

ASSOCIATION - FREEDOM OF - TRADE UNIONS

IV. CONCLUDING OBSERVATIONS, CONTINUED

CERD

- Bahrain, CERD, A/60/18 (2005) 22 at para. 75.

75. The Committee appreciates the establishment of trade unions in 2002 for the first time in Bahrain as well as of cultural associations composed of foreigners.

ICCPR

- El Salvador, ICCPR, A/58/40 vol. I (2003) 61 at para. 84(20).

(20) The Committee notes with concern the statements by the delegation admitting restrictions on the right to form trade unions, while remarking that such restrictions are not applied systematically.

The State party should guarantee everyone the right to form and join trade unions for the protection of their interests, in conformity with article 22 of the Covenant.

- Colombia, ICCPR, A/59/40 vol. I (2004) 35 at para. 67(11).

(11) The Committee is concerned about the fact that a significant number of arbitrary detentions, abductions, forced disappearances, cases of torture, extrajudicial executions and murders continue to occur in the State party. The Committee is also concerned that such practices as the arrest of election candidates continue, and that murders of legislators dating from earlier years remain unpunished. Human rights defenders, political and trade union leaders, judges and journalists continue to be targets of such actions. The abduction of presidential candidate Ingrid Betancourt in February 2002 continues to be of concern to the Committee, as do the other abductions. The Committee is also disturbed about the participation of agents of the State party in the commission of such acts, and the apparent impunity enjoyed by their perpetrators.

The State party should take immediate and effective steps to investigate these incidents, punish and dismiss those found responsible and compensate the victims, so as to ensure compliance with the guarantees set forth in articles 2 (3), 6, 7 and 9 of the Covenant.

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- Lithuania, ICCPR, A/59/40 vol. I (2004) 52 at para. 71(18).

(18) The Committee is concerned that the new Labour Code is too restrictive in providing, *inter alia*, for the prohibition of strikes in services that cannot be considered as essential and requiring a two-thirds majority to call a strike, which may amount to a violation of article 22.

The State party should make the necessary amendments to the Labour Code to ensure the protection of the rights guaranteed under article 22 of the Covenant.

- Mauritius, ICCPR, A/60/40 vol. I (2005) 52 at para. 88(19).

(19) The Committee notes that the Industrial Relations Act, which is still in force, places restrictions on trade union rights that are at variance with article 22 of the Covenant.

The State party should ensure that the ongoing review of that legislation leads to full respect for the provisions of article 22 of the Covenant.

ICESCR

- Colombia, ICESCR, E/2002/22 (2001) 110 at paras. 766 and 787.

766. The Committee is deeply concerned about the personal security of workers and trade union representatives, both of whom are at high risk of physical violence, including murder. The Committee is appalled to note that more than 1,500 trade union members were killed between 1991 and 2001, often merely because they belonged to a trade union, and that others were threatened or forced to become displaced. The Committee is also concerned that many workers cannot exercise their rights to join a trade union, to participate in collective bargaining and to strike.

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787. The Committee urges the State party to take effective measures to provide for the personal security of trade union representatives, to try and punish the persons responsible for murdering trade union members and to provide for appropriate compensation for the victims' families. The Committee also calls upon the State party to take all necessary steps, including legislative and administrative ones, to ensure that all workers can exercise their trade union rights.

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- Algeria, ICESCR, E/2002/22 (2001) 116 at paras. 819, 833 and 835.

819. The Committee notes with concern that an authorization is required from the Ministry of Labour and Social Protection for the establishment of new independent trade unions outside the recognized General Union of Algerian workers.

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833. The Committee recommends that the State party withdraw the interpretative declarations on articles 8 and 13 of the Covenant.

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835. The Committee urges the State party to eliminate the various obstacles hampering the establishment of new and independent trade unions.

- France, ICESCR, E/2002/22 (2001) 121 at paras. 867 and 878.

867. The Committee is concerned that the criteria of "representativity" for participation of trade unions in certain processes such as collective bargaining may tend to exclude smaller and newer trade unions in favour of the larger and more established ones and therefore may jeopardize the right of all trade unions to function freely in accordance with article 8 (c), paragraph 1, of the Covenant.

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878. The Committee recommends that the State party ensure that the criteria of participation and, in particular, the condition of "representativity" do not impede the right of trade unions to participate freely in processes such as collective bargaining, irrespective of their size, in accordance with article 8 (c), paragraph 1, of the Covenant.

- Croatia, ICESCR, E/2002/22 (2001) 125 at paras. 899 and 913.

