPPS as well has still not been able to gain official recognition to bargain collectively even at the federation level though it has pursued this issue with government authorities. In the interim, TOPPS continues advocacy and lobbying since many union affiliates are registered in the BLR under the DOLE but can not negotiate.

While TOPPS as a federation has not entered into CNAs with employers, most of TOPPS union affiliates from the tertiary education (i.e. state colleges and universities) have been able to enter into CNAs. TOPPS states that this right is being exercised in the tertiary level as mandated by Republic Act 8292 (Higher Education Modernization Act of 1997) which in its implementing rules and regulations (Rule V, Sec O), specifies "*To delegate any of its powers and duties provided for herein to the President and/or other officials of the University or College as it may deem appropriate so as to expedite the administration of the affairs of the university or college. By this, provision, the President is authorized by the Board of Regents or Trustees to enter into CNA with the duly registered and accredited organization/union of the university/ college*."

The TF VII states that most of their affiliates have entered into collective bargaining agreements with their respective employers.

Union density is generally low in the Philippines, with DOLE officials reporting that only 1 out of 5 unions in the country have a collective bargaining agreement.[11]

Government contracts, arrangements with teachers

Implementation of the EO 180 is conducted by a Public Sector Labor Management Council, chaired by the Chairman of the Civil Service Commission and composed of four other Ministers (including the Secretary of Labor) but lacking any representatives of the public sector employees.

The RA 4670 (Magna Carta) sets a number of working conditions for public sector teachers, including recruitment and minimum education standards, requirement of teacher's prior consent to be transferred, steps and safeguards in disciplinary procedures (including the right to be defended by a representative of his/her organization, such as a union), and provisions barring discrimination in entrance to or termination from the teaching profession. Furthermore, RA 4670 also regulates hours of work, limiting teaching to no more than six hours per day. There is also an overtime provision that additional classroom teaching beyond those six hours, and other activities outside of school or regular duties after six hours, will receive premium pay equal to 25% more than the teacher's normal rate of pay.

RA 4670 requires that teacher salaries shall compare favorably to other similar professions requiring similar qualifications and abilities, and shall ensure "*a reasonable standard of life for themselves and their families*." Principles of salary scales, and progression from minimum to maximum salary through regular increments over a set period of time, are also set by the Act, and at least minimum parity ensured between teachers paid by the national Government with teachers paid by local, city or provincial Governments. RA 4670 legislates that salaries of teachers should keep pace with inflation and there should be

a regular cost of living allowance recommendation made by the Department of Education to the Congress each year, but to become legally binding this recommendation must then be passed by Congress and signed by the President. Special hardship allowances are also authorized by the Act, but these require authorization by the Secretary of Education – when authorized, the allowances can amount to an extra 25% of the rate of regular salary.

In terms of benefits, the Act requires annual medical check-ups be provided free of charge and states the employing agency shall pay for all costs of medical treatment and hospitalization for teachers. Study leave of one year after seven years service is legislated (at no less than 60% of pay), as well as indefinite sick leave, and computation of wages for pension/retirement purposes.

Despite what is written in RA 4670, the reality is that wages, working hours, and other conditions of service for public school teachers are determined by the salary standardization law, EO 180 and other legal mechanisms.

For the private sector, Republic Act 6728 (An Act Providing Government Assistance to Students and Teachers in Private Education) states that at least 70% of any tuition increase or tuition incremental proceeds (TIPs) should be dedicated to payment of salaries, wages, allowances and other benefits to teaching and non-teaching personnel at the school.

Government/employer treatment of teacher union leaders

Some government officials and certainly sections of the authorities in charge of national security do not respect the right of the workers to organize, form unions and bargain collectively. This attitude is evident in both official and non-official publications where unions and other parts of civil society that question any type of security-related action are deemed as sympathetic to the on-going insurgencies and therefore, part of the problem.

Two ACT National Council leaders – Vitoria Samonte and Napoleon Pornasdoro – were killed by unknown assailants in 2005-2006, during a wave of killings and terror targeting progressive trade union and civil society leaders. Ma Luisa Posa-Dominado, a private school teacher and leader of ACT, disappeared in 2007. ACT reports that their local organizers have faced harassment and intimidation, threats to their security, and continued surveillance by the military and other security forces personnel. In 2005, ACT was included among the organizations listed in a power point presentation entitled "*Knowing the Enemy*", produced by the General Headquarters of the Armed Forces of the Philippines. In that presentation, ACT was identified as a front organization in the protracted people's war being staged by the Communist Party of the Philippines. ACT adds that when the Government's Civil-Military Operations Battalions conduct speaking tours to high schools and colleges, the speakers (who are uniformed soldiers) have been seen to warn students and teachers that they should not have any involvement with the ACT accusing it of being a front organization for the outlawed New People's Army (NPA).

While the level of harassment against ACT has declined in recent years compared to peaks during the 2005-2006 period, activists of the organization say they are still closely monitored.

The kidnapping and murder of civil society activists, including trade unions leaders and six teachers who were union members received international attention and condemnation from Education International, the International Trade Union Confederation, and other international trade union bodies and human rights organizations. However the government appears reluctant to release information on these cases or even following them up. In reaction to this government intransigence and indifference, TOPP relayed that teacher unions have initiated a multi-sectoral grouping called "Save the Teachers."

SMP-NATOW is affiliated to the Trade Union Congress of the Philippines (TUCP), one of the major national labour centers of the country, and reports that they are recognized by the Government. They add they are regularly consulted on various aspects of education policy by the Department of Education and on wages and labour matters by DOLE. However, they report that in a number of provinces, the DOLE offices discriminate against the unions and favor employers. Union busting in the form of "promotion" of the union officers to positions has been also practiced regularly.

Social dialogue and tripartism

The Philippines has ratified ILO Convention 144 (Tripartite Consultation), setting out standards for social dialogue through the tripartite system. However according to TOPPS there has been no formal tripartite mechanism for teachers since 2004 when the National Labor Council last convened. At that time, various sections of the government and representatives of the private and public sector labor movements met to engage in a tripartite social dialogue. A Memorandum of Understanding was drawn up on salaries and additional per diem for teachers, but there was no follow up or continued national social dialogue for teachers alone until this year.

Section 29 of the RA 4670 requires that "*National teachers' organizations shall be consulted in the formulation of national educational policies and professional standards, and in the formulation of national policies governing the social security of the teachers.*"

The Labour Code of the Philippines sets out in Article 211 (g) that it is the policy of the Government "*To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare*" and adds in Article 275 that "*Tripartism in labor relations is hereby declared a State policy. Towards this end, workers and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.*"

Implementing guidelines are set out in DOLE Department Order No. 8, s. 1995, which provided for the creation and institutionalization of Industry Tripartite Councils at the regional or local levels, and Executive Order No. 383, s. 1996, and Executive Order No. 49, s. 1998, which supports the creation and development of Tripartite Councils in the regional or local level. At this time, there are 12 regional Tripartite Industrial Peace Councils, and local tripartite councils at the municipal/city, provincial, and regional industry levels.

SMP-NATOW reported that as a result of the establishment of these tripartite mechanisms, a National Capital Region (NCR) Education Industry Tripartite Council was established on March 10, 2009 by DOLE. SMP-NATOW General Secretary, Milagros Ogalinda, is elected as one of the five regular representatives of the workers, and Avelino S. Caraan Jr., SMP-NATOW's Youth Chair, serves as her alternate.

Private sector teachers are affected by adjustments in the wages through tripartite bodies like the Tripartite Wages and Productivity Boards. In May 2008, SMP-NATOW General Secretary Milagros Ogalinda was one of the representatives of the labor sector during the wage increase consultations and hearings conducted in the National Capital Region.[12]

ACT leaders say they have found that the degree of consultation depends on the willingness of the Secretary and top-level DepEd officials, noting that some officials are more open to dialogue than others. There is no formal tripartite council for teachers to raise their demands, they added, so the engagement on social dialogue and policy is done on an ad hoc basis, with the Government's reaction depending on the issues to be discussed and the personalities involved. ACT pointed out that currently their representatives have been included on several committees examining Department of Education policies and issues. ACT and other teacher organizations are recognized by the current Secretary as dialogue partners, and their opinions are sometimes heeded.

Education reforms and systematic changes impacting on teachers rights

The Constitution says in Article 14, Section 1 that "*The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.*" Section 2 (2) provides that "*Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age.*" Section 5 (5) of the Constitution continues by requiring that the State "*shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment.*"

Many of major educational reforms demanded by the ACT are connected to a need for increased budgetary resources to be provided to the public education sector. ACT demands that the education budget should be equivalent to 6% of the country's GDP, but notes that currently, the level of spending is equal to less than 3 percent of the GDP. Official figures of the Government show spending on education equaling only 2.19% of the overall Government budget.[13]

For educators, ACT demands better pay for teachers (PHP 9,000 increase) and automatic adjustments (pegged to inflation) for teacher salaries so that these increases do not require the unions

to campaign for legislation to be passed by the Congress. ACT also wants the Government to rein in pension fund managers overseeing public sector employees' pensions who have been conducting "reform" efforts yet passing along to teachers unexplained deductions in their benefits.

Additional resources could also tackle concerns about large class sizes (which have purportedly increased in some urban areas from 50 to as many as 80 students) and long teaching hours (teachers are expected to be teaching in the classroom for 6 hours a day) that leave little time for lesson preparation, reviewing students' papers, and other requirements. A shortage of classrooms results in double-shift teaching in many schools and must be addressed to ensure teachers have the facilities they need to teach. Greater budget for maintenance and operation of schools would also contribute to another ACT demand, which is the elimination of all school fees which are currently needed to help schools operate. Noting that there has been an increase in the drop-out rate during the current Government's rule (partly due to rising school fees and other costs), ACT is seeking to push for universal access to education and higher enrollments in basic education.

SMP-NATOW, which primarily represents private sector teachers, raised a number of very important concerns for their teachers that need to be addressed. A significant issue is the security of tenure for teachers because many are forced to undergo a three-year probationary period (and sometimes longer) before they become permanent teachers. Another issue has been the creation of generous early retirement packages offered by most private schools. These packages are within legal frameworks but are apparently designed to weaken private school unions since tenured (and thus senior) members will opt for these buy-outs and replaced by new employees who theoretically can be more easily controlled. SMP-NATOW also raises a number of key systemic issues that it views as potential threats to the private sector education system. These are the hemorrhaging of students from private schools to public schools because of high costs and other associated factors; the entry of very wealthy private businessmen, or "capitalist educators", into the private education system to seek quick profits (e.g. the purchase of the University of Pangasinan); and lax Government regulations that have effective permitted the mushrooming of "fly by night" schools offering courses in high demand, such as nursing, care-giving, and ICT.

Other reforms that SMP-NATOW is focusing on are curriculum enrichment and textbook reviews, and issues related to financing of private education. They call for equitable and fair tuition fee increases to build the amount of resources available for education and the teachers while at the same time increasing access for needy students to grants from the Government Assistance for Students and Teachers in the Private Sector (GASTPE) Program. The federation deems any tuition fee increases unfair and unlawful when school unions are not represented in any consultations or hearings that call for such matriculation fee increases and so they will invoke CHED Memo Nos. 13 (1998); 7 (2004); and 14 (2005).

TOPPS has been consulted or included in committees by the Department of Education both at national and regional levels, especially in relation to the promulgation of policies and guidelines that involve the welfare and benefit issues. TOPPS both recommends and forwards policy suggestions to the Department and other related agencies and will take the initiative upon learning of any new policy formulation affecting teacher welfare to insist on being included as a worker representative. As the Department often has a top down approach, TOPPS taken the initiative on non-consultative issues from curriculum revisions to the adding of a bridging year for elementary school graduates who are not yet academically prepared to secondary school. TOPPS reports it was successful in lobbying with the Department on issues related to the delay of granting salary step increments and maternity benefits and for public sector teacher representation in the Department of Education's Provident Fund and in the House and Senate Committees on Education.

TOPPS' other campaigns include improving the quality of public services. It is an active participant in the Strategic Alliance Project on Social Dialogue in the Public Sector – a project between trade unions, employers groups, and the CSC. Activities include a Workplace Assessment program to diagnose problems in public workplaces and seek ways in which unions and management can work together. TOPPS was part of the workers' negotiating panel on the Memorandum of Understanding on Quality Public Services and Performance, an agreement between the government and public sector unions containing specific commitments to improve terms and conditions of employment and broaden union participation in the policy and decision making. As a result public school teachers will get sick leave benefits, expanded hazard pay, free annual medical check-ups and the integration of human rights issues and trade union issues in the public education system.

TOPPS has also become involved in more political campaigns, including a campaign demanding for reforms in the Government Service Insurance System (GSIS) to prevent the channeling funds to government officials for their own private ends, involvement in mass actions to protect the justice system and coordinating with the Department of Education to protect public school teachers from harassment.

The TF VIII states it has been consulted and included in discussions involving the promotion teacher's welfare.

Available legal and social systems for redress

The Commission on Human Rights (CHR), an independent government agency created by the Constitution of the Philippines and is mandated to protect and promote human rights. It is empowered to investigate all human rights violations involving civil and political rights and to monitor the government's compliance with international human rights treaty obligations. The CHR has authority to make recommendations regarding military and higher-level police promotions. The commission has a chairperson and four members. The CHR did investigate the killing of the teachers; however the CHR monitoring and investigating continued to be hamstrung by insufficient resources. Approximately one-third of the country's 42,000 barangays (villages) had human rights action centers, which coordinated with CHR regional offices; however, the CHR's regional and sub-regional offices remained understaffed and under-funded.

Disputes among the Department of Education employees relating to administrative matter are handled within the department, but criminal and civil cases are handled by Ombudsman or go to the higher court. Union related cases and disputes are handled by the grievance committee. If not resolved then the case can go to the Public Sector Labor Management Council (PSLMC). Teachers who are accused in administrative cases, (or criminal or civil) are not provided with legal assistance by the department TOPPS states if it is a union-related matter filed by the unions, the union will provide legal assistance to their members and/or affiliates. If the national union has no financial capacity then the teachers or local unions shoulder the legal fees.

For the private sector, the grievance mechanisms serve as a good avenue to seek redress. It is an institutional structure where step-by-step procedures are identified giving the union member (or representative) and school management equal opportunity to explore possible means to iron out differences or the implementation of any CBA provisions or school policies. If not resolved through these grievance procedures, the management and the school union may seek recourse through voluntary arbitration and/or mediation.

ILO Jurisprudence

The Philippines has ratified the two most important ILO conventions on trade union rights, ILO Convention 87 (Freedom of Association) and Convention 98 (Right to Organize and Collective Bargaining). It has also ratified other core ILO Conventions include Convention 100 (Equal Remuneration) and Convention 111 (Discrimination [Employment and Occupation])

ILO Committee on Freedom of Association (ILO CFA) case no. 2488 (filed by the Federation of Free Workers – Visayas Council) directly focuses on the denial of FOA rights related to the dismissal of 15 union leaders in the University of San Agustin Employees' Union – FFW (USAEU) who were involved in a strike that was declared legal at the time by the DOLE. Subsequent rulings were made by the courts that the strike was illegal and let the dismissal of the unionists stand. The ILO CFA found that the "*assumption of jurisdiction*" provision contained in Article 263 (g) of the Labor Code is contrary to the principles of freedom of association. Specifically, the ILO CFA has ruled that prohibitions on strikes should only be permitted in cases where there is the existence of a clear and imminent threat to the life, personal safety or health or the whole or part of the population. Second, the ILO CFA called for an independent review of the dismissals, which constitute the entire leadership of the USAEU-FFW, and noted that the Courts had overruled the DOLE Secretary, who had found there were no grounds to declare a loss of employment status for the 15 union teachers. Finally, the ILO CFA decried what it repeatedly characterized as the "*protracted litigation*" and "*long and complex judicial proceedings*" and called for a "*framework of national procedures*" that are "*prompt, impartial and considered as such by the parties concerned*" to examine grievances alleging anti-union discrimination. The ILO has also condemned the action by the University management in August 2006 to organize the election of a new union committee, and encourage teachers and education workers to go to that meeting instead of the general meeting of the USAEU which was occurring at the same time.

Ratifications of UN Conventions

The Philippines has ratified the following major UN human rights Conventions:

- International Covenant on Economic, Social and Cultural Rights (CESR)
- International Covenant on Civil and Political Rights (CCPR)
- UN Convention on the Rights of the Child (CRC)
- UN Convention on the Elimination of Discrimination against Women (CEDAW)
- UN Convention on the Elimination of Racial Discrimination (CERD)
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000
- Rome Statute of the International Criminal Court, 17 July 1998

Acronyms used in the Philippines Report

ACT – Alliance of Concerned Teachers
AJO – Assumption of Jurisdiction Order
BLR – Bureau of Labor Relations
CHR – Commission on Human Rights
CHED – Commission on Higher Education
CSC – Civil Service Commission
CNA – Collective Negotiation Agreements
DepEd – Department of Education
DOLE – Department of Labor and Employment
EO – Executive Order
FFW – Federation of Free Workers
PHP – Philippine Peso
PSLINK – Public Services Labor Independent Confederation
RA – Republic Act
SEC – Securities and Exchange Commission
SMP-NATOW – The National Alliance of Teachers and Office Workers
TOPPS – The Teachers Organization of the Philippine Public Sector
TUCP – Trade Union Congress of Philippines

Endnotes Philippines

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7. These topics include the schedule of vacation and other leaves; personal growth and development; communication system-internal (lateral and vertical), external; work assignment/reassignment/detail/transfer; distribution of work load; provision for protection and safety; provision for facilities for handicapped personnel; provision for first aid medical services and supply; physical fitness program; provision for family planning services for married women; annual medical/physical examination; recreational, social, athletic and cultural activities and facilities; CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003; and other concerns which are not prohibited by law and CSC rules and regulations. Information from Personnel Relations Office, Primer on Collective Negotiation Agreements, Civil Service Commission.
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9. TURN Project - Country Report for Thailand

Country Description

Some of the major problems faced by teachers in Thailand include a shortage of teachers; failure to provide adequate salaries and benefits to teachers; the impacts of education reforms on teachers; and, most importantly, a continued lack of rights to organize into duly recognized trade unions and engage in legally-binding collective bargaining.

