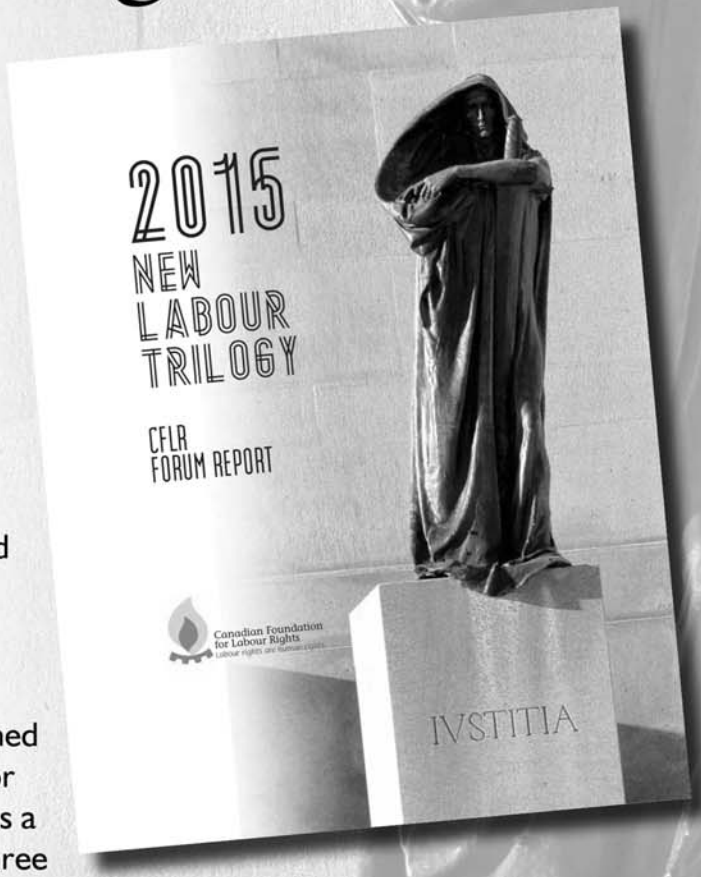
INTERNATIONAL Volume 23 Issue 3 2016

union rights

FOCUS ON Turkey

- IR legislation 'hostile to unions'
- Wildcat strikes
- Syrian refugees in Turkey

Canada ushers in a new era of workers' rights



In January 2015, the Supreme Court of Canada issued three important decisions affirming the constitutional rights of Canadian workers to join a union of their own choosing, bargain collectively and take strike action against their employer.

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union rights

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- Centro Internacional para los Derechos Sindicales
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Editorial

In mid 2016, Arzu Çerkezoğlu, General Secretary of Turkish confederation DISK, was arrested and briefly detained at Istanbul airport on 17 June 2016, for allegedly insulting President Erdoğan in a speech she made on 31 August last year. Although Çerkezoğlu has since been released, her arrest showed that the situation for trade unionists remained very difficult in Turkey. The KESK trade union confederation recently told ICTUR that it had faced a vast catalogue of threats and intimidation in 2016 and called for ICTUR to do more to investigate the situation in Turkey. We discussed producing a special edition of IUR journal, focussing on Turkey, and then, on 15 July, the world watched as an attempted military coup d'état erupted, seemingly from nowhere, rocking the foundations of democracy in Turkey, only to be thwarted and put down by the following morning. The coup was not the first in the country's recent history, but it had enjoyed nearly 20 years of stability and freedom from military intervention. For this edition of IUR we invited academics and representatives of several trade union centres to discuss the situation (those trade unionists who accepted our invitation happen to be both affiliated with DISK trade unions).

A major concern for Turkey's trade unionists has long been around civil liberties. Under military rule most unions were banned. In 1980 a leader of the left-wing DISK union was assassinated. In 1999 an official from a DISK-affiliated union was killed in police detention. In recent years there have been a series of high profile cases involving the policing of labour disputes and the criminal prosecution of trade unionists. ICTUR has sent a number of independent legal observers to these trials, all of whom have produced reports critical of the proceedings. Some of the reports produced by these observers are available on the ICTUR website (*www.ictur.org/Trial.htm*). Almost every year for decades now trade unionists have been banned from demonstrating on May Day in the public Taksim Square. Each year sees conflict between police and demonstrators. Strikes also frequently attract a vigorous police presence and are sometimes violently repressed, as Eyüp Ozer reports.