899. The Committee notes with concern that the legal criteria for establishing trade unions are unduly narrow and do not conform to article 8 of the Covenant. It is also concerned that the required minimum number of employees necessary for the formation of a trade union is too restrictive.

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913. The Committee strongly recommends that the State party review its criteria for establishing trade unions in accordance with article 8 of the Covenant and with the appropriate ILO conventions to which it is a party.

- Ireland, ICESCR, E/2003/22 (2002) 29 at paras. 132 and 143.

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132. The Committee is concerned about the continued impediments imposed by the State party with respect to trade unions obtaining collective bargaining licences and the possible risk of dismissal for members of non-authorized trade unions in the event of strike action, despite the Committee's observation in 1999.^{13/}

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143. The Committee recommends that the State party adequately protect in law and practice trade unions' rights to conduct collective bargaining.

Notes

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^{13/} [*Official Records of the Economic and Social Council, 2000, Supplement No. 2 (E/2000/22-E/C.12/1999/11 and Corr.1), chap. V*], para. 141.

- Benin, ICESCR, E/2003/22 (2002) 34 at paras. 170 and 189.

170. The Committee is concerned at the continuing restrictions on the right to strike, particularly those imposed by Ordinance No. 69-14 of 19 June 1969 concerning the exercise of the right to strike.

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189. The Committee strongly urges the State party to repeal Ordinance No. 69-14 of 19 June 1969 concerning the exercise of the right to strike, and recommends the State party to restrict bans on the right to strike to essential services, in conformity with the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and, in the case of civil servants, to those responsible for keeping order.

- United Kingdom of Great Britain and Northern Ireland, ICESCR, E/2003/22 (2002) 40 at paras. 16 and 34.

219. The Committee reiterates its concern that the failure to incorporate the right to strike in domestic law constitutes a breach of article 8 of the Covenant.^{20/}

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237. The Committee reiterates its recommendations made in 1997^{24/} that the right to strike be incorporated in legislation and that strike action no longer entail the loss of employment.

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^{20/} [*Official Records of the Economic and Social Council, 1998, Supplement No. 2 (E/1998/22-E/C.12/1997/10) chap. V*], para. 294.

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24/ [Official Records of the Economic and Social Council, 1998, Supplement No. 2 (E/1998/22-E/C.12/1997/10) chap. V], para. 306.

- Trinidad and Tobago, ICESCR, E/2003/22 (2002) 45 at paras. 268 and 291.

268. The Committee is concerned at the range of categories of workers denied the right to strike with legal justification. The Committee also notes with concern the existence of legislation that greatly restricts the recognition of trade unions in collective bargaining with employers.

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291. The Committee recommends that legislation preventing workers from striking be reviewed in the light of the State party's international commitments and that the requirements for trade unions membership be lowered, in order to facilitate more constructive and meaningful dialogue between workers and employers. The Committee also urges the State party to ensure that mechanisms for monitoring conditions at work are provided with sufficient human and financial resources to enable them to protect the rights of workers effectively.

- Slovakia, ICESCR, E/2003/22 (2002) 50 at paras. 319 and 332.

319. The Committee notes with concern that the legislative measures in place concerning the right to strike are too restrictive, given that no strikes have actually been staged.

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332. The Committee recommends that the State party revise its legislation on the right to strike, in line with article 8 of the Covenant and the relevant Conventions of the ILO.

- Poland, ICESCR, E/2003/22 (2002) 54 at paras. 363 and 385.

363. The Committee notes with concern that the legislation of the State party still contains restrictions on civil servants' right to join trade unions and to strike.

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385. The Committee recommends that the legislation on civil service be amended with a view to lifting the restrictions imposed on civil servants' right to join trade unions and on their right to strike, in conformity with the comments made in 2000 by the ILO Committee of Experts on the Application of Conventions and Recommendations on Convention No. 87 (1948) concerning freedom of association and protection of the right to organize, which is published in the thirtieth report of the ILO.

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- Solomon Islands, ICESCR, E/2003/22 (2002) 65 at paras. 456 and 469.

456. The Committee is concerned that the State party has not ratified most of the main ILO conventions relating to economic, social and cultural rights.

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469. The Committee recommends that the State party consider ratifying the main ILO Conventions relating to economic, social and cultural rights, such as Convention No. 87 (1948) concerning freedom of association and protection of the right to organize, No. 98 (1949) concerning the right to organize and collective bargaining and No. 182 (1999) concerning the prohibition and immediate action for the worst forms of child labour.

- Estonia, ICESCR, E/2003/22 (2002) 68 at paras. 490, 499 and 522.