In 2007, Thailand had 463,354 public school teachers and education workers, accounting for a total of 36.8% of civil servants in the country. In that year, there were an additional 53,940 public sector employees in other educational institutions, accounting for an additional 4.3% of the total civil service. These figures do not include education personnel in private sector schools.

The level of national budget provided for education has been fairly consistent, averaging 23% of the budget for the years between 1997-2007, or approximately 3.9% of GDP, which the ADB finds is "*not enough to help improve the quality of teaching and learning for over 30,000 public primary schools throughout the country.*"[1] UNESCO estimates expenditure on education rose to 4.2% of GDP by 2005, accounting for 25% of Royal Thai Government budgetary spending.[2] Yet the World Bank states that "*The bottom line is that secondary education access and quality are not likely to experience notable improvements without an infusion of additional resources.*"[3] In the absence of more funds, the World Bank continues by calling for "*raising the cost effectiveness and performance*" of the sector,[4] including through an approach of greater de-centralization of authority which it believes could increase administrative savings but which most Government teachers view as being problematic as it would decrease job security.

The Government is committed to expand educational coverage to all Thai citizens, which will likely bring continuing challenges to teachers and educational personnel.[5] The National Education Act (NEA) of 1999 sets compulsory education at 9 years. The Government is likely to be expand this requirement to 12 years in line with the Constitution of 2007, Article 49, which states that "*a person shall enjoy an equal right to receive the education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.*" The Constitution further provides that "*Education and training management by the professional organization or private section, alternative education, self-education, and life-long learning shall be protected and promoted by the State.*" Thailand's first national Millennium Development Goals (MDGs) report sets clear goals for universal access to lower secondary school access by 2006 and upper secondary schools by 2015.

The Constitution of 2007 contains Article 80 (3), which requires the Government to "*Develop the quality and standard of education management in all levels and all types in compliance with the changing economic and social environment; to prepare the national education plan and laws for development of the national education; develop the quality of teachers and educational personnel to be able to progressively follow the changing of the world community.*" While Thailand matches or exceeds the performance of many other countries with similar income levels, it has not yet reached its stated education goal to stay pace with the changes of world community. Performance levels of Thai students are still deemed to be too low, with 40% of students achieving below the PISA (Program for International Student Assessment) level one in literacy and over 50% below PISA level one in mathematics[6]. A World Bank report on the education sector identifies the importance of raising teacher quality as a critical issue in improving student performance and notes that "*enhancing teacher professional development could potentially translate into significant improvements in student flows and learning.*"[7]

Ensuring the success of the effort by the Government to expand education to reach all youth in Thailand and while also improving the quality of education are the major challenge posed to teachers. UNESCO has reported that the primary school student to teacher ratio was 18.3:1, which secondary school student to teacher ratio was 21.7:1.[8] The National Thai Teacher Union (NTTU) says that "*right now, we do not have enough teachers*" and they point to an increasingly aged workforce of teachers who are over 45 years

old. They say the problem arises from the weakness in Ministry of Education's (MOE) efforts to recruit new graduates to select teaching as a career. There are problems related to status, low starting salaries and benefits versus cost of living (especially for public school teachers in urban centers), and the difficulty of persuading young teachers to live in remote, rural communities. Many older, experienced teachers are taking early retirement because they have been dead-ended on the salary scale. As a result, there is a growing gap between new and older teachers, and the NTTU expressed concerns that knowledge and experience will not be adequately passed from the older generation of teachers to the new incoming teachers.

A World Bank survey supported this conclusion. The Bank found school principals are concerned concerns about the shortage of teachers, as well as weaknesses in providing professional development and training to upgrade teachers' skills, especially in topics such as science and mathematics.[9]

Background on EI Member Organizations

Legal status of EI member organizations participating in TURN

Despite its name, the NTTU is not permitted to register with the Ministry of Labour or any other Government entity as a labour union because civil servants are exempted from coverage under the Labour Relations Act of 1975 (LRA). Furthermore, there is no provision in Thai law to recognize a labour union that includes both civil servants and private sector workers.

For this reason, the NTTU is legally registered as an Association under the authority of the Ministry of Interior, with the NTTU headquarters registered at the Tao Poon Bangkok City District Office while its provincial chapters are registered with provincial Ministry of Culture offices.[10] The registration process for an Association is substantial and involves significant scrutiny by various Ministries and offices, culminating in consideration and approval by an inter-agency committee, before the registration is granted.

The Private School Teachers Association of Thailand (PSTAT) is a registered Association, under the same law and provisions as the NTTU.

Basic information on structure and leadership

The NTTU has a 33 member Executive Committee which is elected to a two year term. The Executive Committee meets six times a year. The positions are unpaid and all NTTU leaders continue to fulfill their full-time jobs as teachers and education personnel. The NTTU has a website in Thai (www.nttu.or.th) which is maintained by the officers of the union.

The PSTAT has 28 person board of directors and 8 advisors to the board, for an overall committee of 36 persons. All board members are volunteers. The term of the board is four years. PSTAT's board meets twice a year, and there is an annual general meeting of all members as well. The President is Dr. Usira Anomasiri and the General-Secretary is Dr. Mantariga Witoonchat.

Basic information on membership

The NTTU reports a membership of approximately 10,000 teachers and school administrators. At this time, it does not have other education workers or education system personnel in the membership. NTTU members may come from all types of schools – Government, private, and vocational – though the vast majority comes from Government schools. Members must pay annual dues of 120 baht ($US 3.32), or 10 baht per month. Members also have the choice of paying a one-time payment of 1000 baht ($27.70) to become a life-time member. The NTTU reports it currently has approximately 1000 lifetime members.

The PSTAT says that it has two types of membership: (1) individual and (2) institutional. At this time, there are approximately 1500 individual members and 30 institutional members (all private schools). Dues are 100 baht ($US 2.85) per year for individuals, and 2,000 baht ($US 57.14) for institutional per annum.

National Context

Legal framework of TUR rights for teachers, for public servants

Freedom of association

Freedom of association as a legal right is effectively denied for both public sector and private sector teachers and educational staff.

Freedom of association for civil servants, including teachers, is guaranteed by the Constitution of 2007. But on a practical level this recognition is effectively negated by the lack of an implementing law that sets legal procedures to register civil servants' labour unions and to ensure that all Government offices would be obligated to collectively bargain with civil servants' unions. Freedom of association is allowed as provided for by in law. Thai governance divides workers into four categories-- private sector, state enterprise, civil servant, and public institution – and does not permit formal association within a union of these different categories of employees, nor combination of these categories within a labor federation or confederation.

Article 31 of the Constitution that "*government servants, other State officials, and employees of State agencies*" are afforded the same Constitutional rights as the rest of the population except where there are restrictions in "*ordinances, rules and regulations issued by virtue of law, particularly in parts relating to politics, efficiency, and discipline or code of conduct.*"

Article 64 of the Thai Constitution of 2007 ostensibly provides guarantees for freedom of association for all persons, though there are limitations imposed based on administration of the Government and delivery of public services. Specifically, the Article states that "*A person shall enjoy the liberty of assembly in the form of association, unions, cooperatives, farmers' associations, private organizations, nongovernmental organization and other groups. Civil servants and State officials shall enjoy the liberty of assembly like the general public, provided that doing so does not affect the efficient administration of State affairs and the continuity of delivery of public services as providing by law.*" There is not yet any legal clarification of what constitutes "*the efficient administration of State affairs*" so it is not possible to assess the degree of the possible threat this qualification may pose to teachers' rights to form a union. Similarly, there has been no clear case to clarify how the Government defines the "*continuity of delivery of public services*", which specific public services are covered, or what interruption of said services would constitution a violation of "*continuity*."

The Civil Servant Regulations Act of 2008 conforms to the Constitution of 2007 by stating in Article 43 that civil servants have the right to form organizations as provided in the Constitution, and repeats the restrictions listed in Article 64 of the Constitution. However, the Act adds an additional limitation by adding that any organization formed by civil servants shall not have an objective related to politics – essentially denying the right of civil servants to have their groups actively involved in formal politics. The standards, procedures, and conditions of formation of the groups are to be set out by the Council of State, which is the legal arm of the Government.

However, this right has yet to be asserted legally by public teachers because the implementing law for this provision has not been developed. EI affiliates have not filed a test case against the exclusion of civil servants, including personnel under the Ministry of Education, from the coverage of the LRA, which is the main national law that provides the legal right for formation of labour unions and registration of unions as legal entities under the Ministry of Labour.[11] Similarly, since Government education personnel are considered civil servants, they cannot avail the authority to form and register unions in the State Enterprise Labour Relations Act (SELRA) of 2000 because this Act is limited to covering state enterprise workers.

Numerous educational and research institutes established by law have been designated as Public Organizations under the Public Organization Act of B.E. 2542 (1999). Article 38 of the Act exempts workers of Public Organizations from coverage by laws on labour rights and protection (LRA and the Labor Protection Act of 1998/LPA), social security, and occupational safety and health. These workers are denied the right to freely associate as a labour union because they cannot register the union, and without legal registration, there is no legal requirement for a Public Organization to collectively bargain with its employees. Since the Office on National Education Standards and Quality Assessment (ONESQA), which was established in November 2000 and is tasked with developing the standards and overseeing the process of external assessments of schools, is registered as a Public Organization, the educational workers there have no trade union rights.

Private sector teachers and personnel at all levels are barred by law from coverage under the LRA 1975 and the LPA 1998. Article 86 of the Private School Act of 2007 (PSA) explicitly exempts all private sector school personnel from coverage of these two core labor laws, as well as the Social Security Act of 1991. The only proviso under the Act is that teachers must receive wages and conditions of work no less than those provided in the LPA. All other conditions of work shall be set according to the policy sent by the governing committee of the school. The Private University Act of 2003 also specifically exempts private university employees of all types from coverage by the LRA 1975 or the LPA 1998.

In both cases, by exempting private sector teachers and education staff from the LRA, it strips these staff of the right to freedom of association. The Thai labor relations system requires all unions to be duly registered with the Ministry of Labor in order to access the process of representation for purposes of collective bargaining.[12]

As a direct result of the Private University Act, in 2004 the Union of Professors and Staff of the Rangsit University ceased to be recognised by university management, was stripped of its office and staff, and thrown off the campus.

By excluding private education workers from coverage under the LRA 1975, these workers are prevented from provisions of law that prevent anti-union discrimination (such as Article 121 of the LRA 1975) and mechanisms for redress, such as the tri-partite Labour Relations Committee (LRC) which is empowered to investigate complaints and issue legal decisions ordering reinstatement if anti-union practices are found.

Nevertheless, the NTTU reports that it continues to receive a constant stream of expressions of interest from private sector teachers who are seeking the protection of a union.

Collective bargaining rights

Government teachers do not have the right to collectively bargain. Salaries and benefits are determined by the Government through legislation and regulation, in line with the policies for civil servants.[13] There is no legal framework in the Government sector that provides for binding collective bargaining between the Government and any of the teacher unions.

Specific regulations for public teachers are contained in the Teachers and Educational Staff Law of B.E. 2547 (2004). The law creates a Government Teacher and Education Personnel Committee (GTEPC), chaired by the Minister of Education (with the MOE Permanent Secretary, the top civil servant, as Vice-Chair) and composed of senior civil servants and appointees, and 9 elected teacher representatives. This is the all-powerful national administrative organ overseeing education personnel with whom a public sector union representing teachers would have to bargain.

The GTEPC is the legal mechanism for seeking changes in wages and conditions of work[14], and for determining and administering all rules and regulations regarding the hiring, firing, promotion, discipline and other personnel matters covering teachers and education staff.[15] GTEPC is an all powerful decision-maker, with authority to interpret all aspects of this law regulating education personnel, as provided for in Article 19 (5) of the law that states it shall "*consider, decide and interpret any issue arising from the execution of this Act and all education agencies are bound to comply with the resolution of GTEPC.*" To carry out its work, GTEPC is authorized with broad powers to compel witnesses to appear and for testimony/evidence to be produced from all education agencies, and other Government agencies. Issues related to recruitment, advancement, and handling of discipline and grievances are also spelled out in highly detailed terms in the law, essentially meaning the law supplants any potential union role in grievance handling and membership support on these important personnel matters.

Moreover, the law creates GTEP Subcommittees to carry out its mandates on teachers and education personnel in each of the Education Service Areas (ESAs) created through the de-centralization imperative of the NEA. Hire and fire decisions, taken within GTEPC set guidelines, are vested with the Director of the Office of the ESA – thereby potentially reducing employment security of teachers and education personnel, and setting out an organizational challenge to any union or association representing teachers. Performance reviews, and decisions on raising salary based on those reviews, are ultimately vested with school superintendent, but appeals must be filed to the Director and a Committee that s/he sets up for personnel matters – again with procedures to follow the rules set by the GTEPC. If an issue is not covered in Teachers and Educational Staff Law, the teachers must follow the regulations in the Regulation of Civil Servants Law of B.E. 2551 (2008).

Private sector teachers and education staff at all levels have no legal right to collectively bargain with owners of private schools or universities. Within the framework of the MOE, there is a Committee to Promote Private Education which has the right to propose policies about private education and has the duty, among other things, to help determine mechanisms of state support and assistance for private schools, their teachers, and education staff.

Right to strike

Government teachers do not have the right to strike. If they exercised this right, the NTTU and other observers stated they were quite sure that prompt disciplinary would be levied against the strikers.

Since access to the mechanism to hold a legal strike in the private sector is through the LRA 1975, private sector teachers at all levels have no right to strike.

There are no indications in the private or Government sector that teachers have conducted a strike in the recent past.

Actual Practice and Enforcement of Rights

Freedom of Association

Informally, the NTTU is able to refer to itself as a "union" in its conversations with Government and other stakeholders, and its leaders report being able to engage in various public forums with unions in the private and state enterprise sectors, and participate in training, education, and advocacy activities. Teachers are able to form associations which are not labor unions without any significant restrictions. The NTTU is also considered to be a union by the State Enterprise Worker Relations Confederation (SERC).[16] There are two NTTU leaders assigned to attend the SERC meetings and coordinate work between the NTTU and the SERC.

A group of civil servants is working to achieve legal status and recognition by the Government for a union of civil servants. If they succeed, this would be the single most important step forward for enforcement of legal frameworks governing civil servants, and potentially teachers. In this effort, they are receiving support from Public Services International (PSI).

The Public Sector Union (PSU) of Thailand[17] has been organized since November 27, 2008, when it held its public debut at a national meeting held at the National Human Rights Commission (NHRC) on November 27, 2008. However, the PSU is not formally registered since there is still no legal process for them to do so. The union holds monthly meetings on a rotating basis among different Ministries and Government agencies where it has activists but it must work informally since most senior Government civil servants in charge do not recognize it. The current PSU strategy focuses on lobbying the Minister of Labour and the Cabinet to draft a specific law that will operationalize the rights of civil servants to form unions and set up a formal process to register unions. The PSU says it regularly invites the NTTU to participate in meetings and other activities but that so far it has received little response and NTTU representatives have not attended.

The union is "starting from zero" says a source from the Public Services International (PSI) Thailand Council and it still lacks clear structures and procedures, and does not yet collect membership dues. The union is still working on its formal constitution and expects this will be finalized during the first quarter of 2009. A website (only in Thai) has been developed and is located at www.psu-thailand.org.[18]

In an interview, the President of the PSTAT indicated that private sector workers are represented by the Association and the owners of the private schools, and that they engage on behalf of the private sector teachers for better wages, welfare, and conditions of work from the Ministry of Education.

Collective bargaining agreements

For public teachers, no collective bargaining agreements have been concluded between teachers' representatives and the Government. Since the NTTU is not a registered trade union under the LRA, it does not have access to the collective bargaining mechanisms with private sector employers under that law. For this reason, it is not able to conclude formal collective bargaining agreements under law with the private sector schools where the NTTU has members. The NTTU says that negotiations that do take place are informal and usually focus on resolving disputes over employment regulations promulgated by private schools.

However, the NTTU continues to engage and make demands on the Government on behalf of issues affecting teachers' interest and welfare. These demands tend to focus on broad policy issues affecting teachers and the education system in general.

For example, the FETAT, NTTU and Teachers Life Development Network of Thailand[19] held a meeting with the Minister of Education in late 2008 and presented 9 demands.[20] According to the NTTU, it is now common practice that these three groups join hands on various policy advocacy and initiatives on behalf of teachers. The NTTU notes that they are able to discuss a wide variety of issues with MOE civil servants, and the close relationship they enjoy with these civil servants sometimes results in those civil servants referring worthy policy ideas or issues to the NTTU so it can conduct advocacy for those ideas. The reason they do this is the senior civil servants are constrained by their positions in proposing these policy ideas directly. This was the case in 2008 during negotiations concerning early retirement packages for teachers, when there was a registered demand by 10,000 eligible teachers to take early retirement, but the MOE only committed funding for 7000 slots. The MOE senior civil servants then surreptitiously encouraged the NTTU to push the MOE to find supplemental budget to fund the additional 3000 teachers wishing to retire early – and the Minister finally agreed. The NTTU has focused demands on letting "let the teachers be teachers" and reduce levels of administrative work required through the hiring an administrator for each school. The MOE says that this has been agreed to be policy, but so far the policy has not been implemented. Other efforts, such as informal discussions on the need to raise teachers' pay the MOE has agreed there is a problem but said that since there are so many teachers already, such a pay raise would decimate the budget.

However, there is no formal bargaining system outside established regulations and rules for handling cases of individual teachers with grievances. Informal negotiations are undertaken by the NTTU but without clear evidence of violations or discrimination against a teacher, the NTTU finds it difficult to resolve such grievances at the local level.