The legislation also establishes a framework that perpetuates systematic interference in the administration, establishment, and governance of trade unions. By far the most extensive legislative interference in freedom of association surrounds the regulation of strikes. Precariousness, repression of unions and dismissals of organisers are serious problems, as are the 'double threshold' laws requiring unions to organise whole tracts of entire industrial sectors before they can enjoy bargaining rights at even a single local company. Eyüp Ozer looks at how auto workers have sought to work outside the industrial relations legal framework in order to press their demands. Aziz Çelik and Mahsun Turan examine the industrial relations system and explain that recent changes to these laws have not addressed fundamental problems. Çelik also reports on the closure of a number of recently-formed, relatively minor, trade unions, and the dismissal of tens of thousands of workers.

Into this complex situation, as Bilge Pinar Yenigün reminds us, there has recently arrived a huge influx of Syrian refugees, following the 'open door' policy for those fleeing the war in neighbouring Syria. Yenigün reports on the situation for refugees in terms of their involvement in work and observes that both formal legal and practical difficulties remain a barrier to the involvement of the refugees with Turkey's trade unions.

Daniel Blackburn and Ciaran Cross, *Editors.*

Next issue of IUR

Articles between 850 and 1,900 words should be sent by email (mail@ictur.org) and accompanied by a photograph and short biographical note of the author. Photographs **15 November** if they are to be considered for publication in the next issue of IUR.

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Trade Union Rights in Turkey: A Gloomy Picture

Trade union rights have always been at the very bottom of the rights and freedoms agenda in Turkey – not just for the last years but during the entire history of the republic. In the post-2002 period of single party rule by the Adalet ve Kalkınma Partisi (AKP, English: Justice and Development Party), trade union rights were seen to suffer a considerable meltdown. Currently trade union density in Turkey is much lower than in the decade following the military coup of September 12th, 1980. Due to higher thresholds for entering into collective bargaining system, a very low number of workers benefit from collective agreements or are able to engage in collective action, including strikes. Union members are insufficiently protected from dismissal on the grounds of their trade union activities. Moreover the right to strike has been abolished *de facto*.

Trade union legislation undermines trade union rights

Turkey's industrial relations legislation as a whole has not encouraged trade unionism – indeed, to some degree it has been hostile to the unions. There were no remarkable changes in trade union legislation during the AKP rule and the legislation of the coup d'état of 1980 went untouched. In 2010, some amendments were made to the provisions of the Constitution related to trade union rights. However, these changes, contrary to some claims, are not capable of creating meaningful expansion of trade union rights. The changes cannot satisfy the criticisms of the European Court of Human Rights, along with the ILO's and the EU's demands.

Turkey's new Law on Trade Unions and Collective Agreements (No. 6356) was enacted in December 2012. Even though the new law introduces some limited improvements especially as far as the founding of unions, as concerns the internal functioning of unions and union membership (within the context of freedom of association), it maintains, and in some areas even increases limitations, especially those concerning the rights to collective agreements and to strike.

The Act did amend the double threshold system – 10 percent all of workers in a particular industry and more than 50 percent at in individual firms/workplace must join a union for it to be recognised – that had inhibited unionisation for 30 years. At first, the industry threshold was reduced to 3 percent for independent unions and 1 percent for unions affiliated with confederations under the umbrella of the Economic and Social Council (ESC). In 2015 the Constitutional Court decreed that all unions shall be subject to the 1 percent industry threshold. The law continues to maintain the workplace threshold of more than 50 percent where a company is composed of a single workplace, while lowering the threshold to 40 percent for enterprises composed of multiple workplaces, for example, banks. These high workplace and enterprise thresholds hamper union organisation, the effective representation of workers and the exercise of their right to bargain collectively.

There are several unions and confederations for civil servants in Turkey but these have been left out of the analysis here for several reasons. They are regulated differently from the workers' unions and differ markedly from them in terms of rights. It is still forbidden for some public officials to be unionised, and no civil servants have rights to genuinely free collective bargaining. They must submit to compulsory arbitration and are forbidden to strike. Moreover, while workers (in both the private and the public sector) work under individual employment contract, civil servants are subject to administrative law. Civil servants' unions in Turkey work as associations rather than trade unions.

The structure of trade unionism in Turkey

Industry based unionism or the principle of 'industrial unionism' has been adopted in Turkey. Workplace and profession-based unions, along with regional unions and federations were not allowed. Instead, Turkey adopted a uniform, centralised industrial unionism by force of law. The new trade union law No. 6356 also limits the formation of unions to industry level and prohibits the formation of workplace, enterprise or occupation-based unions. Nor does it allow union federations, city- or region-based unions, or unions representing retired people, farmers or the unemployed.