490. The Committee welcomes the adoption of the Trade Union Act of 14 June 2000, which formalized free and independent trade unions in Estonia.

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499. The Committee expresses its concern that the State party's legislation on the right to strike for civil servants contains restrictions which are not in conformity with international norms.

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522. The Committee also recommends that the State party undertake measures to amend the Public Service Act, with a view to lifting the restrictions imposed on civil servants' right to strike, in conformity with ILO norms.

- Brazil, ICESCR, E/2004/22 (2003) 28 at paras. 132 and 156.

132. The Committee notes with concern the killing of landless farmers and the members of trade unions defending them and the impunity enjoyed by those responsible for committing these crimes.

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156. The Committee urges the State party to take legal action against those who are responsible for committing crimes against landless farmers and members of trade unions and to take effective preventive measures to ensure protection to all farmers and members of trade unions.

- New Zealand, ICESCR, E/2004/22 (2003) 35 at para. 180.

180. The Committee welcomes the Employment Relations Act 2000 which facilitates

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collective bargaining, strengthens the role of trade unions and introduces measures of protection against harassment and discrimination in the workplace. The Committee also welcomes the State party's indication of the imminent ratification of ILO Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

- Israel, ICESCR, E/2004/22 (2003) 42 at paras. 265 and 281.

265. The Committee is concerned about the fact that it is extremely difficult for Palestinians living in the occupied territories and working in Israel to join Israeli trade unions or to establish their own trade unions in Israel.

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281. The Committee recommends that the State party take steps to ensure that all workers working in Israel can exercise their trade union rights, in accordance with article 8 of the Covenant.

- Russian Federation, ICESCR, E/2004/22 (2003) 64 at paras. 463 and 491.

463. The Committee is concerned that the Labour Code may impose undue restrictions on the right to strike, by requiring a quorum of two thirds of the total number of workers and the agreement of at least half of the workers present at the meeting to call a strike.

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491. The Committee encourages the State party to revise section 410 of the Labour Code so as to lower the quorum required for a strike ballot.

- Democratic People's Republic of Korea, ICESCR, E/2004/22 (2003) 71 at paras. 525 and 545.

525. The Committee notes with concern that the legislation of the Democratic People's Republic of Korea establishes a single trade-union structure, which is controlled by the ruling party. It notes also that the exercise of the right to form trade unions is dependent upon an authorization given by the State security organs. Furthermore, the Committee notes with concern that domestic legislation does not recognize the right to strike.

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545. The Committee recommends that the State party review its domestic legislation to bring it in line with the provisions of article 8 of the Covenant with regard to trade union rights, including the right to form independent trade unions and the right to strike.

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- Lithuania, ICESCR, E/2005/22 (2004) 18 at para. 81.

81. While noting that the Labour Code of January 2003 has addressed some of the weaknesses of previous legislation regulating the right to strike, the Committee is concerned that the definition of “essential services” for which strikes are prohibited is too broad.
- Kuwait, ICESCR, E/2005/22 (2004) 29 at paras. 191 and 211.

191. The Committee notes with concern the limitations with regard to the right to join trade unions for non-national workers, and about the restrictive legal limitations on the right to strike.

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211. The Committee strongly recommends that the State party liberalize the limitations on the right to strike and extend the right to join trade unions to all workers, including migrant workers, in line with article 8 of the Covenant.
- Ecuador, ICESCR, E/2005/22 (2004) 39 at paras. 285 and 308.

285. The Committee is concerned that the Labour Code in the State party limits, to a required minimum of 30 workers, the right to set up a trade union section or a staff association designed to create a labour union section. The Committee is deeply concerned about the wide extent of temporary contracts and subcontracting, and of the obstacles these phenomena have created to the exercise of workers’ trade union rights. The Committee also regrets the limitations to the right to strike contained in the Ecuadorian Labour Code.

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308. The Committee urges the State party to take immediate legislative or other measures necessary to ensure that all workers, including the subcontracted and temporary ones, are able to exercise their trade union rights.
- Malta, ICESCR, E/2005/22 (2004) 45 at paras. 346 and 364.

346. The Committee is concerned that the Industrial Relations Act unduly restricts the right to strike by providing for a compulsory arbitration procedure in industrial labour disputes.

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364. The Committee encourages the State party to review the legislation on industrial labour disputes with a view to removing the compulsory arbitration procedure, in conformity with the observations made in 2002 by the ILO Committee of Experts on the Application of Conventions and Recommendations, with reference to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

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- Italy, ICESCR, E/2005/22 (2004) 54 at para. 450.