The NTTU has also made demands for changes in policy regarding retirements and recruitment. The NTTU and its allies are pushing hard for the principle that an equal number of new teachers are recruited to replace those who retire – so the principle should be that if 100 teachers retire, then 100 new teachers are recruited. According to the NTTU, this policy was agreed to by the Ministry but has not yet been implemented.

For private sector teachers and education staff, there is little evidence of collective bargaining agreements that have been concluded between teachers and private school owners. PSTAT stated that it was not aware of any such collective bargaining agreements.

Government contracts and other arrangements with teachers

Wages, benefits, additional salary supplements, and other conditions of work for Government teachers are set by the MOE under GTEPC.

For private sector teachers, the wage rates set by this Commission serve as the "minimum wage" for teachers and they are not supposed to be paid less than this level. For example, the starting wage for a new teacher with a bachelor's degree is 7940 baht. On behalf of the private teachers, the PSTAT is seeking to have this raised to 8,130 baht, but has so far been unsuccessful. In the absence of private sector teachers unions, wages and other benefits above the minimum amounts are set unilaterally by the school owners.

For the private sector, Ministerial Regulation No. 1 issued under the authority of the LPA 1998 exempts application of the law to principals and teachers who work for an employer that operates a private school under the law relating to private schools. This has now been supplemented by Article 86 of the PSA 2007, which prevents private sector workers from being covered under the LRA 1975 or the LPA 1998. However, the law states the conditions of work must be no less than the minimum level required under the LPA.

Treatment of teacher union leaders by Government and employers

The NTTU reports that its leaders do not suffer from overt anti-union discrimination. However, it reports the lack of formal status of the NTTU means that local NTTU leaders must be careful when they represent the interests of teachers locally. If a local NTTU leader is too forceful and alienates the head of the ESA or local political interests, s/he can face retaliation in terms of evaluations and professional advancement, recommendations for awards of professional achievement (*rien dra*), and disciplinary actions. The national NTTU says it is difficult for the organization to intervene in such cases of subtle anti-union discrimination unless the evidence and facts of misconduct in blocking a teacher's advancement are very clear. In such cases, the NTTU will work informally to mediate and resolve grievances of individual

teachers but the organization's lack of formal status is a barrier to more comprehensive representation for local members facing harassment by superiors.

Social dialogue and tripartism

The NTTU is accepted by the Ministry of Education as a legitimate stakeholder and an important representative of teachers The NTTU meets with all incoming Ministers of Education, and is able to hold meetings with MOE civil servants at all levels on various issues and topics of concern to teachers. The NTTU also has a good relationship with the Teachers Council of Thailand (TCT), regularly using rooms and other facilities in the Karusapha complex. In 2010, NTTU will be granted office space at the Karusapha complex by the TCT, which is a further indication of the NTTU's status as an accepted representative of teachers.

There are three Committees set up by law under the MOE which affect teachers' conditions of work in various ways – the TCT, the Professional Standards Committee (PSC) and the Committee for Promotion of the Benefits and Welfare of Teachers and Educational Personnel (PBWT).[21] The leaders of these Committees are primarily senior MOE and academic officials, though general membership largely comprises rank-and-file teachers. Teachers' voice and issues can be channeled through these Committees if the rank-and-file are sufficiently energized about particular issue(s), but formal collective bargaining does not take place.

The TCT has the following areas of authority that are relevant to teachers' conditions of work: development of professional standards and code(s) of ethics for teachers; all aspects of teacher licensing; determination of professional development plans and policies; and certification of professional knowledge and experience. The PST serves to both implement professional standards and codes of ethics for teachers, and monitor compliance with those standards, codes, and conditions for retaining a teacher's license. Finally, the PBWT is duly designated to "*promote benefits, welfare, other privileges and the security of Professional Educators and educational practitioners*" [22] but in reality it primarily serves as the oversight body for the Karusapha Business Organization (a quasi-state enterprise that produces textbooks, school uniforms, etc.) and implementer of a few select membership benefits, such as the teachers' funeral fund.[23] The PBWT does not actively bargain or represent teachers in obtaining additional welfare or benefits through a collective bargaining process.

The PSTAT reports that it has good, regular access to the senior levels of the MOE, and to the Committee to Promote Private Education.

Education reforms and systematic changes impacting on teachers rights

Education reforms have been instituted over the past decade to decentralize authority and operations of the public school system and increase internal and external monitoring of school performance. These reforms have significantly increased teachers' apprehensions about the security of their employment as well as the terms and conditions of their work. Reforms have also focused on increased use of internal and external audits to evaluate performance of teachers and schools, which have also raised concerns among Government teachers.

The National Education Act of 1999 (NEA) set outs the principles, structures and operations of the education system. A core principle of the Act is decentralization of authority for academic affairs, personnel, budget and general administration to the local authorities.[24] A total of 175 Educational Service Area Offices (ESAs) have been established and are led by an Area Committee comprised of representatives of local government organizations, community representatives, parents and community members, and teachers and educational administrators. The practical processes and progress of decentralization has been affected by vastly differing levels of capacity in service delivery among the Area Committees.[25] The decentralization process involves an agreement between local authorities (such as a Sub-district Administrative Organization [SAO]) and the school first, followed by a joint application to the MOE by the two parties to start the de-centralization process. The MOE must assess the readiness of the local partner(s) to take over school administration before it agrees to the de-centralization.

At the outset of the reform process, the MOE sought strong encourage de-centralization, by making teachers and principals come under the authority of the ESAs, which while still operating under the authority of the MOE are also viewed by many teachers as being dominated by local government bodies, such as the SAO. Teachers have generally resisted these efforts, citing uncertainties about ESA's capacity to manage schools, unclear budgetary commitments to education, worries about detrimental changes to teachers' wages and conditions of work, and concern about interference in hiring and operation of the schools. According to

the President of the NTTU the momentum for decentralization of authority over schools has diminished significantly at the MOE. Therefore, the threat of de-centralization that many Government teachers worried would mean an inexorable erosion of their status, and wages and benefits, has receded for the moment.

There are approximately 300 Government schools that have gone through the de-centralization process and are therefore administered by local authorities. Problems faced by teachers (and students) at these 300 schools include being called to constantly organize and participate in non-school activities at the behest of the SAO leaders, and reductions in the quality of equipment provided since all procurement must pass through the local organizations where diversions of resources and budgets are more common. Confusion also results from a lack of clarity on the respective roles and duties of the ESAs and the SAOs for the management and oversight of these schools. The de-centralization plan results in a transfer of budget authority to local government authorities in two areas: first, for the school lunch program, and second, for the student milk program. Bid-rigging and delivery of sub-standard milk to students prompted a major scandal that erupted in February 2009, triggering a nation-wide probe of the milk program by the Office of Public Sector Anti-Corruption Commission.[26]

MOE has set up evaluation/quality assurance systems (both internal and external evaluators). An internal evaluation must be done of the school on an annual basis, using standards that are set by MOE, and those evaluations are public documents. ONESQA is responsible for carrying out external evaluations. The World Bank states that *"school staff will need to demonstrate action to turn around ineffective practices in order to make a difference in student performance" and "performance-based incentives could provide the necessary impetus to fuel administrative and instructional behavioral changes."* [27]

Private sector schools are also governed by the provisions of the NEA 1999. However, there are also specific issues affecting private schools and teachers that are a direct result of the PSA 2007. On the institutional side, the PSA 2007 requires private schools to be incorporated, with land, buildings and other investments (usually paid for by the owner) to be transferred to the incorporated school under a formal school board. Accounts must now be audited annually. On the individual/staff side, the PSA 2007 has forced all private school teachers and staff out of the coverage of the Social Security Act, causing significant hardship.

Available legal and social systems for redress

In a case of a violation of human rights, any person can petition the National Human Rights Commission (NHRC) regarding the abuse that has take place by simply providing the petitioner's name and address, facts about acts or omissions that constitute the violation, and the signature of the petitioner. The NHRC has the right to consider any matter that it not currently pending in a Court.[28] In practice, the NHRC has helped petitioners re-frame questions so a case can be opened even in cases where the specific violation is in the Court. The NHRC has the power to compel testimony from witnesses, hold private or public hearings, conduct investigations, and publish reports making recommendations to various stake-holders, including Government. The NHRC has set up a Labour Rights Subcommittee which serves as the investigator of first instance for labour rights cases and the Thai labor movement has regularly used the NHRC as a way to fight labor rights violations.

ILO Jurisprudence

Thailand has not ratified ILO Conventions 87 and 98, despite repeated demands and advocacy campaigns by the Thai labour movement and civil society organizations. It has ratified core conventions on forced labour (Conventions 29 and 105), child labour (138 and 182), and elimination of discrimination in employment and occupation (100 and 111).

To date, no ILO cases have been filed on violations of freedom of association of civil servants, employees of private sector universities, or public organizations. This is certainly a gap that should be addressed, since the restrictions and resulting practices are quite clearly violation of ILO Convention no. 87. The most relevant case is no. 2181 (Bangchak Petroleum Public Co., Ltd), involving the unilateral MOL dissolution of a state enterprise union because of the change of status of the company during privatization. This case raises concerns about inability of registered unions to transition changes of status of their employer between private sector, Government, State Enterprise and Public Organization.

Ratifications of UN Conventions

Thailand has ratified the following international human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child

However, Thailand often uses its right to exercise reservations to sections of these international treaties which serve to diminish the protection of rights afforded by these Conventions.[29]

Acronyms used in the Thailand Report

ESA	*Education Service Areas*
GTEPC	*Government Teacher and Education Personnel Committee*
LPA	*Labor Protection Act of 1998*
LRA	*Labor Relations Act of 1975*
LRC	*Labor Relations Committee*
MDG	*Millennium Development Goals*
MOE	*Ministry of Education*
NEA	*National Education Act of 1999*
NHRC	*National Human Rights Commission*
NTTU	*National Thai Teachers Union*
ONESQA	*Office on National Education Standards and Quality Assessment*
PBWT	*Committee for Promotion of the Benefits and Welfare of Teachers and Educational Personnel*
PISA	*Program for International Student Assessment*
PSA	*Private School Act of 2007*
PSC	*Professional Standards Committee*
PSTAT	*Private School Teachers Association of Thailand*
PSU	*Public Servants Union of Thailand*
SAO	*Sub-district Administrative Organization*
SELRA	*State Enterprise Labor Relations Act of 2000*
SERC	*State Enterprise Worker Relations Confederation*
TCT	*Teachers Council of Thailand*

Endnotes Thailand

1. Asian Development Bank, Project Number: 42144, September 2008, "Kingdom of Thailand: Capacity Building and School Networking for Educational Services (e-Learning) in Thailand."
2. UNESCO Institute for Statistics, Data Centre, January 2008 http://stats.uis.unesco.org/unesco/ReportFolders/ReportFolders.aspx
3. World Bank, Social Monitor, p.89
4. World Bank, Social Monitor, p. 12
5. Thailand is also home to significant numbers of migrant children from the surrounding countries of Burma, Cambodia and Lao PDR. Under a 2005 RTG Cabinet decision which implemented an Education for All policy, migrant children are also supposed to be granted access to Thai education. However, despite promising pilot projects in a number of areas that have been spearheaded by NGOs like Save the Children (UK), most migrant children do not yet have access to Thai Government schools.
6. World Bank Social Monitor, p. 10-11
7. World Bank, Social Monitor, p. 11
8. UNESCO Institute for Statistics, Data Centre, January 2008 http://stats.uis.unesco.org/unesco/ReportFolders/ReportFolders.aspx, statistics reflected are from 2006.
9. World Bank, Thailand Social Monitor: Improving Secondary Education, October 2006.
10. The legal name of the NTTU is the Association of the Union of the Thai Teachers. The Ministry of Interior is the government line agency in charge of registration of associations while the Ministry of Labour is given the authority to govern the registration of labour unions.
11. The Labour Relations Act of 1975, Article 4: "This Act shall not apply to: (1) central administration; (2) provincial administration; (3) local administration; (4) Bangkok Metropolitan administration; (5) other businesses as prescribed in the Royal Decree."
12. Article 23 of the Act states that "The business of a private higher education institution is not subject to the law on labour protection and the law on labour relation, provided that all personnel of a private higher education institution shall be entitled to benefits of not less than benefits as prescribed by the law on labour protection."
13. Article 31 of the Government Teacher and Education Personnel Act, B.E. 2547 (2004) does not countenance collective bargaining. It provides that "the rates of salary, academic standing allowance and position allowance of government teacher or education personnel shall be in accordance with the law on salary, academic standing allowance and position allowance of government teacher or education personnel."

14. Under Article 19 (3) of the Government Teacher and Education Personnel Act, B.E. 2547 (2004), the Committee shall "give advise and recommendation to the Council of Ministers so as to adjust salary, academic standing allowance, position allowance, living allowance, welfare or benefits of government teacher and education personnel in the case where the cost of living has changed considerably or where the existing welfare or benefits of government teacher or education personnel is inappropriate."

15. The Committee is empowered in Article 19 (4) to "issue the Rule of GTEPC, regulation, requirement, rule, procedure and condition for personnel administration of government teacher and education personnel. The Rule of GTEPC shall be approved by the Council of Ministers and it shall come into force upon its publication in the Government Gazette." In Article 19 (6) the Committee is authorized "to develop rule, procedure and standard on personnel administration and maintain merit protection system of government teacher and education personnel" and in Article 19 (7) it shall "determine employment procedure and condition for the recruitment and appointment of person to be teacher and education personnel in education agency and to determine their salary or allowance rate." Regarding discipline, the Committee is similarly given sweeping powers in Article 19 (12) to "to lay down standard and to consider and give advise in the matter dealing with discipline, discharge from official service, appeal and petition as prescribed by this Act."

16. SERC is one of the four ITUC affiliates in Thailand.

17. The name in Thai translates literally as National Civil Servants and Government Workers Union.

18. The PSU has set out a number of key roles that it plans to fulfill if it can register and be recognized by the RTG. First and foremost is to be able to collectively bargain on wages and benefits, conditions of work, work assignments and transfers, professional development, and other core issues affecting civil servants. Second, the union aims to play a continuous role in affecting changes in laws, regulations, and rules overseeing the work of civil servants. Third, it wants to see established an effective system to receive grievances from civil servants and provide them with redress. Fourth, it seeks to play a monitoring "watch dog" role on the actions and policies of Government in the realm of human resources which affect the security of employment, and conditions of work, for civil servants. Fifth, it plans to advocate for expanded Government policies on services for civil servants, such as scholarships, housing, credit unions, and other initiatives to reduce the cost of living for civil servants. Finally, it plans to network and link Thai civil servants to organizations representing public service employees internationally.

19. A registered association of teachers, primarily focused on issues to alleviate debts faced by teachers. The Network has provincial branches as well as an elected national board.

20. The demands include the following: (1) calling for education to be made a national policy priority; (2) re-establishment of a Ministry of University Affairs; (3) pressing to make the compulsory nine year education requirement reach all areas; (4) allowing for individual schools to be legally established organizations; (5) arranging for budget for school lunches to meet 100% of the need in line with the conditions of the economic crisis; (6) pushing for the RTG to pass the necessary laws that are required for justice [note: a round-about appeal for an implementing law for public sector teachers unions] (7) solve the problems with the advancement of teachers who faced problems with the evaluation of teaching standards and methods, and provide remediation assistance; (8) solve the problems of teachers and education personnel to ensure that all of those that wish to can take part in the early retirement program; and (9) reform the Law on Civil Service Pensions of B.E. 2540.

21. The Teachers and Educational Personnel Council Act of B.E. 2546 (2003).

22. Article 63 (1), The Teachers and Educational Personnel Council Act of B.E. 2546 (2003).

23. Each PBWT member pays 1 baht each time another member dies, and these funds are assembled and given to the relatives of the deceased member teacher. According to the NTTU, there are approximately 600,000 PBWT members, meaning that the relatives of a teacher belonging to the PBWT can expect to receive 600,000 baht when that member passes away.

24. National Education Act of B.E. 2542 (1999), Office of the National Education Commission, Office of the Prime Minister, Royal Thai Government. Article 9 (2) sets out decentralization as a core principle of the law.

25. National Education Act of 1999, article 42 provides that the MOE is responsible for setting out the criteria and procedures to determine local readiness of local organizations to take over the provision of education.

26. Bangkok Post, "Milk Scandal Grows into Corruption Probe", by King-oua Laohong, Bamrung Amnatcharoenrit, and Sirikul Bunnag, February 21, 2009.

27. World Bank, Social Monitor, p. 13

28. Articles 22 and 23, National Human Rights Commission Act of B.E. 2542 (1999).

29. For example, upon accession in 1985, a reservation was lodged for CEDAW article 10 (elimination of discrimination against women in education) to compel action only as far as required by national law – and the vaguely defined "maintenance of public order" and "national security" rationale is used as an excuse for this restriction. Fortunately, this reservation was subsequently removed by the RTG in 1996.

10. General guidelines for lodging complaints

Particular organizations will have their own rules. However, the following list represents the most common expectations:

Approach

- A teacher organization should begin by contacting EI, for advice and endorsement.
- Only a few institutions allow individuals to lodge complaints.
- Request an application form, if any. When one is received, it should be filled out carefully and legibly and returned promptly.

Drafting

- Preferably, complaints should be written in an official international language (English and French for Europe).
- Provide a brief summary of the facts and your complaints.
- Highlight the right/convention/article that you think has been violated.
- Highlight the national remedies you have already used with copies of the decisions given in your case by all the public authorities concerned.
- Attach as many documents as possible relating to your complaints (these documents will not be returned to you, so only copies should be sent).
- When drafting the complaint, bear in mind that the complaint will usually be submitted to the country government for comment.