The trade unions in Turkey are organised mainly under three confederations or umbrella organisations. The leading one is the Confederation of Turkish Trade Unions (Türk-İş), the other two are the Progressive Trade Unions Confederation of Turkey (DİSK), and the Righteous Worker Unions Confederation (Hak-İş). Türk-İş, which has adopted

Turkey's industrial relations legislation as a whole has not encouraged trade unionism – indeed, to some degree it has been hostile to the unions

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the principles of 'bread-and-butter unionism' and 'non-partisanship politics' characteristic of the US trade unionism, and is generally aligned with centre-right political parties, is active mainly in state owned enterprises. DİSK, adopted class-based unionism, is more closely aligned with left politics and is most prominent in the private sector. Hak-İş was founded by the pro-Islamist National Salvation Party (the precursor of the AKP) and is known to have formed close ties to the ruling party, AKP, since the 2000s. In 2002 the respective shares of Türk-İş, DİSK and Hak-İş in total union membership were 71.5, 14 and 11 percent, by 2015 the shares of Türk-İş and DİSK had fallen to 59 and 10 percent, while that of Hak-İş had shot up to 27 percent.

There are also some small independent unions outside the three big confederations. But their share of trade union membership is very low and they are ineffective in trade union activities in Turkey. For instance, the Aksiyon-İş confederation, which was closed down following the failed coup of 15 July 2016, accounted for only 1.9 percent of total trade union density.

The 'suspension' of any strike under the current Turkish labour legislation usually means an indefinite ban in practice, because the law imposes a compulsory arbitration mechanism

Trade union density

It is impossible to find reliable data for union density in Turkey before 2013. For this reason, basing the calculation on the number of workers covered by collective agreements may be more reliable for this period. The estimated union density was 25 percent at the end of the 1980s and the beginning of the 1990s had declined to 10 to 12 percent in the early 2000s and to 6 to 7 percent in the 2010s. The union density in Turkey in the 2000s was even lower than in the period following the coup of 1980. In fact, Turkey has the lowest and fastest dropping union density of all the OECD countries.

Following the long period of fictive official statistics, the MoLSS (Ministry of Labour and Social Security), finally in January 2013, changed its method of calculating the number of union membership. The fictive memberships in the Ministry's system have been removed and the actual memberships are calculated on the basis of the records of the country's Social Security Institution. The revised official statistics show that union density for Turkey is 10.65 percent in 2015. However, there is a weak spot in these statistics — they do not take informal workers into account, even though this method is accepted by the International Labour Organisation (ILO). The method accepted by the ILO requires that all employees, regardless of their employment status, must be taken into account when calculating union density (ILO, *World Labour Report 1997-1998*). According to the calculation based on the ILO method, trade union density based on the new system varies from 7.3 to 9.4 percent between 2013-2016.

But these figures do not reflect the actual situation related to unionisation due to public sector share and union members out of the CBAs coverage. Trade union density in the private sector is about 4 percent.

Collective bargaining coverage

In contrast to its centralised union structure, Turkey has a decentralised collective bargaining system. Moreover, only trade unions are eligible to make collective agreements, not confederations. This weakens the influence of unions over collective bargaining. The scope of collective bargaining is the most critical aspect of trade union rights. Indeed, the extent of collective bargaining may be seen as the key indicator of trade union rights. In the EU countries, because of widespread CBA extension mechanisms, the number of workers covered by collective agreements is very high.

In Turkey, by contrast, since there is no effective collective bargaining extension mechanism, the number of workers covered by CBAs is much lower than the number of unionised workers. MoLSS statistics indicate that while the total number of unionised workers by the end of 2015 was some 1,500,000, the number of workers under collective agreements was about 1,000,000. Thus, more than 30 percent of unionised workers fall outside the scope of collective agreements. By the end of 2015, the coverage of CBAs stood at just 6–7 percent, held down by the lack of extension mechanisms, the cumbersome competency system, and the lack of industry-level and national-level negotiations. Unsurprisingly, the coverage of CBAs in the private sector is lower than in the public sector. According to calculations based on MoLSS data, the number of workers covered by CBAs in the private sector in 2015 was around 600,000; that equated to 4 percent of the total number of private sector workers.

Right to strike under threat

The most restrictive provisions of Law No. 6356 concern the right to strike. The law designates as illegal all strikes except those that arise from disputes during collective bargaining ('interest strikes'). Thus slowdowns, solidarity strikes, sympathy strikes and general strikes are prohibited and subject to heavy penalties, including large fines and the dismissal without compensation of participating workers. The law limits even 'interest strikes' to specified durations, and stipulates that employers be notified ahead of time and that strike action take place within 60 days of the notification.