450. The Committee recommends that the bill on the judicial regulations, which the State party contemplates modifying, if adopted, should ensure that the right of everyone, including judges, to form and join trade unions and to take part in trade unions activities is respected, in conformity with article 8, paragraph 1 (a), of the Covenant.

- Azerbaijan, ICESCR, E/2005/22 (2004) 59 at paras. 486 and 512.

486. The Committee regrets the extensive limitations imposed on the right to strike by the Labour Code of the State party, exceeding by far the ILO definition of essential services. The Committee also expresses concern about section 188-3 of the Criminal Code which punishes, including with imprisonment, collective action by trade unions when such action disrupts public transport, and about section 6, Paragraph 1, of Act No. 792 on trade unions which prohibits all types of political activity by trade unions.

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512. The Committee recommends that the State party take appropriate measures to amend the Labour Code and liberalize the existing limitations on the right to strike. The Committee further recommends that the State party amend or repeal section 188-3 of the Criminal Code and section 6, paragraph 1, of Act No. 792 on trade unions, to ensure that the right to collective bargaining and the right to join trade unions are duly respected, in accordance with article 8 of the Covenant.

- Chile, ICESCR, E/2005/22 (2004) 67 at paras. 545 and 568.

545. The Committee notes with concern that section 381 of the Labour Code provides for the possibility of the replacement of striking workers. Furthermore, the Committee is concerned that essential services in which strikes may be prohibited are too broadly defined in section 384.

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568. The Committee encourages the State party to ensure that judicial authorities and members of political parties are not restricted in their trade union rights under article 8 of the Covenant. The State party is also encouraged to review section 381 of the Labour Code, which provides for the possibility of the replacement of striking workers, and section 384, and gives a too broad definition of essential services in which strikes may be prohibited.

- Zambia, ICESCR, E/2006/22 (2005) 19 at paras. 88, 89 and 111.

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88. The Committee is...concerned about the restriction of the right to form trade unions, particularly the prohibition on forming more than one trade union per industry.

89. The Committee is concerned about the limits on the right to strike and, in particular, the procedural requirements which make it difficult to effectively exercise the legal right to strike in the State party. The Committee is equally concerned about the broad definition of the concept of “essential services”, which exceeds the ILO definition by including fire fighting, sewerage and certain mining operations.

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111. The Committee recommends that the State party take appropriate legislative measures to enable workers to form trade unions, ensure the effective exercise of the right to strike and limit the scope of its definition of “essential services”.

- China, ICESCR, E/2006/22 (2005) 25 at paras. 155 and 184.

155. The Committee regrets the State party’s prohibition of the right to organize and join independent trade unions in the State party.

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184. The Committee urges the State party to amend the Trade Union Act to allow workers to form independent trade unions outside the structure of the All China Federation of Trade Unions. Further, the Committee strongly urges the State party to consider withdrawing its declaration on article 8, paragraph 1, of the Covenant.

- Serbia and Montenegro, ICESCR, E/2006/22 (2005) 41 at paras. 278, 279, 305 and 306.

278. The Committee notes with concern that only a small number of workers are unionized in the private sector and that the registration of trade unions is subject to strict requirements, including authorization by the Minister of the Interior, who has the power to dissolve trade unions.

279. The Committee is equally concerned about the broad definition of the concept of “essential services”, including professions such as teachers and postal workers. The Committee is also concerned that the right to strike can only be exercised if strict conditions are met, and that participation

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305. The Committee recommends that the State party remove from its legislation any unjustified registration requirements and grounds for dissolving trade unions.

306. The Committee requests the State party to limit the scope of its definition of “essential

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services” and to ensure that the exercise of the right to strike does not lead to the suspension of social security rights.

CEDAW

- Mexico, CEDAW, A/57/38 part III (2002) 205 at paras. 443 and 444.

443. The Committee expresses its concern about the small percentage of women in high-level posts in all activities, namely political, legislative, trade union and educational.

444. The Committee recommends the adoption of strategies for increasing the number of women in decision-making posts at all levels, particularly in the municipalities, by taking temporary special measures as specified in article 4, paragraph 1, of the Convention; it recommends further that the State party strengthen its efforts to promote women to management positions in the public and private sectors through special training programmes and sensitivity campaigns stressing the importance of women’s participation in decision-making at all levels.

- Argentina, CEDAW, A/59/38 part II (2004) 155 at para. 368.

368. The Committee commends the State party for its measures to increase the participation of women in public life in the renewal process of the country...It...welcomes the fact that, further to the adoption of National Law No. 25.674 and Decree No. 514/2003, known as the Law on Trade Union Quotas, a woman is now part of the presiding body of the confederation of labour.