Submission

- Never go in person to make the complaint. The case will not be examined more quickly, and no legal advice will be available.
- The complaint may be sent by fax, provided the original is sent by surface mail.
- Originals must bear a signature

11. Addresses

Education International

5 bd du Roi Albert II
B1210 Brussels
Belgium
Tel : + 32 2 224 06 11
Fax: +32 2 224 06 06

Dominique Marlet
Human & Trade Union Rights Senior Coordinator
Tel : +32 2 224 06 80
dominique.marlet@ei-ie.org

International Labour Organization

4 Route des Morillons
1211- Geneva
Switzerland
Fax : +41 22 799 85 33

Office of the United Nations High Commissioner for Human Rights

Palais Wilson
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Tel: +41 22 917 90 00
Fax: +41 22 917 90 11
urgent-action@ohchr.org

CEART

UNESCO
Chief of Section
Section for Teacher Education
Division for Higher Education UNESCO,
7, place de Fontenoy
75352 Paris 07 SP
France

CEART

International Labour Organization
Education sector specialist
Sectoral Activities Department
International Labour Office
CH-1211 Geneva 22
Switzerland
Tel: +41 22 799 7143
Fax: +41 22 799 7046

12. Resources

A. Universal Declaration of Human Rights
http://www.unhchr.ch/udhr/lang/eng.htm

B. UN Convention on the Rights of the Child
http://www2.ohchr.org/english/law/crc.htm

C. UN International Covenant on Civil and Political Rights
http://www2.ohchr.org/english/law/ccpr.htm

D. UN Convention on the Elimination of All Forms of Discrimination against Women
http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

E. ILO Declaration on Fundamental Principles and Rights at Work
http://www.ilo.org/public/english/employment/skills/hrdr/instr/decla.htm

F. ILO Convention 87: Freedom of Association and Protection of the Right to Organize
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

G. ILO Convention 98: Right to Organize and Collective Bargaining
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098

H. ILO Convention 29: Forced Labour
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029

I. ILO Convention 105: Abolition of Forced Labour
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105

J. ILO Convention 138: Minimum Age
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138

K. ILO Convention 182: Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182

L. ILO Convention 100: Equal Remuneration
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100

M. ILO Convention 111: Discrimination (Employment and Occupation)
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111

N. 1966 ILO/UNESCO Recommendation concerning the Status of Teachers
http://portal.unesco.org/en/ev.php-URL_ID=13084&URL_DO=DO_TOPIC&URL_SECTION=201.html

O. 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel
http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

P. Charter of the Association of Southeast Asian Nations
http://www.aseansec.org/21069.pdf

A. Universal Declaration of Human Rights

http://www.unhchr.ch/udhr/lang/eng.htm

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his

country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

B. United Nations Convention on the Rights of the Child

http://www2.ohchr.org/english/law/crc.htm

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Entry into force 2 September 1990, in accordance with article 49

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others; or

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives

and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the

necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 General comment on its implementation

1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

   (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

   (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

   (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

   (a) Provide for a minimum age or minimum ages for admission to employment;

   (b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this

decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems. (amendment)

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat

basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

C. International Covenant on Civil and Political Rights

http://www2.ohchr.org/english/law/ccpr.htm

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI)of 16 December 1966.

Entry into force 23 March 1976, in accordance with Article 49.

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

   (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

   (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

   (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

   (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

   (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

   (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public

health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after

the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

   (a) Twelve members shall constitute a quorum;

   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

   (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

   (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses

of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

   (a) Signatures, ratifications and accessions under article 48;

   (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

D. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - Extracts

http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

Entry into force 3 September 1981, in accordance with article 27(1)

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph l of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall

ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

   (a) The same right to enter into marriage;

   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

   (c) The same rights and responsibilities during marriage and at its dissolution;

   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V and VI to be consulted online

E. ILO Declaration on Fundamental Principles and Rights at Work

http://www.ilo.org/public/english/employment/skills/hrdr/instr/decla.htm

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

   a. that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

   b. that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

   a. freedom of association and the effective recognition of the right to collective bargaining;

   b. the elimination of all forms of forced or compulsory labour;

   c. the effective abolition of child labour; and

   d. the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

   a. by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

   b. by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

   c. by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Annex

Follow-up to the Declaration

I. Overall purpose

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e) of the Constitution; and the global report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. Annual follow-up concerning non-ratified fundamental Conventions

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e) of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.

4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. Global report

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following

period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. It is understood that:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

F. ILO Convention 87 : Freedom of Association and Protection of the Right to Organise Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1.In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended

by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the

desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

G. ILO Convention 98 : Right to Organise and Collective Bargaining Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to:

   (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

   (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

   a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

   b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

   c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

   d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this

Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

H. ILO Convention 29 : Forced Labour Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Article 2

1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include--

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Article 3

For the purposes of this Convention the term competent authority shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

Article 4

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

Article 5

1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.

2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.

Article 6

Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

Article 7

1. Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.

2. Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.

3. Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.

Article 8

1. The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.

2. Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of Government stores.

Article 9

Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;

(b) that the work or service is of present or imminent necessity;

(c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and

(d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.

Article 10

1. Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.

2. Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;

(b) that the work or the service is of present or imminent necessity;

(c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;

(d) that the work or service will not entail the removal of the workers from their place of habitual residence;

(e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life

and agriculture.

Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:

   (a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;

   (b) exemption of school teachers and pupils and officials of the administration in general;

   (c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;

   (d) respect for conjugal and family ties.

2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

Article 12

1. The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.

2. Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.

Article 13

1. The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.

2. A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.

Article 14

1. With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.

2. In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.

3. The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.

4. For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.

5. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.

Article 15

1. Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.

2. In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.

Article 16

1. Except in cases of special necessity, persons from whom forced or compulsory labour is exacted shall not be transferred to districts where the food and climate differ so considerably from those to which they have been accustomed as to endanger their health.

2. In no case shall the transfer of such workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.

3. When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.

4. In cases where such workers are required to perform regular work to which they are not accustomed, measures shall be taken to ensure their habituation to it, especially as regards progressive training, the hours of work and the provision of rest intervals, and any increase or amelioration of diet which may be necessary.

Article 17

Before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself--

(1) that all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care, and, in particular, (a) that the workers are medically examined before commencing the work and at fixed intervals during the period of

service, (b) that there is an adequate medical staff, provided with the dispensaries, infirmaries, hospitals and equipment necessary to meet all requirements, and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, and cooking utensils, and, where necessary, of housing and clothing, are satisfactory;

(2) that definite arrangements are made to ensure the subsistence of the families of the workers, in particular by facilitating the remittance, by a safe method, of part of the wages to the family, at the request or with the consent of the workers;

(3) that the journeys of the workers to and from the workplaces are made at the expense and under the responsibility of the administration, which shall facilitate such journeys by making the fullest use of all available means of transport;

(4) that, in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;

(5) that any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.

Article 18

1. Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, (a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of Government stores, or, in cases of very urgent necessity, the transport of persons other than officials, (b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease, (c) the maximum load which these workers may carry, (d) the maximum distance from their homes to which they may be taken, (e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes, and (f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.
2. In fixing the maxima referred to under (c), (d) and (e) in the foregoing paragraph, the competent authority shall have regard to all relevant factors, including the physical development of the population from which the workers are recruited, the nature of the country through which they must travel and the climatic conditions.
3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates.

Article 19

1. The competent authority shall only authorise recourse to compulsory cultivation as a method of precaution against famine or a deficiency of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.
2. Nothing in this Article shall be construed as abrogating the obligation on members of a community, where production is organised on a communal basis by virtue of law or custom and where the produce or any profit accruing from the sale thereof remain the property of the community, to perform the work demanded by the community by virtue of law or custom.

Article 20

Collective punishment laws under which a community may be punished for crimes committed by any of its members shall not contain provisions for forced or compulsory labour by the community as one of the methods of punishment.

Article 21

Forced or compulsory labour shall not be used for work underground in mines.

Article 22

The annual reports that Members which ratify this Convention agree to make to the International Labour Office, pursuant to the provisions of Article 22 of the Constitution of the International Labour Organisation, on the measures they have taken to give effect to the provisions of this Convention, shall contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.

Article 23

1. To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.
2. These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and ensuring that such complaints will be examined and taken into consideration.

Article 24

Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Article 26

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may

desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating :

(1) the territories to which it intends to apply the provisions of this Convention without modification;

(2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(3) the territories in respect of which it reserves its decision.

2. The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

Article 27

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

Article 28

1. This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

Article 29

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 30

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

Article 31

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 32

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall ipso jure involve denunciation of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.

2. As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

3. Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

Article 33

The French and English texts of this Convention shall both be authentic.

I. ILO Convention 105 : Abolition of Forced Labour Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour :

(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) as a method of mobilising and using labour for purposes of economic development;

(c) as a means of labour discipline;

(d) as a punishment for having participated in strikes;

(e) as a means of racial, social, national or religious discrimination.

Article 2

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

Article 3

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 4

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 5

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 6

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 7

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 8

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 9

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 5 above, if and when the new revising Convention shall have come into force;

   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 10

The English and French versions of the text of this Convention are equally authoritative.

J. ILO Convention 138 : Minimum Age Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement :

   (a) that its reason for doing so subsists; or

   (b) that it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention

limited categories of employment or work in respect of which special and substantial problems of application arise.

2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.

2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.

3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article--

   (a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

   (b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--

   (a) a course of education or training for which a school or training institution is primarily responsible;

   (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or

   (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

   (a) not likely to be harmful to their health or development; and

   (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum

Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.

2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.

3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.

4. When the obligations of this Convention are accepted--

(a) by a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(b) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(c) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

(d) in respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall ipso jure involve the immediate denunciation of that Convention,

(e) in respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fishermen) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall ipso jure involve the immediate denunciation of that Convention,

(f) by a Member which is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Convention is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

if and when this Convention shall have come into force.

5. Acceptance of the obligations of this Convention--

(a) shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,

(b) in respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,

(c) in respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof,

if and when this Convention shall have come into force.

Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of

the preceding Articles.

Article 16

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;

   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

K. ILO Convention 182 : Worst Forms of Child Labour Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term child shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term the worst forms of child labour comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

   (a) prevent the engagement of children in the worst forms of child labour;

   (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

   (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

   (d) identify and reach out to children at special risk; and

   (e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides --

   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

L. ILO Convention 100 : Equal Remuneration Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100

Article 1

For the purpose of this Convention--

(a) the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of--

   (a) national laws or regulations;

   (b) legally established or recognised machinery for wage determination;

   (c) collective agreements between employers and workers; or

   (d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the partíes thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

   a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

   b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

   c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

   d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--

   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

M. ILO Convention 111 : Discrimination (Employment and Occupation) Convention

http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111

Article 1

1. For the purpose of this Convention the term discrimination includes--

   (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

   (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice--

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the

registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

   b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

N. Recommendation concerning the Status of Teachers, 1966

http://portal.unesco.org/en/ev.php-URL_ID=13084&URL_DO=DO_TOPIC&URL_SECTION=201.html

Adopted by the Special Intergovernmental Conference on the Status of Teachers , Paris , 5 October 1966

The Special Intergovernmental Conference on the Status of Teachers has adopted this Recommendation:

I. Definitions

1. For the purpose of the Recommendation:

   (a) the word `teacher' covers all those persons in schools who are responsible for the education of pupils;

   (b) the expression `status' as used in relation to teachers means both the standing or regard accorded them, as evidenced by the level of appreciation of the importance of their function and of their competence in performing it, and the working conditions, remuneration and other material benefits accorded them relative to other professional groups.

II. Scope

2. This Recommendation applies to all teachers in both public and private schools up to the completion of the secondary stage of education, whether nursery, kindergarten, primary, intermediate or secondary, including those providing technical, vocational, or art education.

III. Guiding principles

3. Education from the earliest school years should be directed to the allround development of the human personality and to the spiritual, moral, social, cultural and economic progress of the community, as well as to the inculcation of deep respect for human rights and fundamental freedoms; within the framework of these values the utmost importance should be attached to the contribution to be made by education to peace and to understanding, tolerance and friendship among all nations and among racial or religious groups.

4. It should be recognized that advance in education depends largely on the qualifications and ability of the teaching staff in general and on the human, pedagogical and technical qualities of the individual teachers.

5. The status of teachers should be commensurate with the needs of education as assessed in the light of educational aims and objectives; it should be recognized that the proper status of teachers and due public regard for the profession of teaching are of major importance for the full realization of these aims and objectives.

6. Teaching should be regarded as a profession: it is a form of public service which requires of teachers expert knowledge and specialized skills, acquired and maintained through rigorous and continuing study; it calls also for a sense of personal and corporate responsibility for the education and welfare of the pupils in their charge.

7. All aspects of the preparation and employment of teachers should be free from any form of discrimination on grounds of race, colour, sex, religion, political opinion, national or social origin, or economic condition.

8. Working conditions for teachers should be such as will best promote effective learning and enable teachers to concentrate on their professional tasks.

9. Teachers' organizations should be recognized as a force which can contribute greatly to educational advance and which therefore should be associated with the determination of educational policy.

IV. Educational objectives and policies

10. Appropriate measures should be taken in each country to the extent necessary to formulate comprehensive educational policies consistent with the Guiding Principles, drawing on all available resources, human and otherwise. In so doing, the competent authorities should take account of the consequences for teachers of the following principles and objectives:

    (a) it is the fundamental right of every child to. be provided with the fullest possible educational opportunities; due attention should be paid to children requiring special educational treatment;

    (b) all facilities should be made available equally to enable every person to enjoy his right to education without discrimination

on grounds of sex, race, colour, religion, political opinion, national or social origin, or economic condition;

(c) since education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State, which should provide an adequate network of schools, free education in these schools and material assistance to needy pupils; this should not be construed so as to interfere with the liberty of the parents and, when applicable, legal guardians to choose for their children schools other than those established by the State, or so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions which conform to such minimum educational standards as may be laid down or approved by the State;

(d) since education is an essential factor in economic growth, educational planning should form an integral part of total economic and social planning undertaken to improve living conditions;

(e) since education is a continuous process the various branches of the teaching service should be so co-ordinated as both to improve the quality of education for all pupils and to enhance the status of teachers ;

(f) there should be free access to a flexible system of schools, properly interrelated, so that nothing restricts the opportunities for each child to progress to any level in any type of education;

(g) as an educational objective, no State should be satisfied with mere quantity, but should seek also to improve quality;

(h) in education both long-term and short-term planning and programming are necessary; the efficient integration in the community of today's pupils will depend more on future needs than on present requirements;

(i) all educational planning should include at each stage early provision for the training, and the further training, of sufficient numbers of fully competent and qualified teachers of the country concerned who are familiar with the life of their people and able to teach in the mother tongue;

(j) co-ordinated systematic and continuing research and action in the field of teacher preparation and in-service training are essential, including, at the international level, co-operative projects and the exchange of research findings ;

(k) there should be close co-operation between the competent authorities, organizations of teachers, of employers and workers, and of parents as well as cultural organizations and institutions of learning and research, for the purpose of defining educational policy and its precise objectives;

(l) as the achievement of the aims and objectives of education largely depends on the financial means made available to it, high priority should be given, in all countries, to setting aside, within the national budgets, an adequate proportion of the national income for the development of education.

V. Preparation for the profession

Selection

11. Policy governing entry into preparation for teaching should rest on the need to provide society with an adequate supply of teachers who possess the necessary moral, intellectual and physical qualities and who have the required professional knowledge and skills.

12. To met this need, educational authorities should provide adequate inducements to prepare for teaching and sufficient places in appropriate institutions.

13. Completion of an approved course in an appropriate teacher-preparation institution should be required of all persons entering the profession.

14. Admission to teacher preparation should be based on the completion of appropriate secondary education, and the evidence of the possession of personal qualities likely to help the persons concerned to become worthy members of the profession.

15. While the general standards for admission to teacher preparation should be maintained, persons who may lack some of the formal academic requirements for admission, but who possess valuable experience, particularly in technical and vocational fields, may be admitted.

16. Adequate grants or financial assistance should be available to students preparing for teaching to enable them to follow the courses provided and to live decently; as far as possible, the competent authorities should seek to establish a system of free teacher-preparation institutions.

17. Information concerning the opportunities and the grants or financial assistance for teacher preparation should be readily available to students and other persons who may wish to prepare for teaching.

18. (1) Fair consideration should be given to the value of teacher-preparation programmes completed in other countries as establishing in whole or in part the right to practice teaching.

(2) Steps should be taken with a view to achieving international recognition of teaching credentials conferring professional status in terms of standards agreed to internationally.

Teacher preparation programmes

19. The purpose of a teacher-preparation programme should be to develop in each student his general education and personal culture, his ability to teach and educate others, an awareness of the principles which underlie good human relations, within and across national boundaries, and a sense of responsibility to contribute both by teaching and by example to social, cultural and economic progress.

20. Fundamentally a teacher-preparation programme should include:

(a) general studies;

(b) study of the main elements of philosophy, psychology, sociology as applied to education, the theory and history of education, and of comparative education, experimental pedagogy, school administration and methods of teaching the various subjects;

(c) studies related to the student's intended field of teaching;

(d) practice in teaching and in conducting extra-curricular activities under the guidance of fully qualified teachers.

21. (1) All teachers should be prepared in general, special and pedagogical subjects in universities, or in institutions on a level comparable to universities, or else in special institutions for the preparation of teachers.

(2) The content of teacher-preparation programmes may reasonably vary according to the tasks the teachers are required to perform in different-types of schools, such as establishments for handicapped children or technical and vocational schools. In the latter case, the programmes might include some practical experience to be acquired in industry, commerce or agriculture.

22. A teacher-preparation programme may provide for a professional course either concurrently with or subsequent to a course of personal academic or specialized education or skill cultivation.

23. Education for teaching should normally be full-time; special arrangements may be made for older entrants to the profession and persons in other exceptional categories to undertake all or part of their course on a part-time basis, on condition that the content of such courses and the standards of attainment are on the same level as -those of the full-time courses.

24. Consideration should be given to the desirability of providing for the education of different types of teachers, whether primary, secondary, technical, specialist or vocational teachers, in institutions organically related or geographically adjacent to one another.

Teacher preparation institutions

25. The staff of teacher-preparation institutions should be qualified to teach in their own discipline at a level equivalent to that of higher education. The staff teaching pedagogical subjects should have had experience of teaching in schools and wherever possible should have this experience periodically refreshed freshed by secondment to teaching duties in schools.