In recent years, several strikes in glass, metal, tire and mining industries were banned by the government on the grounds of 'national security' for 60 days. According to the Article 63 of the act of 6356 'A lawful strike or lock-out that has been called or commenced may be suspended by the Council of Ministers for 60 days with a decree if it is prejudicial to public health or national security. The suspension shall come into force on the date of publication of the decree. If an agreement is not reached before the expiry date of the suspension period, the High Board of Arbitration settles the dispute upon the application of the either parties within six working days. Otherwise, the competence of the workers' union shall be void'.

Thus 'suspension' of any strike under the current Turkish labour legislation usually means an indefinite ban in practice, because the law imposes compulsory arbitration mechanism at the end of the sixty day-suspension, unless the parties have either come to an agreement or voluntarily sought arbitration. The provision relating suspension of the labour legislation (Article 63) has been misused systematically by the Government of Turkey to undermine the freedom of association and the right to strike that are protected by the ILO Conventions.

Article 63 is not only applied to the essential services the interruption of which would endanger the life, safety and health of the whole or part of the population (as made clear in the decisions of ILO supervisory bodies), but also to any ordinary strike in any service or industry such as rubber, metal and glass. As is shown in the table, 'suspension of strike' in Turkey is not an exceptional situation but a routine habit of governments. These kinds of suspensions mean a clear violation of the right to strike, which is protected by C87. As shown in the table, in the years since 2000 several major strikes were suspended on the ground of national security or public health. Table 2 shows some examples.

In all decrees of suspension, the government indicated no reason why a strike in glass, rubber, and metal and mining industry might be considered as harmful to public health and national security. The repeated suspension of strikes so as to prevent strikes in sectors such as glass, metal and rubber, which do not appear to have any direct connection to national security or public health, might amount to a systematic violation of the right to strike. There is no reasonable connection between the glass industry and the Turkey's national security.

In this respect, despite the promises made by the government for many years, there is no meaningful improvement to amend the current labour legislation especially in terms of the right to strike. In 2012, Turkish Parliament adopted a new trade union act (No. 6356). In the new act, the strike suspension mechanism was not amended, and the same provisions as in the old act (No. 2822) were incorporated.

Table 2: Strikes prohibited by the government on the grounds of national security & public health

Date	On what grounds	Industry or Company concerning	Trade Union concerning
5 May 2000	National security	Rubber	Lastik-İş
8 June 2001	National Security	Glass/Sisecam	Kristal-İs
17 May 2002	National Security	Rubber	Lastik-İş
25 June 2003	National Security	Rubber	Petrol-İs
8 December 2003	National Security	Glass/Sisecam	Kristal-Is
14 February 2004	National Security and Public Health	Glass/Sisecam	Kristal-Is
21 March 2004	National Security	Rubber	Lastik-Is
1 September 2005	National Security	Mining	Maden-İş
27 June 2014	National Security and Public Health	Glass/Sisecam	Kristal-Is
30 January 2015	National Security	Metal/Automotive	Birlesik Metal-Is

Source: The Official Journal of the Government of Turkey

Failed coup d'état and trade unions

After the 15 July 2016 coup attempt, two trade union confederations– Aksiyon-İş (for workers) and Cihan-Sen (for public servants) – and their 19 affiliated unions were shut down on grounds of allegedly supporting the coup, according to government statements following the state of emergency. All members and leaders of two confederations and the affiliated 19 unions were dismissed. These two confederations had some fifty thousand members, both from workers and public servants.

The organisations are widely perceived to have been founded by supporters of the Gülen movement – a religious and clandestine sect (cult), which is the prime suspect of the attempted coup. Turkish media have often identified the two confederations and affiliated unions with the Gülen movement, which has also established a large number of other institutions in Turkey, including media outlets, schools and employers' organisations. The terms 'aksiyon' and 'cihan' also were used by the Gülen movement as a trademark for media (weekly journal and news agency). Not only trade unions but all other organisations of the Gülen movement were shut down following the coup attempt.

The unions belonging to the Gülen movement are regarded as not independent and democratic unions but some sort of pseudo and inefficient organisations in Turkey's trade union movement. Even so, shutting down unions by government violates basic trade unions rights. The shutting down of these trade unions seems to be an excessive measure. The decision to shut them down should be taken by independent courts and not the government. Not only members of Aksiyon-İş and Cihan-Sen but also thousands of academics, teachers and public servants affiliated with other unions (mostly Eğitim Sen, a public education employees' union) were also dismissed or suspended without any court decision. Measures against the failed coup seem to exceed the rule of law principle and violate both the freedom of association and the principle of presumption of innocence. The struggle against the coup attempt should be carried out within the context of the rule of law.