26. Research and experimentation in education and in the teaching of particular subjects should be promoted through the' provision of research facilities in teacher-preparation institutions and research work by their staff and students. All staff concerned with teacher education' should be aware of the findings of research in the field with which they are concerned and endeavour to pass on its results to students.

27. Students as well as staff should have the opportunity of expressing their views on the arrangements governing the life, work and discipline of a teacher-preparation institution.

28. Teacher-preparation institutions should form a focus of development in the education service, both keeping schools abreast of the results of research and methodological progress, and reflecting in their own work the experience of schools and teachers.

29. The teacher-preparation institutions should, either severally or jointly, and in collaboration with another institution of higher education or with the competent education authorities, or not, be responsible for certifying that the student has satisfactorily completed the course.

30. School authorities, in co-operation with teacher-preparation institutions, should take appropriate measures to provide the newly-trained teachers with an employment in keeping with their preparation, and individual wishes and circumstances.

VI. Further education for teachers

31. Authorities and teachers should recognize the importance of in-service education designed to secure a systematic improvement of the quality and content of education and of teaching techniques.

32. Authorities, in consultation with teachers' organizations, should promote the establishment of a wide system of in-service education, available free to all teachers. Such a system should provide a variety of arrangements and should involve the participation of teacher-preparation institutions, scientific and cultural institutions, and teachers' organizations. Refresher courses should be provided, especially for teachers returning to teaching after a break in service.

33. (1) Courses and other appropriate facilities should be so designed as to enable teachers to improve their qualifications, to alter or enlarge the scope of their work or seek promotion and to keep up to date with their subject and field of education as regards both content and method.

(2) Measures should be taken to make books and other material available to teachers to improve their general education and professional qualifications.

34. Teachers should be given both the opportunities and the incentives to participate in courses and facilities and should take full advantage of them.

35. School authorities should make every endeavour to ensure that schools can apply relevant research findings both in the subjects of study and in teaching methods.

36. Authorities should encourage and, as far as possible, assist teachers to travel in their own country and abroad, either in groups or individually, with a view to their further education.

37. It would be desirable that measures taken for the preparation and further education of teachers should be developed and supplemented by financial and technical co-operation on an international or regional basis.

VII. Employment and career

Entry into the teaching profession

38. In collaboration with teachers'organizations, policy governing recruitment into employment should be clearly defined at the appropriate level and rules should be established laying down the teachers'obligations and rights.

39. A probationary period on entry to teaching should be recognized both by teachers and by employers as the opportunity for the encouragement and helpful initiation of the entrant and for the establishment and maintenance of proper professional standards as well as the teacher's own development of his practical teaching proficiency. The normal duration of probation should be known in advance and the conditions for its satisfactory completion should be strictly related to professional competence. If the teacher is failing to complete his probation satisfactorily, he should be informed of the reasons and should have the right to make representations.

Advancement and promotion

40. Teachers should be able, subject to their having the necessary qualifications, to move from one type or level of school to another within the education service.

41. The organization and structure of an education service, including that of individual schools, should provide adequate opportunities for and recognition of additional responsibilities to be exercised by individual teachers, on condition that those responsibilities are not detrimental to the quality or regularity of their teaching work.

42. Consideration should be given to the advantages of schools sufficiently large for pupils to have the benefits and staff the

opportunities to be derived from a range of responsibilities being carried by different teachers.

43. Posts of responsibility in education, such as that of inspector, educational administrator, director of education or other posts of special responsibility, should be given as far as possible to experienced teachers.

44. Promotion should be based on an objective assessment of the teacher's qualifications for the new post, by reference to strictly professional criteria laid down in consultation with teachers' organizations.

Security of tenure

45. Stability of employment and security of tenure in the profession are essential in the interests of education as well as in that of the teacher and should be safeguarded even when changes in the organization of or within a school system are made.

46. Teachers should be adequately protected against arbitrary action affecting their professional standing or career.

Disciplinary procedures related to breaches of professional conduct

47. Disciplinary measures applicable to teachers guilty of breaches of professional conduct should be clearly defined. The proceedings and any resulting action should only be made public if the teacher so requests, except where prohibition from teaching is involved or the protection or well-being of the pupils so requires.

48. The authorities or bodies competent to propose-or apply sanctions and penalties should be clearly designated.

49. Teachers' organizations should be consulted when the machinery to deal with disciplinary matters is established.

50. Every teacher should enjoy equitable safeguards at each stage of any dis-ciplinary procedure, and in particular:

(a) the right to be informed in writing of the allegations and the grounds for, them ;

(b) the right to full access to the evidence in the case;

(c) the right to defend himself and to be defended by a representative of his choice, adequate time being given to the teacher for the preparation of his defense;

(d) the right to be informed in writing of the decisions reached and the reasons for them;

(e) the right to appeal to clearly designated competent authorities or bodies.

51. Authorities should recognize that effectiveness of disciplinary safeguards as well as discipline itself would be greatly enhanced if the teachers were judged with the participation of their peers.

52. The provisions of the foregoing paragraphs 47-51 do not in any way affect the procedures normally applicable under national laws or regulations to acts punishable under criminal laws.

Medical examinations

53. Teachers should be required to undergo periodical medical examinations, which should be provided free.

Women teachers with family responsibilities

54. Marriage should not be considered a bar to the appointment or to the continued employment of women teachers, nor should it affect remuneration or other conditions of work.

55. Employers should be prohibited from terminating contracts of service for reasons of pregnancy and maternity leave.

56. Arrangements such as creches or nurseries should be considered where desirable to take care of the children of teachers with family responsibilities.

57. Measures should be taken to permit women teachers with family respon-sibilities to obtain teaching posts in the locality of their homes and to enable married couples,- both of whom are teachers, to teach in the same general neighborhood or in one and the same school.

58. In appropriate circumstances women teachers with family responsibilities who have left the profession before retirement age should be encouraged to return to teaching.

Part-time service

59. Authorities and schools should recognize the value of part-time service given, in case of need, by qualified teachers who for some reason cannot give full-time service.

60. Teachers employed regularly on a part-time basis should:

(a) receive proportionately the same remuneration and enjoy the same basic conditions of employment as teachers employed on a full-time basis;

(b) be granted rights corresponding to those of teachers employed on a full time basis as regards holidays with pay, sick leave and maternity leave, subject to the same eligibility requirements; and

(c) be entitled to adequate and appropriate social security protection, including coverage under employers' pension schemes.

VIII. The rights and responsibilities of teachers

Professional freedom

61. The teaching profession should enjoy academic freedom in the discharge of professional duties. Since teachers are particularly qualified to judge the teaching aids and methods most suitable for their pupils, they should be given the essential role in the choice and the adaptation of teaching material, the selection of textbooks and the application of teaching methods, within the framework of approved programmes, and with the assistance of the educational authorities.

62. Teachers and their organizations should participate in the development of new courses, textbooks and teaching aids

63. Any systems of inspection or supervision should be designed to encourage and help teachers in the performance of their professional tasks and should be such as not to diminish the freedom, initiative and responsibility of teachers.

64. (1) Where any kind of direct assessment of the teacher's work is required, such assessment should be objective and should be made known to the teacher.

(2) Teachers should have a right to appeal against assessments which they deem to be unjustified.

65. Teachers should be free to make use of such evaluation techniques as they _may deem useful for the appraisal of pupils' progress, but should ensure that no unfairness to individual pupils results.

66. The authorities should give due weight to the recommendations of teachers regarding the suitability of individual pupils for courses and further education of different kinds.

67. Every possible effort should be made to promote close co-operation between teachers and parents in the interests of

pupils, but teachers should be protected against unfair or unwarranted interference by parents in matters which are essentially the teacher's professional responsibility.

68. (1) Parents having a complaint against a school or a teacher should be given the opportunity of discussing it in the first instance with the school principal and the teacher concerned. Any complaint subsequently addressed to higher authority should be put in writing and a copy should be supplied to the teacher.

(2) Investigations of complaints should be so conducted that the teachers are given a fair opportunity to defend themselves and that no publicity is given to the proceedings.

69. While teachers should exercise the utmost care to avoid accidents to pupils, employers of teachers should safeguard them against the risk of having damages assessed against them in the event of injury to pupils occurring at school or in school activities away from the school premises or grounds.

Responsibilities of teachers

70. Recognizing that the status of their profession depends to a considerable extent upon teachers themselves, all teachers should seek to achieve the highest possible standards in all their professional work.

71. Professional standards relating to teacher performance should be defined and maintained with the participation of the teachers' organizations.

72. Teachers and teachers' organizations should seek to co-operate fully with authorities in the interests of the pupils, of the education service and of society generally.

73. Codes of ethics or of conduct should be established by the teachers' organizations, since such codes greatly contribute to ensuring the prestige of the profession and the exercise of professional duties in accordance with agreed principles.

74. Teachers should be prepared to take their part in extra-curricular activities for the benefit of pupils and adults.

Relations between teachers and the education service as a whole

75. In order that teachers may discharge their responsibilities, authorities should establish and regularly use recognized means of consultation with teachers' organizations on such matters as educational policy, school organization, and new developments in the education service.

76. Authorities and teachers should recognize the importance of the participation of teachers, through their organizations and in other ways, in steps designed to improve the quality of the education service, in educational research, and in the development and dissemination of new improved methods.

77. Authorities should facilitate the establishment and the work of panels designed, within a school or within a broader framework, to promote the co-operation of teachers of the same subject and' should take due account of the opinions and suggestions of such panels.

78. Administrative and other staff who are responsible for aspects of the education service should seek to establish good relations with teachers and this approach should be equally reciprocated.

Rights of teachers

79. The participation of teachers in social and public life should be encouraged in the interests of the teacher's personal development, of the education service and of society as a whole.

80. Teachers should be free to exercise all civic rights generally enjoyed by citizens and should be eligible for public office.

81. Where the requirements of public office are such that the teacher has to relinquish his teaching duties, he should be retained in the profession for seniority and pension purposes and should be able to return to his previous post or to an equivalent post after his term of public'office has expired.

82. Both salaries and working conditions for teachers should be determined through the process of negotiation between teachers' organizations and the employers of teachers.

83. Statutory or voluntary machinery should be established whereby the right of teachers to negotiate through their organizations with their employers, either public or private, is assured..

84. Appropriate joint machinery should be set up to deal with the settlement of disputes between the teachers and their employers arising out of terms and conditions of employment. If the means and procedures established for these purposes should be exhausted or if there should be a breakdown in negotiations between the parties, teachers' organizations should have the right to take such other steps as are normally open to other organizations in the defense of their legitimate interests.

IX. Conditions for effective teaching and learning

85. Since the teacher is a valuable specialist, his work should be so organized and assisted as to avoid waste of his time and energy.

Class size

86. Class size should be such as to permit the teacher to give the pupils individual attention. From time to time provision may be made for small group or even individual instruction for such purposes as remedial work, and on occasion, for large group instruction employing audio-visual aids.

Ancillary staff

87. With a view to enabling teachers to concentrate on their professional tasks, schools should be provided with ancillary staff to perform non-teaching duties.

Teaching aids

88. (1) Authorities should provide teachers and pupils with modern aids to teaching. Such aids should not be regarded as a substitute for the teacher but as a means of improving the quality of teaching and extending to a larger number of pupils the benefits of education.

(2) Authorities should promote research into the use of such aids and encourage teachers to participate actively in such research.

Hours of work

89. The hours teachers are required to work per day and per week should be established in consultation with teachers' organizations.

90. In fixing hours of teaching account should be taken of all factors which are relevant to the teacher's work load, such as:

(a) the number of pupils with whom the teacher is required to work per day and per week;

(b) the necessity to provide time for adequate planning and preparation of lessons and for evaluation of work;

(c) the number of different lessons assigned to be taught each

day;

(d) the demands upon the time of the teacher imposed by participation in research, in co-curricular and extra-curricular activities, in supervisory duties and in counseling of pupils ;

(e) the desirability of providing time in which teachers may report to and consult with parents regarding pupil progress.

91. Teachers should be provided time necessary for taking part in in-service training programmes.

92. Participation of teachers in extra-curricular activities should not constitute an excessive burden and should not interfere with the fulfillment of the main duties of the teacher.

93. Teachers assigned special educational responsibilities in addition to classroom instruction should have their normal hours of teaching reduced correspondingly.

Annual holidays with pay

94. All teachers should enjoy a right to adequate annual vacation with full pay.

Study leave

95. (1) Teachers should be granted study leave on full or partial pay at intervals. Women teachers with children should be encouraged to remain in the service by such measures as enabling them, at their request, to take additional

(2) The period of study leave should be counted for seniority and pension purposes.

(3) Teachers in areas which are remote from population centers and are recognized as such by the public authorities should be given study leave more frequently.

Special leave

96. Leave of absence granted within the framework of bilateral and multilateral cultural exchanges should be considered as service.

97. Teachers attached to technical assistance projects should be granted leave of absence and their seniority, eligibility for promotion and pension rights in the home country should be safeguarded. In addition special arrangements should be made to cover their extraordinary expenses.

98. Foreign guest teachers should similarly be given leave of absence by their home countries and have their seniority and pension rights safeguarded.

99. (1) Teachers should be granted occasional leave of absence with full pay to enable them to participate in the activities of their organizations.

(2) Teachers should have the right to take up office in their organizations; in such case their entitlements should be similar to those of teachers holding public office.

100. Teachers should be granted leave of absence with full pay for adequate personal reasons under arrangements specified in advance of employment.

Sick leave and maternity leave

101. (1) Teachers should be entitled to sick leave with pay.

(2) In determining the period during which full or partial pay shall be payable, account should be taken of cases in which it is necessary for teachers to be isolated from pupils for long periods.

102. Effect should be given to the standards laid down by the International Labour Organisation in the field of maternity protection, and in particular the Maternity Protection Convention, 1919, and the Maternity Protection Convention (Revised), 1952, as well as to the standards referred to in paragraph 126 of this

103. Women teachers with children should be encouraged to remain in the service by such measures as enabling them, at their request, to take additional unpaid leave of up to one year after childbirth without loss of employment, all rights resulting from employment being fully safeguarded.

Teacher exchange

104. Authorities should recognize the value both to the education service and to teachers themselves of professional and cultural exchanges between countries and of travel abroad on the part of teachers; they should seek to extend such opportunities and take account of the experience acquired abroad by individual teachers.

105. Recruitment for such exchanges should be arranged without any dis-crimination, and the persons concerned should not be considered as representing any particular political view.

106. Teachers who travel in order to study and work abroad should be given adequate facilities to do so and proper safeguards of their posts and status.

107. Teachers should be encouraged to share teaching experience gained abroad with other members of the profession.

School buildings

108. School buildings should be safe and attractive in overall design and functional in layout; they should lend themselves to effective teaching, and to use for extra-curricular activities and, especially in rural areas, as a community centre; they should be constructed in accordance with established sanitary standards and with a view to durability, adaptability and easy, economic maintenance.

109. Authorities should ensure that school premises are properly maintained, so as not to threaten in any way the health and safety of pupils and teachers.

110. In the planning of new schools representative teacher opinion should be consulted. In providing new or additional accommodation for an existing school the staff of the school concerned should be consulted.

Special provisions for teachers in rural or remote areas

111. (1) Decent housing, preferably free or at a subsidized rental, should be provided for teachers and their families in areas remote from population centers and recognized as such by the public authorities.

(2) In countries where teachers, in addition to their normal teaching duties, are expected to promote and stimulate community activities, development plans and programmes should include provision for appropriate accommodation for teachers.

112. (1) On appointment or transfer to schools in remote areas, teachers should be paid removal and travel expenses for themselves and their families.

(2) Teachers in such areas should, where necessary, be given special travel facilities to enable them to maintain their professional standards.

(3) Teachers transferred to remote areas should, as an inducement,

be reimbursed their travel expenses from their place of work to their home town once a year when they go on leave.

113. Whenever teachers are exposed to particular hardships, they should be compensated by the payment of special hardship allowances, which should be included in earnings taken into account for pension purposes.

X. Teachers' salaries

114. Amongst the various factors which affect the status of teachers, particular importance should be attached to salary, seeing that in present world con-ditions other factors, such as the standing or regard accorded them and the level of appreciation of the importance of their function, are largely dependent, as in other comparable professions, on the economic position in which they are placed.

115. Teachers' salaries should :

(a) reflect the importance to society of the teaching function and hence the importance of teachers as well as the responsibilities of all kinds which fall upon them from the time of their entry into the service;

(b) compare favorably with salaries paid in other occupations requiring similar or equivalent qualifications ;

(c) provide teachers with the means to ensure a reasonable standard of living for themselves and their families as well as to invest in further education or in the pursuit of cultural activities, thus enhancing their professional qualification;

(d) take account of the fact that certain posts require higher qualifications and experience and carry greater responsibilities.

116. Teachers should be paid on the basis of salary scales established in agreement with the teachers' organizations. In no circumstances should qualified teachers during a probationary period or if employed on a temporary basis be paid on a lower salary scale than that laid down for established teachers.

117. The salary structure should be planned so as not to give rise to injustices or anomalies tending to lead to friction between different groups of teachers.

118. Where a maximum number of class contact hours is laid down, a teacher whose regular schedule exceeds the normal maximum should receive additional remuneration on an approved scale.

119. Salary differentials should be based on objective criteria such as levels of qualification, years of experience or degrees of responsibility but the relationship between the lowest and the highest salary should be of a reasonable order.

120. In establishing the placement on a basic salary scale of a teacher of vocational or technical subjects who may have no academic degree, allowance should be made for the value of his practical training and experience.

121. Teachers' salaries should be calculated on an annual basis.

122. (1) Advancement within the grade through salary increments granted at regular, preferably annual, intervals should be provided.

(2) The progression from the minimum to the maximum of the basic salary scale should not extend over a period longer, than, 10 to 15 years.

(3) Teachers should be granted salary increments for service performed during periods of probationary or temporary appointment.

123. (1) Salary scales for teachers should be reviewed periodically to take into account such factors as a rise in the cost of living, increased productivity leading to higher standards of living in the country or- a general upward movement in wage or salary levels.

(2) Where a system of salary adjustments automatically following a cost of living index has been adopted, the choice of index should be determined with the participation of the teachers' organizations and any cost-of-living allowance granted should be regarded as an integral part of earnings taken into account for pension purposes.

124. No merit rating system for purposes of salary determination should be introduced or applied without prior consultation with and acceptance by the teachers' organizations concerned.

XI. Social security

General provisions

125. All teachers, regardless of the type of school in which they serve, should enjoy the same or similar social security protection. Protection should be extended to periods of probation and of training for those who are regularly employed as teachers.

126. (1) Teachers should be protected by social security measures in respect of all the contingencies included in the International Labour Organization -Social Security (Minimum Standards) Convention, 1952, namely by medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

(2) The standards of social security provided for teachers should be at least as favorable as those set out in the relevant instruments of-the International Labour Organization and in particular the Social Security (Minimum Standards) Convention, 1952.

(3) Social security benefits for teachers should be granted as a matter of right.

127. The social security protection of teachers should take account of their particular conditions of employment, as indicated in paragraphs 128-140.

Medical care

128. In regions whlre there is a scarcity of medical facilities teachers should be paid travelling expenses necessary to obtain appropriate medical care.

Sickness benefit

129. (1) Sickness benefit should be granted throughout any period of incapacity for work involving suspension of earnings.

(2) It should be paid from the first day in each case of suspension of earnings.

(3) Where the duration of sickness benefit is limited to a specified period, provisions should be made for extensions in cases in which it is necessary for teachers to be isolated from pupils.

Employment injury benefit

130. Teachers should be protected against the consequences of injuries suffered not only during teaching at school but also when engaged in school activities away from the school premises or grounds.

131. Certain infectious diseases prevalent among children should be regarded as occupational diseases when contracted by teachers who have been exposed to them by virtue of their contact with pupils.

Old-age benefit

132. Pension credits earned by a teacher under any education authority within a country should be portable should the teacher transfer to employment under any other authority within that country.

133. Taking account of national regulations, teachers who, in case of a duly recognized teacher shortage, continue in service after qualifying for a pension should either receive credit in the calculation of the pension for the additional years of service or be able to gain a supplementary pension through an appropriate agency.

134. Old-age benefit% should be so related to final earnings that the teacher may continue to maintain an adequate living standard.

Invalidity benefit

135. Invalidity benefit should be payable to teachers who are forced to discontinue teaching because of physical or mental disability. Provision should be made for the granting of pensions where the contingency is not covered by extended sickness benefit or other means.

136. Where disability is only partial in that the teacher is able to teach part time, partial invalidity benefit should be payable.

137. (1) Invalidity benefit should be so related to final earnings that the teacher may continue to maintain an adequate living standard.

(2) Provision should be made for medical care and allied benefits with a view to restoring or, where this is not possible, improving the health of dis-abled teachers, as well as for rehabilitation services designed to prepare disabled teachers, wherever possible, for the resumption of their previous activity.

Survivors' benefit

138. The conditions of eligibility for survivors' benefit and the amount of such benefit should be such as to enable survivors to maintain an adequate standard of living and as to secure the welfare and education of surviving dependent children.

Means of providing social security for teachers

139. (1) The social security protection of teachers should be assured as far as possible through a general scheme applicable to employed persons in the public sector or in the private sector as appropriate.

(2) Where no general scheme is in existence for one or more of the contingencies to be covered, special schemes, statutory or non-statutory, should be established.

(3) Where the level of benefits under a general scheme is below that provided for in this Recommendation, it should be brought up to the recom-mended standard by means of supplementary schemes.

140. Consideration should be given to the possibility of associating represen-tatives of teachers' organizations with the administration of special and sup-plementary schemes, including the investment of their funds.

XII. The teacher shortage

141. (1) It should be a guiding principle that any severe supply problem should be dealt with by measures which are recognized as exceptional, which do, not detract from or endanger in any way professional standards already established or to be established and which minimize educational loss to pupils.

(2) Recognizing that certain expedients designed to deal with the shortage of teachers, such as over-large classes and the unreasonable extension of hours of teaching duty are incompatible with the aims and objectives of education and are detrimental to the pupils, the competent authorities as a matter of urgency should take steps to render these expedients unnecessary and to discontinue them.

142. In developing countries, where supply considerations may necessitate short-term intensive emergency preparation programmes for teachers," a fully professional, extensive programme should be available in order to produce corps of professionally prepared teachers competent to guide and direct the educational enterprise.

143. (1) Students admitted to training in short-term, emergency programmes should be selected in terms of the standards applying to admission to the normal professional programme, or even higher ones, to ensure that they will be capable of subsequently completing the requirements of the full programme.

(2) Arrangements and special facilities, including extra study leave on full pay, should enable such students to complete their qualifications in service.

144. (1) As far as possible, unqualified personnel should be required to work under the close supervision and direction of professionally qualified teachers.

(2) As a condition of continued employment such persons should be required to obtain or complete their qualifications.

145. Authorities should recognize that improvements in the social and economic status of teachers, their living and working conditions, their terms of employment and their career prospects are the best means of overcoming any existing shortage of competent and experienced teachers, and of attracting to and retaining in they teaching profession substantial numbers of fully qualified persons.

XIII. Final provision

146. Where teachers enjoy a status, which is, in certain respects, more favorable than that provided for in this Recommendation, its terms should not be invoked to diminish the status already granted.

The foregoing is the authentic text of the Recommendation duly adopted by the Special Intergovernmental Conference on the Status of Teachers, which was held in Paris and declared closed the fifth day of October 1966.

O. Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997

http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

Preamble

The General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), meeting in Paris from 21

October to 12 November 1997, at its 29th session, adopts the present Recommendation on 11 November 1997 :

I. Definitions

1. For the purpose of this Recommendation:

(a) 'higher education' means programmes of study, training or training for research at the post-secondary level provided by universities or other educational establishments that are approved as institutions of higher education by the competent state authorities, and/or through recognized accreditation systems;

(b)'research', within the context of higher education, means original scientific, technological and engineering, medical, cultural, social and human science or educational research which implies careful, critical, disciplined inquiry, varying in technique and method according to the nature and conditions of the problems identified, directed towards the clarification and/or resolution of the problems, and when within an institutional framework, supported by an appropriate infrastructure;

(c) 'scholarship' means the processes by which higher-education teaching personnel keep up to date with their subject, engage in scholarly editing, disseminate their work and improve their pedagogical skills as teachers in their discipline and upgrade their academic credentials;

(d) 'extension work' means a service by which the resources of an educational institution are extended beyond its confines to serve a widely diversified community within the state or region regarded as the constituent area of the institution, so long as this work does not contradict the mission of the institution. In teaching it may include a wide range of activities such as extramural, lifelong and distance education delivered through evening classes, short courses, seminars and institutes. In research it may lead to the provision of expertise to the public, private and non-profit sectors, various types of consultation, and participation in applied research and in implementing research results;

(e) 'institutions of higher education' means universities, other educational establishments, centres and structures of higher education, and centres of research and culture associated with any of the above, public or private, that are approved as such either through recognized accreditation systems or by the competent state authorities;

(f) 'higher-education teaching personnel' means all those persons in institutions or programmes of higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large.

II. Scope

2.This Recommendation applies to all highereducation teaching personnel.

III. Guiding principles

3. The global objectives of international peace, understanding, co-operation and sustainable development pursued by each Member State and by the United Nations require, inter alia, education for peace and in the culture of peace, as defined by UNESCO, as well as qualified and cultivated graduates of higher education institutions, capable of serving the community as responsible citizens and undertaking effective scholarship and advanced research and, as a consequence, a corps of talented and highly qualified higher-education teaching personnel.

4. Institutions of higher education, and more particularly universities, are communities of scholars preserving, disseminating and expressing freely their opinions on traditional knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines. The pursuit of new knowledge and its application lie at the heart of the mandate of such institutions of higher education. In higher education institutions where original research is not required, higher-education teaching personnel should maintain and develop knowledge of their subject through scholarship and improved pedagogical skills.

5. Advances in higher education, scholarship and research depend largely on infrastructure and resources, both human and material, and on the qualifications and expertise of higher-education teaching personnel as well as on their human, pedagogical and technical qualities, underpinned by academic freedom, professional responsibility, collegiality and institutional autonomy.

6. Teaching in higher education is a profession: it is a form of public service that requires of higher education personnel expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research; it also calls for a sense of personal and institutional responsibility for the education and welfare of students and of the community at large and for a commitment to high professional standards in scholarship and research.

7. Working conditions for higher-education teaching personnel should be such as will best promote effective teaching, scholarship, research and extension work and enable higher-education teaching personnel to carry out their professional tasks.

8. Organizations which represent higher-education teaching personnel should be considered and recognized as a force which can contribute greatly to educational advancement and which should, therefore, be involved, together with other stakeholders and interested parties, in the determination of higher education policy.

9. Respect should be shown for the diversity of higher education institution systems in each Member State in accordance with its national laws and practices as well as with international standards.

IV. Educational objectives and policies

10. At all appropriate stages of their national planning in general, and of their planning for higher education in particular, Member States should take all necessary measures to ensure that:

(a) higher education is directed to human development and to the progress of society;

(b) higher education contributes to the achievement of the goals of lifelong learning and to the development of other forms and levels of education;

(c) where public funds are appropriated for higher education institutions, such funds are treated as a public investment, subject to effective public accountability;

(d) the funding of higher education is treated as a form of public investment the returns on which are, for the most part,

necessarily long term, subject to government and public priorities;

(e) the justification for public funding is held constantly before public opinion.

11. Higher-education teaching personnel should have access to libraries which have up-to-date collections reflecting diverse sides of an issue, and whose holdings are not subject to censorship or other forms of intellectual interference. They should also have access, without censorship, to international computer systems, satellite programmes and databases required for their teaching, scholarship or research.

12. The publication and dissemination of the research results obtained by higher-education teaching personnel should be encouraged and facilitated with a view to assisting them to acquire the reputation which they merit, as well as with a view to promoting the advancement of science, technology, education and culture generally. To this end, higher-education teaching personnel should be free to publish the results of research and scholarship in books, journals and databases of their own choice and under their own names, provided they are the authors or co-authors of the above scholarly works. The intellectual property of higher-education teaching personnel should benefit from appropriate legal protection, and in particular the protection afforded by national and international copyright law.

13. The interplay of ideas and information among higher-education teaching personnel throughout the world is vital to the healthy development of higher education and research and should be actively promoted. To this end higher-education teaching personnel should be enabled throughout their careers to participate in international gatherings on higher education or research, to travel abroad without political restrictions and to use the Internet or video-conferencing for these purposes.

14. Programmes providing for the broadest exchange of higher-education teaching personnel between institutions, both nationally and internationally, including the organization of symposia, seminars and collaborative projects, and the exchange of educational and scholarly information should be developed and encouraged. The extension of communications and direct contacts between universities, research institutions and associations as well as among scientists and research workers should be facilitated, as should access by higher education teaching personnel from other states to open information material in public archives, libraries, research institutes and similar bodies.

15. Member States and higher education institutions should, nevertheless, be conscious of the exodus of higher-education teaching personnel from the developing countries and, in particular, the least developed ones. They should, therefore, encourage aid programmes to the developing countries to help sustain an academic environment which offers satisfactory conditions of work for higher-education teaching personnel in those countries, so that this exodus may be contained and ultimately reversed.

16. Fair, just and reasonable national policies and practices for the recognition of degrees and of credentials for the practice of the higher education profession from other states should be established that are consistent with the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education of 1993.

V. Institutional rights, duties and responsibilities

A. Institutional autonomy

17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved.

18. Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions.

19. Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source.

20. Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards set out in the appendix.

21. Self-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education.

B. Institutional accountability

22. In view of the substantial financial investments made, Member States and higher education institutions should ensure a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability. Higher education institutions should endeavour to open their governance in order to be accountable. They should be accountable for:

(a) effective communication to the public concerning the nature of their educational mission;

(b) a commitment to quality and excellence in their teaching, scholarship and research functions, and an obligation to protect and ensure the integrity of their teaching, scholarship and research against intrusions inconsistent with their academic missions;

(c) effective support of academic freedom and fundamental human rights;

(d) ensuring high quality education for as many academically qualified individuals as possible subject to the constraints of the resources available to them;

(e) a commitment to the provision of opportunities for lifelong learning, consistent with the mission of the institution and the resources provided;

(f) ensuring that students are treated fairly and justly, and without discrimination;

(g) adopting policies and procedures to ensure the equitable treatment of women and minorities and to eliminate sexual and racial harassment;

(h) ensuring that higher education personnel are not impeded in their work in the classroom or in their research capacity by violence, intimidation or harassment;

(i) honest and open accounting;

(j) efficient use of resources;

(k) the creation, through the collegial process and/or through negotiation with organizations representing higher-education teaching personnel, consistent with the principles of academic freedom and freedom of speech, of statements or codes of ethics to guide higher education personnel in their teaching, scholarship, research and extension work;

(l) assistance in the fulfilment of economic, social, cultural and political rights while striving to prevent the use of knowledge, science and technology to the detriment of those rights, or for purposes which run counter to generally accepted academic ethics, human rights and peace;

(m) ensuring that they address themselves to the contemporary problems facing society; to this end, their curricula, as well as their activities, should respond, where appropriate, to the current and future needs of the local community and of society at large, and they should play an important role in enhancing the labour market opportunities of their graduates;

(n) encouraging, where possible and appropriate, international academic co-operation which transcends national, regional, political, ethnic and other barriers, striving to prevent the scientific and technological exploitation of one state by another, and promoting equal partnership of all the academic communities of the world in the pursuit and use of knowledge and the preservation of cultural heritages;

(o) ensuring up-to-date libraries and access, without censorship, to modern teaching, research and information resources providing information required by higher-education teaching personnel or by students for teaching, scholarship or research;

(p) ensuring the facilities and equipment necessary for the mission of the institution and their proper upkeep;

(q) ensuring that when engaged in classified research it will not contradict the educational mission and objectives of the institutions and will not run counter to the general objectives of peace, human rights, sustainable development and environment.

23. Systems of institutional accountability should be based on a scientific methodology and be clear, realistic, cost-effective and simple. In their operation they should be fair, just and equitable. Both the methodology and the results should be open.

24. Higher education institutions, individually or collectively, should design and implement appropriate systems of accountability, including quality assurance mechanisms to achieve the above goals, without harming institutional autonomy or academic freedom. The organizations representing higher-education teaching personnel should participate, where possible, in the planning of such systems. Where statemandated structures of accountability are established, their procedures should be negotiated, where applicable, with the institutions of higher education concerned and with the organizations representing higher-education teaching personnel.

VI. Rights and freedoms of higher-education teaching personnel

A. Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information

25. Access to the higher education academic profession should be based solely on appropriate academic qualifications, competence and experience and be equal for all members of society without any discrimination.

26. Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights. Higher-education teaching personnel should not be subject to arbitrary arrest or detention, nor to torture, nor to cruel, inhuman or degrading treatment. In cases of gross violation of their rights, higher-education teaching personnel should have the right to appeal to the relevant national, regional or international bodies such as the agencies of the United Nations, and organizations representing higher-education teaching personnel should extend full support in such cases.

27. The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.

28. Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. Higher education teaching personnel should play a significant role in determining the curriculum.

29. Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors, as stated in paragraph 12 of this Recommendation.

30. Higher-education teaching personnel have a right to undertake professional activities outside of their employment, particularly those that enhance their professional skills or allow for the

application of knowledge to the problems of the community, provided such activities do not interfere with their primary commitments to their home institutions in accordance with institutional policies and regulations or national laws and practice where they exist.

B. Self-governance and collegiality

31. Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution.

32. The principles of collegiality include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision making structures and practices, and the development of consultative mechanisms. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large.

VII. Duties and responsibilities of higher education teaching personnel

33. Higher-education teaching personnel should recognize that the exercise of rights carries with it special duties and responsibilities, including the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research on an honest search for truth. Teaching, research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world.

34. In particular, the individual duties of higher education teaching personnel inherent in their academic freedom are:

(a) to teach students effectively within the means provided by the institution and the state, to be fair and equitable to male and female students and treat those of all races and religions, as well as those with disabilities, equally, to encourage the free exchange of ideas between themselves and their students, and to be available to them for guidance in their studies. Higher-education teaching personnel should ensure, where necessary, that the minimum content defined in the syllabus for each subject is covered;

(b) to conduct scholarly research and to disseminate the results of such research or, where original research is not required, to maintain and develop their knowledge of their subject through study and research, and through the development of teaching methodology to improve their pedagogical skills;

(c) to base their research and scholarship on an honest search for knowledge with due respect for evidence, impartial reasoning and honesty in reporting;

(d) to observe the ethics of research involving humans, animals, the heritage or the environment;

(e) to respect and to acknowledge the scholarly work of academic colleagues and students and, in particular, to ensure that authorship of published works includes all who have materially contributed to, and share responsibility for, the contents of a publication;

(f) to refrain from using new information, concepts or data that were originally obtained as a result of access to confidential manuscripts or applications for funds for research or training that may have been seen as the result of processes such as peer review, unless the author has given permission;

(g) to ensure that research is conducted according to the laws and regulations of the state in which the research is carried out, that it does not violate international codes of human rights, and that the results of the research and the data on which it is based are effectively made available to scholars and researchers in the host institution, except where this might place respondents in peril or where anonymity has been guaranteed;

(h) to avoid conflicts of interest and to resolve them through appropriate disclosure and full consultation with the higher education institution employing them, so that they have the approval of the aforesaid institution;

(i) to handle honestly all funds entrusted to their care for higher education institutions for research or for other professional or scientific bodies;

(j) to be fair and impartial when presenting a professional appraisal of academic colleagues and students;

(k) to be conscious of a responsibility, when speaking or writing outside scholarly channels on matters which are not related to their professional expertise, to avoid misleading the public on the nature of their professional expertise;

(l) to undertake such appropriate duties as are required for the collegial governance of institutions of higher education and of professional bodies.

35. Higher-education teaching personnel should seek to achieve the highest possible standards in their professional work, since their status largely depends on themselves and the quality of their achievements.

36. Higher-education teaching personnel should contribute to the public accountability of higher education institutions without, however, forfeiting the degree of institutional autonomy necessary for their work, for their professional freedom and for the advancement of knowledge.

VIII. Preparation for the profession

37. Policies governing access to preparation for a career in higher education rest on the need to provide society with an adequate supply of higher-education teaching personnel who possess the necessary ethical, intellectual and teaching qualities and who have the required professional knowledge and skills.

38. All aspects of the preparation of higher-education teaching personnel should be free from any form of discrimination.

39. Amongst candidates seeking to prepare for a career in higher education, women and members of minorities with equal academic qualifications and experience should be given equal opportunities and treatment.

IX. Terms and conditions of employment

A. Entry into the academic profession

40. The employers of higher-education teaching personnel should

establish such terms and conditions of employment as will be most conducive for effective teaching and/or research and/or scholarship and/or extension work and will be fair and free from discrimination of any kind.

41. Temporary measures aimed at accelerating de facto equality for disadvantaged members of the academic community should not be considered discriminatory, provided that these measures are discontinued when the objectives of equality of opportunity and treatment have been achieved and systems are in place to ensure the continuance of equality of opportunity and treatment.

42. A probationary period on initial entry to teaching and research in higher education is recognized as the opportunity for the encouragement and helpful initiation of the entrant and for the establishment and maintenance of proper professional standards, as well as for the individual's own development of his/her teaching and research proficiency. The normal duration of probation should be known in advance and the conditions for its satisfactory completion should be strictly related to professional competence. If such candidates fail to complete their probation satisfactorily, they should have the right to know the reasons and to receive this information sufficiently in advance of the end of the probationary period to give them a reasonable opportunity to improve their performance. They should also have the right to appeal.

43. Higher-education teaching personnel should enjoy:

(a) a just and open system of career development including fair procedures for appointment, tenure where applicable, promotion, dismissal, and other related matters;

(b) an effective, fair and just system of labour relations within the institution, consistent with the international standards set out in the appendix.

44. There should be provisions to allow for solidarity with other institutions of higher education and with their higher-education teaching personnel when they are subject to persecution. Such solidarity may be material as well as moral and should, where possible, include refuge and employment or education for victims of persecution.

B.Security of employment

45. Tenure or its functional equivalent, where applicable, constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions. It also encourages individual responsibility and the retention of talented higher-education teaching personnel.

46. Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher-education teaching personnel. It ensures that higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. They may also be released for bona fide financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure. Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.

C. Appraisal

47. Higher education institutions should ensure that:

(a) evaluation and assessment of the work of higher-education teaching personnel are an integral part of the teaching, learning and research process, and that their major function is the development of individuals in accordance with their interests and capacities;

(b) evaluation is based only on academic criteria of competence in research, teaching and other academic or professional duties as interpreted by academic peers;

(c) evaluation procedures take due account of the difficulty inherent in measuring personal capacity, which seldom manifests itself in a constant and unfluctuating manner;

(d) where evaluation involves any kind of direct assessment of the work of higher-education teaching personnel, by students and/or fellow colleagues and/or administrators, such assessment is objective and the criteria and the results are made known to the individual(s) concerned;

(e) the results of appraisal of higher-education teaching personnel are also taken into account when establishing the staffing of the institution and considering the renewal of employment;

(f) higher-education teaching personnel have the right to appeal to an impartial body against assessments which they deem to be unjustified.

D. Discipline and dismissal

48. No member of the academic community should be subject to discipline, including dismissal, except for just and sufficient cause demonstrable before an independent third-party hearing of peers, and/or before an impartial body such as arbitrators or the courts.

49. All members of higher-education teaching personnel should enjoy equitable safeguards at each stage of any disciplinary procedure, including dismissal, in accordance with the international standards set out in the appendix.

50. Dismissal as a disciplinary measure should only be for just and sufficient cause related to professional conduct, for example: persistent neglect of duties, gross incompetence, fabrication or falsification of research results, serious financial irregularities, sexual or other misconduct with students, colleagues, or other members of the academic community or serious threats thereof, or corruption of the educational process such as by falsifying grades, diplomas or degrees in return for money, sexual or other favours or by demanding sexual, financial or other material favours from subordinate employees or colleagues in return for continuing employment.

51. Individuals should have the right to appeal against the decision to dismiss them before independent, external bodies such as arbitrators or the courts, with final and binding powers.

E. Negotiation of terms and conditions of employment

52. Higher-education teaching personnel should enjoy the right to freedom of association, and this right should be effectively promoted. Collective bargaining or an equivalent procedure should be promoted in accordance with the standards of the

International Labour Organization (ILO) set out in the appendix.

53. Salaries, working conditions and all matters related to the terms and conditions of employment of higher-education teaching personnel should be determined through a voluntary process of negotiation between organizations representing higher-education teaching personnel and the employers of higher education teaching personnel, except where other equivalent procedures are provided that are consistent with international standards.

54. Appropriate machinery, consistent with national laws and international standards, should be established by statute or by agreement whereby the right of higher-education teaching personnel to negotiate through their organizations with their employers, whether public or private, is assured. Such legal and statutory rights should be enforceable through an impartial process without undue delay.

55. If the process established for these purposes is exhausted or if there is a breakdown in negotiations between the parties, organizations of higher-education teaching personnel should have the right to take such other steps as are normally open to other organizations in the defence of their legitimate interests.

56. Higher-education teaching personnel should have access to a fair grievance and arbitration procedure, or the equivalent, for the settlement of disputes with their employers arising out of terms and conditions of employment.

F. Salaries, workload, social security benefits, health and safety

57. All financially feasible measures should be taken to provide higher-education teaching personnel with remuneration such that they can devote themselves satisfactorily to their duties and allocate the necessary amount of time for the continuing training and periodic renewal of knowledge and skills that are essential at this level of teaching.

58. The salaries of higher-education teaching personnel should:

(a) reflect the importance to society of higher education and hence the importance of higher-education teaching personnel as well as the different responsibilities which fall to them from the time of their entry into the profession;

(b) be at least comparable to salaries paid in other occupations requiring similar or equivalent qualifications;

(c) provide higher-education teaching personnel with the means to ensure a reasonable standard of living for themselves and their families, as well as to invest in further education or in the pursuit of cultural or scientific activities, thus enhancing their professional qualifications;

(d) take account of the fact that certain posts require higher qualifications and experience and carry greater responsibilities;

(e) be paid regularly and on time;

(f) be reviewed periodically to take into account such factors as a rise in the cost of living, increased productivity leading to higher standards of living, or a general upward movement in wage or salary levels.

59. Salary differentials should be based on objective criteria.

60. Higher-education teaching personnel should be paid on the basis of salary scales established in agreement with organizations representing higher-education teaching personnel, except where other equivalent procedures consistent with international standards are provided. During a probationary period or if employed on a temporary basis qualified higher-education teaching personnel should not be paid on a lower scale than that laid down for established higher education teaching personnel at the same level.

61. A fair and impartial merit-rating system could be a means of enhancing quality assurance and quality control. Where introduced and applied for purposes of salary determination it should involve prior consultation with organizations representing higher-education teaching personnel.

62. The workload of higher-education teaching personnel should be fair and equitable, should permit such personnel to carry out effectively their duties and responsibilities to their students as well as their obligations in regard to scholarship, research and/or academic administration, should provide due consideration in terms of salary for those who are required to teach beyond their regular workload, and should be negotiated with the organizations representing higher-education teaching personnel, except where other equivalent procedures consistent with international standards are provided.

63. Higher-education teaching personnel should be provided with a work environment that does not have a negative impact on or affect their health and safety and they should be protected by social security measures, including those concerning sickness and disability and pension entitlements, and measures for the protection of health and safety in respect of all contingencies included in the conventions and recommendations of ILO. The standards should be at least as favourable as those set out in the relevant conventions and recommendations of ILO. Social security benefits for higher-education teaching personnel should be granted as a matter of right.

64. The pension rights earned by higher-education teaching personnel should be transferable nationally and internationally, subject to national, bilateral and multilateral taxation laws and agreements, should the individual transfer to employment with another institution of higher education. Organizations representing higher education teaching personnel should have the right to choose representatives to take part in the governance and administration of pension plans designed for higher-education teaching personnel where applicable, particularly those which are private and contributory.

G. Study and research leave and annual holidays

65. Higher-education teaching personnel should be granted study and research leave, such as sabbatical leave, on full or partial pay, where applicable, at regular intervals.

66. The period of study or research leave should be counted as service for seniority and pension purposes, subject to the provisions of the pension plan.

67. Higher-education teaching personnel should be granted occasional leave with full or partial pay to enable them to participate in professional activities.

68. Leave granted to higher-education teaching personnel within the framework of bilateral and multilateral cultural and scientific exchanges or technical assistance programmes abroad should be considered as service, and their seniority and eligibility for promotion and pension rights in their home institutions should be safeguarded. In addition, special arrangements should be made to cover their extra expenses.

69. Higher-education teaching personnel should enjoy the right to adequate annual vacation with full pay.

H. Terms and conditions of employment of women higher-education teaching personnel

70. All necessary measures should be taken to promote equality of opportunity and treatment of women higher-education teaching personnel in order to ensure, on the basis of equality between men and women, the rights recognized by the international standards set out in the appendix.

I. Terms and conditions of employment of disabled higher-education teaching personnel

71. All necessary measures should be taken to ensure that the standards set with regard to the conditions of work of higher-education teaching personnel who are disabled are, as a minimum, consistent with the relevant provisions of the international standards set out in the appendix.

J. Terms and conditions of employment of part-time higher-education teaching personnel

72. The value of the service provided by qualified part-time higher-education teaching personnel should be recognized. Higher-education teaching personnel employed regularly on a part-time basis should:

(a) receive proportionately the same remuneration as higher-education teaching personnel employed on a full-time basis and enjoy equivalent basic conditions of employment;

(b) benefit from conditions equivalent to those of higher-education teaching personnel employed on a full-time basis as regards holidays with pay, sick leave and maternity leave; the relevant pecuniary entitlements should be determined in proportion to hours of work or earnings;

(c) be entitled to adequate and appropriate social security protection, including, where applicable, coverage under employers' pension schemes.

X. Utilization and implementation

73. Member States and higher education institutions should take all feasible steps to extend and complement their own action in respect of the status of higher-education teaching personnel by encouraging co-operation with and among all national and international governmental and nongovernmental organizations whose activities fall within the scope and objectives of this Recommendation.

74. Member States and higher education institutions should take all feasible steps to apply the provisions spelled out above to give effect, within their respective territories, to the principles set forth in this Recommendation.

75. The Director-General will prepare a comprehensive report on the world situation with regard to academic freedom and to respect for the human rights of higher-education teaching personnel on the basis of the information supplied by Member States and of any other information supported by reliable evidence which he/she may have gathered by such methods as he/she may deem appropriate.

76. In the case of a higher education institution in the territory of a state not under the direct or indirect authority of that state but under separate and independent authorities, the relevant authorities should transmit the text of this Recommendation to institutions, so that such institutions can put its provisions into practice.

XI. Final provision

77. Where higher-education teaching personnel enjoy a status which is, in certain respects, more favourable than that provided for in this Recommendation, the terms of this Recommendation should not be invoked to diminish the status already recognized.

P. CHARTER OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

http://www.aseansec.org/21069.pdf

PREAMBLE

WE, THE PEOPLES of the Member States of the Association of Southeast Asian Nations (ASEAN), as represented by the Heads of State or Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam:

NOTING with satisfaction the significant achievements and expansion of ASEAN since its establishment in Bangkok through the promulgation of The ASEAN Declaration;

RECALLING the decisions to establish an ASEAN Charter in the Vientiane Action Programme, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter;

MINDFUL of the existence of mutual interests and interdependence among the peoples and Member States of ASEAN which are bound by geography, common objectives and shared destiny;

INSPIRED by and united under One Vision, One Identity and One Caring and Sharing Community;

UNITED by a common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations;

RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity;

ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms;

RESOLVED to ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process;

CONVINCED of the need to strengthen existing bonds of regional solidarity to realise an ASEAN Community that is politically cohesive, economically integrated and socially responsible in order to effectively respond to current and future challenges and opportunities;

COMMITTED to intensifying community building through enhanced regional cooperation and integration, in particular by establishing an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community, as provided for in the Bali Declaration of ASEAN Concord II;

HEREBY DECIDE to establish, through this Charter, the legal and institutional framework for ASEAN,

AND TO THIS END, the Heads of State or Government of the Member States of ASEAN, assembled in Singapore on the historic occasion of the 40th anniversary of the founding of ASEAN, have agreed to this Charter.

CHAPTER I - *PURPOSES AND PRINCIPLES*

ARTICLE 1 - PURPOSES

The Purposes of ASEAN are:

1. To maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region;
2. To enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation;
3. To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction;
4. To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment;
5. To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital;
6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation;
7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;
8. To respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges;
9. To promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples;
10. To develop human resources through closer cooperation in education and life-long learning, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community;
11. To enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice;
12. To strengthen cooperation in building a safe, secure and drug-free environment for the peoples of ASEAN;
13. To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building;
14. To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region; and
15. To maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive.

ARTICLE 2 - PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN.
2. ASEAN and its Member States shall act in accordance with the following Principles:
   (a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;
   (b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;
   (c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;
   (d) reliance on peaceful settlement of disputes;
   (e) non-interference in the internal affairs of ASEAN Member States;
   (f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;
   (g) enhanced consultations on matters seriously affecting the common interest of ASEAN;
   (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;
   (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;
   (j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;
   (k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;
   (l) respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;
   (m) the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and
   (n) adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

CHAPTER II- *LEGAL PERSONALITY*

ARTICLE 3 - LEGAL PERSONALITY OF ASEAN

ASEAN, as an inter-governmental organisation, is hereby conferred legal personality.

CHAPTER III - *MEMBERSHIP*

ARTICLE 4 - MEMBER STATES

The Member States of ASEAN are Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

ARTICLE 5 - RIGHTS AND OBLIGATIONS

1. Member States shall have equal rights and obligations under this Charter.

2. Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.

3. In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to Article 20.

ARTICLE 6 - ADMISSION OF NEW MEMBERS

1. The procedure for application and admission to ASEAN shall be prescribed by the ASEAN Coordinating Council.

2. Admission shall be based on the following criteria:

   (a) location in the recognised geographical region of Southeast Asia;

   (b) recognition by all ASEAN Member States;

   (c) agreement to be bound and to abide by the Charter;and

   (d) ability and willingness to carry out the obligations of Membership.

3. Admission shall be decided by consensus by the ASEAN Summit, upon the recommendation of the ASEAN Coordinating Council.

4. An applicant State shall be admitted to ASEAN upon signing an Instrument of Accession to the Charter.

CHAPTER IV - *ORGANS*

ARTICLE 7 -ASEAN SUMMIT

1. The ASEAN Summit shall comprise the Heads of State or Government of the Member States.

2. The ASEAN Summit shall:

   (a) be the supreme policy-making body of ASEAN;

   (b) deliberate, provide policy guidance and take decisions on key issues pertaining to the realisation of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

   (c) instruct the relevant Ministers in each of the Councils concerned to hold ad hoc inter-Ministerial meetings, and address important issues concerning ASEAN that cut across the Community Councils. Rules of procedure for such meetings shall be adopted by the ASEAN Coordinating Council;

   (d) address emergency situations affecting ASEAN by taking appropriate actions;

   (e) decide on matters referred to it under Chapters VII and VIII;

   (f) authorise the establishment and the dissolution of Sectoral Ministerial Bodies and other ASEAN institutions; and

   (g) appoint the Secretary-General of ASEAN, with the rank and status of Minister, who will serve with the confidence and at the pleasure of the Heads of State or Government upon the recommendation of the ASEAN Foreign Ministers Meeting.

3. ASEAN Summit Meetings shall be:

   (a) held twice annually, and be hosted by the Member State holding the ASEAN Chairmanship; and

   (b) convened, whenever necessary, as special or ad hoc meetings to be chaired by the Member State holding the ASEAN Chairmanship, at venues to be agreed upon by ASEAN Member States.

ARTICLE 8 - ASEAN COORDINATING COUNCIL

1. The ASEAN Coordinating Council shall comprise the ASEAN Foreign Ministers and meet at least twice a year.

2. The ASEAN Coordinating Council shall:

   (a) prepare the meetings of the ASEAN Summit;

   (b) coordinate the implementation of agreements and decisions of the ASEAN Summit;

   (c) coordinate with the ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them;

   (d) coordinate the reports of the ASEAN Community Councils to the ASEAN Summit;

   (e) consider the annual report of the Secretary-General on the work of ASEAN;

   (f) consider the report of the Secretary-General on the functions and operations of the ASEAN Secretariat and other relevant bodies;

   (g) approve the appointment and termination of the Deputy Secretaries-General upon the recommendation of the Secretary-General; and

   (h) undertake other tasks provided for in this Charter or such other functions as may be assigned by the ASEAN Summit.

3. The ASEAN Coordinating Council shall be supported by the relevant senior officials.

ARTICLE 9 - ASEAN COMMUNITY COUNCILS

1. The ASEAN Community Councils shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council.

2. Each ASEAN Community Council shall have under its purview the relevant ASEAN Sectoral Ministerial Bodies.

3. Each Member State shall designate its national representation for each ASEAN Community Council meeting.

4. In order to realise the objectives of each of the three pillars of the ASEAN Community, each ASEAN Community Council shall:

   (a) ensure the implementation of the relevant decisions of the ASEAN Summit;

   (b) coordinate the work of the different sectors under its purview, and on issues which cut across the other Community Councils; and

   (c) submit reports and recommendations to the ASEAN Summit on matters under its purview.

5. Each ASEAN Community Council shall meet at least twice a year and shall be chaired by the appropriate Minister from the Member State holding the ASEAN Chairmanship.

6. Each ASEAN Community Council shall be supported by the relevant senior officials.

ARTICLE 10 - ASEAN SECTORAL MINISTERIAL BODIES

1. ASEAN Sectoral Ministerial Bodies shall:

   (a) function in accordance with their respective established mandates;

   (b) implement the agreements and decisions of the ASEAN Summit under their respective purview;

   (c) strengthen cooperation in their respective fields in support of ASEAN integration and community building; and

   (d) submit reports and recommendations to their respective Community Councils.

2. Each ASEAN Sectoral Ministerial Body may have under its purview the relevant senior officials and subsidiary bodies to undertake its functions as contained in Annex 1. The Annex may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.

ARTICLE 11 - SECRETARY-GENERAL OF ASEAN AND ASEAN SECRETARIAT

1. The Secretary-General of ASEAN shall be appointed by the ASEAN Summit for a non-renewable term of office of five years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, capability and professional experience, and gender equality.

2. The Secretary-General shall:

   (a) carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices;

   (b) facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit;

   (c) participate in meetings of the ASEAN Summit, the ASEAN Community Councils, the ASEAN Coordinating Council, and ASEAN Sectoral Ministerial Bodies and other relevant ASEAN meetings;

   (d) present the views of ASEAN and participate in meetings with external parties in accordance with approved policy guidelines and mandate given to the Secretary-General; and

   (e) recommend the appointment and termination of the Deputy Secretaries-General to the ASEAN Coordinating Council for approval.

3. The Secretary-General shall also be the Chief Administrative Officer of ASEAN.

4. The Secretary-General shall be assisted by four Deputy Secretaries-General with the rank and status of Deputy Ministers. The Deputy Secretaries-General shall be accountable to the Secretary-General in carrying out their functions.

5. The four Deputy Secretaries-General shall be of different nationalities from the Secretary-General and shall come from four different ASEAN Member States.

6. The four Deputy Secretaries-General shall comprise:

   (a) two Deputy Secretaries-General who will serve a non-renewable term of three years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, qualifications, competence, experience and gender equality; and

   (b) two Deputy Secretaries-General who will serve a term of three years, which may be renewed for another three years. These two Deputy Secretaries-General shall be openly recruited based on merit.

7. The ASEAN Secretariat shall comprise the Secretary-General and such staff as may be required.

8. The Secretary-General and the staff shall:

   (a) uphold the highest standards of integrity, efficiency, and competence in the performance of their duties;

   (b) not seek or receive instructions from any government or external party outside of ASEAN; and

   (c) refrain from any action which might reflect on their position as ASEAN Secretariat officials responsible only to ASEAN.

9. Each ASEAN Member State undertakes to respect the exclusively ASEAN character of the responsibilities of the Secretary-General and the staff, and not to seek to influence them in the discharge of their responsibilities.

ARTICLE 12 - COMMITTEE OF PERMANENT REPRESENTATIVES TO ASEAN

1. Each ASEAN Member State shall appoint a Permanent Representative to ASEAN with the rank of Ambassador based in Jakarta.

2. The Permanent Representatives collectively constitute a Committee of Permanent Representatives, which shall:

   (a) support the work of the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

   (b) coordinate with ASEAN National Secretariats and other ASEAN Sectoral Ministerial Bodies;

   (c) liaise with the Secretary-General of ASEAN and the ASEAN Secretariat on all subjects relevant to its work;

   (d) facilitate ASEAN cooperation with external partners; and

   (e) perform such other functions as may be determined by the ASEAN Coordinating Council.

ARTICLE 13 - ASEAN NATIONAL SECRETARIATS

Each ASEAN Member State shall establish an ASEAN National Secretariat which shall:

(a) serve as the national focal point;

(b) be the repository of information on all ASEAN matters at the national level;

(c) coordinate the implementation of ASEAN decisions at the national level;

(d) coordinate and support the national preparations of ASEAN meetings;

(e) promote ASEAN identity and awareness at the national level; and

(f) contribute to ASEAN community building.

ARTICLE 14 - ASEAN HUMAN RIGHTS BODY

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights

and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

ARTICLE 15 - ASEAN FOUNDATION

1. The ASEAN Foundation shall support the Secretary-General of ASEAN and collaborate with the relevant ASEAN

   bodies to support ASEAN community building by promoting greater awareness of the ASEAN identity, people-to-people interaction, and close collaboration among the business sector, civil society, academia and other stakeholders in ASEAN.

2. The ASEAN Foundation shall be accountable to the Secretary-General of ASEAN, who shall submit its report to the ASEAN Summit through the ASEAN Coordinating Council.

CHAPTER V - *ENTITIES ASSOCIATED WITH ASEAN*

ARTICLE 16 - ENTITIES ASSOCIATED WITH ASEAN

1. ASEAN may engage with entities which support the ASEAN Charter, in particular its purposes and principles. These associated entities are listed in Annex 2.

2. Rules of procedure and criteria for engagement shall be prescribed by the Committee of Permanent Representatives upon the recommendation of the Secretary-General of ASEAN.

3. Annex 2 may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.

CHAPTER VI - *IMMUNITIES AND PRIVILEGES*

ARTICLE 17 - IMMUNITIES AND PRIVILEGES OF ASEAN

1. ASEAN shall enjoy in the territories of the Member States such immunities and privileges as are necessary for the fulfilment of its purposes.

2. The immunities and privileges shall be laid down in separate agreements between ASEAN and the host Member State.

ARTICLE 18 - IMMUNITIES AND PRIVILEGES OF THE SECRETARY-GENERAL OF ASEAN AND STAFF OF THE ASEAN SECRETARIAT

1. The Secretary-General of ASEAN and staff of the ASEAN Secretariat participating in official ASEAN activities or representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the independent exercise of their functions.

2. The immunities and privileges under this Article shall be laid down in a separate ASEAN agreement.

ARTICLE 19 - IMMUNITIES AND PRIVILEGES OF THE PERMANENT REPRESENTATIVES AND OFFICIALS ON ASEAN DUTIES

1. The Permanent Representatives of the Member States to ASEAN and officials of the Member States participating in official ASEAN activities or representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

2. The immunities and privileges of the Permanent Representatives and officials on ASEAN duties shall be governed by the 1961 Vienna Convention on Diplomatic Relations or in accordance with the national law of the ASEAN Member State concerned.

CHAPTER VII - *DECISION-MAKING*

ARTICLE 20 - CONSULTATION AND CONSENSUS

1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.

2. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made.

3. Nothing in paragraphs 1 and 2 of this Article shall affect the modes of decision-making as contained in the relevant ASEAN legal instruments.

4. In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to the ASEAN Summit for decision.

ARTICLE 21 - IMPLEMENTATION AND PROCEDURE

1. Each ASEAN Community Council shall prescribe its own rules of procedure.

2. In the implementation of economic commitments, a formula for flexible participation, including the ASEAN Minus X formula, may be applied where there is a consensus to do so.

CHAPTER VIII - *SETTLEMENT OF DISPUTES*

ARTICLE 22 - GENERAL PRINCIPLES

1. Member States shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation.

2. ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation.

ARTICLE 23 - GOOD OFFICES, CONCILIATION AND MEDIATION

1. Member States which are parties to a dispute may at any time agree to resort to good offices, conciliation or mediation in order to resolve the dispute within an agreed time limit.

2. Parties to the dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an exofficio capacity, to provide good offices, conciliation or mediation.

ARTICLE 24 - DISPUTE SETTLEMENT MECHANISMS IN SPECIFIC INSTRUMENTS

1. Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments.

2. Disputes which do not concern the interpretation or application of any ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rules of procedure.

3. Where not otherwise specifically provided, disputes which concern the interpretation or application of ASEAN economic agreements shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

ARTICLE 25 - ESTABLISHMENT OF DISPUTE SETTLEMENT MECHANISMS

Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established

for disputes which concern the interpretation or application of this Charter and other ASEAN instruments.

ARTICLE 26 - UNRESOLVED DISPUTES

When a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision.

ARTICLE 27 - COMPLIANCE

1. The Secretary-General of ASEAN, assisted by the ASEAN Secretariat or any other designated ASEAN body, shall monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, and submit a report to the ASEAN Summit.
2. Any Member State affected by non-compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, may refer the matter to the ASEAN Summit for a decision.

ARTICLE 28 -UNITED NATIONS CHARTER PROVISIONS AND OTHER RELEVANT INTERNATIONAL PROCEDURES

Unless otherwise provided for in this Charter, Member States have the right of recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations or any other international legal instruments to which the disputing Member States are parties.

CHAPTER IX - *BUDGET AND FINANCE*

ARTICLE 29 - GENERAL PRINCIPLES

1. ASEAN shall establish financial rules and procedures in accordance with international standards.
2. ASEAN shall observe sound financial management policies and practices and budgetary discipline.
3. Financial accounts shall be subject to internal and external audits.

ARTICLE 30 -OPERATIONAL BUDGET AND FINANCES OF THE ASEAN SECRETARIAT

1. The ASEAN Secretariat shall be provided with the necessary financial resources to perform its functions effectively.
2. The operational budget of the ASEAN Secretariat shall be met by ASEAN Member States through equal annual contributions which shall be remitted in a timely manner.
3. The Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.
4. The ASEAN Secretariat shall operate in accordance with the financial rules and procedures determined by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

CHAPTER X - *ADMINISTRATION AND PROCEDURE*

ARTICLE 31 - CHAIRMAN OF ASEAN

1. The Chairmanship of ASEAN shall rotate annually, based on the alphabetical order of the English names of Member States.
2. ASEAN shall have, in a calendar year, a single Chairmanship by which the Member State assuming the Chairmanship shall chair:
   (a) the ASEAN Summit and related summits;
   (b) the ASEAN Coordinating Council;
   (c) the three ASEAN Community Councils;
   (d) where appropriate, the relevant ASEAN Sectoral Ministerial Bodies and senior officials; and
   (e) the Committee of Permanent Representatives.

ARTICLE 32 - ROLE OF THE CHAIRMAN OF ASEAN

The Member State holding the Chairmanship of ASEAN shall:

(a) actively promote and enhance the interests and wellbeing of ASEAN, including efforts to build an ASEAN Community through policy initiatives, coordination, consensus and cooperation;

(b) ensure the centrality of ASEAN;

(c) ensure an effective and timely response to urgent issues or crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns;

(d) represent ASEAN in strengthening and promoting closer relations with external partners; and

(e) carry out such other tasks and functions as may be mandated.

ARTICLE 33 - DIPLOMATIC PROTOCOL AND PRACTICES

ASEAN and its Member States shall adhere to existing diplomatic protocol and practices in the conduct of all activities relating to ASEAN. Any changes shall be approved by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

ARTICLE 34 - WORKING LANGUAGE OF ASEAN

The working language of ASEAN shall be English.

CHAPTER XI - *IDENTITY AND SYMBOLS*

ARTICLE 35 - ASEAN IDENTITY

ASEAN shall promote its common ASEAN identity and a sense of belonging among its peoples in order to achieve its shared destiny, goals and values.

ARTICLE 36 - ASEAN MOTTO

The ASEAN motto shall be: "One Vision, One Identity, One Community"

ARTICLE 37 - ASEAN FLAG

The ASEAN flag shall be as shown in Annex 3.

ARTICLE 38 - ASEAN EMBLEM

The ASEAN emblem shall be as shown in Annex 4.

ARTICLE 39 - ASEAN DAY

The eighth of August shall be observed as ASEAN Day.

ARTICLE 40 - ASEAN ANTHEM

ASEAN shall have an anthem.

CHAPTER XII -*EXTERNAL RELATIONS*

ARTICLE 41 - CONDUCT OF EXTERNAL RELATIONS

1. ASEAN shall develop friendly relations and mutually beneficial dialogue, cooperation and partnerships with countries and sub-regional, regional and international organisations and institutions.

2. The external relations of ASEAN shall adhere to the purposes and principles set forth in this Charter.

3. ASEAN shall be the primary driving force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building.

4. In the conduct of external relations of ASEAN, Member States shall, on the basis of unity and solidarity, coordinate and endeavour to develop common positions and pursue joint actions.

5. The strategic policy directions of ASEAN's external relations shall be set by the ASEAN Summit upon the recommendation of the ASEAN Foreign Ministers Meeting.

6. The ASEAN Foreign Ministers Meeting shall ensure consistency and coherence in the conduct of ASEAN's external relations.

7. ASEAN may conclude agreements with countries or subregional, regional and international organisations and institutions. The procedures for concluding such agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.

ARTICLE 42 - DIALOGUE COORDINATOR

1. Member States, acting as Country Coordinators, shall take turns to take overall responsibility in coordinating and promoting the interests of ASEAN in its relations with the relevant Dialogue Partners, regional and international organisations and institutions.

2. In relations with the external partners, the Country Coordinators shall, inter alia:

   (a) represent ASEAN and enhance relations on the basis of mutual respect and equality, in conformity with ASEAN's principles;

   (b) co-chair relevant meetings between ASEAN and external partners; and

   (c) be supported by the relevant ASEAN Committees in Third Countries and International Organisations.

ARTICLE 43- ASEAN COMMITTEES IN THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

1. ASEAN Committees in Third Countries may be established in non-ASEAN countries comprising heads of diplomatic missions of ASEAN Member States. Similar Committees may be established relating to international organisations. Such Committees shall promote ASEAN's interests and identity in the host countries and international organisations.

2. The ASEAN Foreign Ministers Meeting shall determine the rules of procedure of such Committees.

ARTICLE 44 - STATUS OF EXTERNAL PARTIES

1. In conducting ASEAN's external relations, the ASEAN Foreign Ministers Meeting may confer on an external party the formal status of Dialogue Partner, Sectoral Dialogue Partner, Development Partner, Special Observer, Guest, or other status that may be established henceforth.

2. External parties may be invited to ASEAN meetings or cooperative activities without being conferred any formal status, in accordance with the rules of procedure.

ARTICLE 45 - RELATIONS WITH THE UNITED NATIONS SYSTEM AND OTHER INTERNATIONAL ORGANISATIONS AND INSTITUTIONS

1. ASEAN may seek an appropriate status with the United Nations system as well as with other sub-regional, regional, international organisations and institutions.

2. The ASEAN Coordinating Council shall decide on the participation of ASEAN in other sub-regional, regional, international organisations and institutions.

ARTICLE 46 - ACCREDITATION OF NON-ASEAN MEMBER STATES TO ASEAN

Non-ASEAN Member States and relevant inter-governmental organisations may appoint and accredit Ambassadors to ASEAN. The ASEAN Foreign Ministers Meeting shall decide on such accreditation.

CHAPTER XIII - *GENERAL AND FINAL PROVISIONS*

ARTICLE 47 - SIGNATURE, RATIFICATION, DEPOSITORY AND ENTRY INTO FORCE

1. This Charter shall be signed by all ASEAN Member States.

2. This Charter shall be subject to ratification by all ASEAN Member States in accordance with their respective internal procedures.

3. Instruments of ratification shall be deposited with the Secretary-General of ASEAN who shall promptly notify all Member States of each deposit.

4. This Charter shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 48 - AMENDMENTS

1. Any Member State may propose amendments to the Charter.

2. Proposed amendments to the Charter shall be submitted by the ASEAN Coordinating Council by consensus to the ASEAN Summit for its decision.

3. Amendments to the Charter agreed to by consensus by the ASEAN Summit shall be ratified by all Member States in accordance with Article 47.

4. An amendment shall enter into force on the thirtieth day following the date of deposit of the last instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 49 - TERMS OF REFERENCE AND RULES OF PROCEDURE

Unless otherwise provided for in this Charter, the ASEAN Coordinating Council shall determine the terms of reference and rules of procedure and shall ensure their consistency.

ARTICLE 50 - REVIEW

This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit.

ARTICLE 51 - INTERPRETATION OF THE CHARTER

1. Upon the request of any Member State, the interpretation of the Charter shall be undertaken by the ASEAN Secretariat in accordance with the rules of procedure determined by the ASEAN Coordinating Council.

2. Any dispute arising from the interpretation of the Charter shall be settled in accordance with the relevant provisions in Chapter VIII.

3. Headings and titles used throughout the Charter shall only be for the purpose of reference.

ARTICLE 52 - LEGAL CONTINUITY

1. All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect

before the entry into force of this Charter shall continue to be valid.

2. In case of inconsistency between the rights and obligations of ASEAN Member States under such instruments and this Charter, the Charter shall prevail.

ARTICLE 53 - ORIGINAL TEXT

The signed original text of this Charter in English shall be deposited with the Secretary-General of ASEAN, who shall provide a certified copy to each Member State.

ARTICLE 54 - REGISTRATION OF THE ASEAN CHARTER

This Charter shall be registered by the Secretary-General of ASEAN with the Secretariat of the United Nations, pursuant to Article 102, paragraph 1 of the Charter of the United Nations.

ARTICLE 55 - ASEAN ASSETS

The assets and funds of the Organisation shall be vested in the name of ASEAN.

Done in Singapore on the Twentieth Day of November in the Year Two Thousand and Seven, in a single original in the English language.

Notes :

TRADE UNION RIGHTS NETWORK

Education International
Trade Union Rights Manual

A practical guide for teacher organisations defending their rights in South East Asia

The EI Trade Union Rights Manual shows how teacher organisations can draw the world's attention in cases of local threats to freedom of association, collective bargaining, and workers' rights. It describes international mechanisms that unions can call on to urge their country to live up to its commitments in support of human rights and trade union rights. Focusing on issues encountered by teacher organisations in Cambodia, Indonesia, Malaysia, the Philippines and Thailand, the EI TURN manual will be of practical value across the trade union movement.

Education International
Internationale de l'Education
Internacional de la Educación

EI Head Office
5 bd du Roi Albert II
1210 Brussels, Belgium
Tel +32-2 224 06 11
Fax +32-2 224 06 06
headoffice@ei-ie.org
www.ei-ie.org

Education International is the voice of the teaching profession worldwide. A global federation of 401 member unions in 172 countries and territories, it represents 30 million teachers and education workers from pre-school to university.

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