After the July coup attempt, two trade union confederations – Aksiyon-İş and Cihan-Sen –were shut down and thousands of members dismissed. Thousands of academics and teachers affiliated with Eğitim-Sen were also dismissed and suspended

Conclusion

Contrary to all expectations there has been no meaningful progress in the area of the industrial relations and trade union legislation during the EU accession process of Turkey. During its rule the AKP government promised everything but delivered little in the area of trade union rights. In the area of trade union rights there is no meaningful step towards to meet ILO and EU standards. There has been no progress regarding the transposition of the ILO and EU acquis. As illustrated above, a dramatic decline in trade union density and CBA coverage, as well as the shortage of the mechanisms for social dialogue, are the main indicators of the gloomy trend in trade unionism in Turkey.

Wildcat strikes in auto sector of Turkey

Turkey is the major exporter of cars to Europe but workers in the sector have been frustrated by wages and conditions negotiated by the established TURK METAL union

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In last 10 years Turkey's auto industry grow exponentially just in 2015 Turkey exported 843, 000 cars just to EU which makes to Turkey the biggest car exporter to EU, this number is even more than sum of Japan and South Korea's car exports to EU. Country hosts production plants for almost all the multinational auto producers including Ford, FIAT, Toyota, Renault, Hyundai, Mercedes, MAN, Honda etc. Between 2009-2014, employment in auto assembly in Turkey grew 350 percent. Europe remains the largest market, despite declining demand due to the crisis. FIAT, which has been closing units in Italy, has just announced that they will export 175,000 FIAT Doblo cars from Turkey to the US between now and 2021. The Turkish Government has a policy to attract foreign investment by keeping labour cheap by imposing major restrictions on right to organise. For some time now, Erdoğan, Turkey's President (and former Prime Minister), has been promoting the dream of turning Turkey into the 'China of Europe'. In April 2015, when Economy Minister Zafer Çağlayan met with foreign investors in London he declared with pride that 'labour costs in Turkey are even lower than in China'.

The minimum wage in Turkey is around 400 Euros per month; many workers earn only the minimum, even the skilled ones, and Turkey has the highest death rate from workplace accidents in Europe, and ranks third in the world. 1700 workers died in workplace accidents in 2015 alone. The vast majority of the Turkish workforce is unorganised; only around 5 percent of workers are covered by a collective bargaining agreement. This is the lowest unionisation rate among the OECD countries. And the majority of the unionised workers are members of unions hat were not chosen by the workers but got 'assigned' to them. The current system creates discontent among the workers. From time to time, this discontent turns into spontaneous uprisings which are mostly supressed by police violence and dismissals.

The protests at Renault

During the collective bargaining negotiations of 2012 1500 Renault workers on one shift stopped production and did not leave the factory. In order to prevent these workers from meeting up with other workers on the next shift, Renault management cancelled that shift. The next day, they dismissed 35 workers in order to put a stop to these workplace actions. After the signature of collective bargaining agreement which covers the three year term (2014-2017) which covers majority of the workers in auto industry in Turkey, there was a general discontent among the workers.

The main opposition to the agreement was because of its duration, until that time, all the collective bargaining agreements signed in the metal industry were covering two years. Turkey has high inflation rates and a rather unstable macroeconomic situation. For a majority of the workers, three years is too long a time to predict economic developments. In every previous collective bargaining agreement, it was possible to get some adjustment beside the rate of inflation. A three-year agreement would mean that for every two agreements, workers would lose one agreement, meaning a loss of some extra adjustment in their salaries.

The second biggest discontent was among the low-waged, younger workers who represent around 60-70 percent of the workforce in these companies. In some cases, a worker who started after 2005 might be paid around half the wage of a worker who started before the 2000s. This situation creates huge tension among the younger workers. Their wages are so low they cannot see a future for themselves. Since they cannot live on these wages it does not matter too much if they lose their jobs. They have nothing to fear and nothing to lose. This makes them the most militant section of the class. For this new generation of workers an agreement without any plans to narrow this wage gap, is unacceptable.

At the end of April 2015, workers of Renault factory in Bursa started to demonstrate at the beginning and end of each shift. Soon after, these demonstrations spread to other automobile factories and their suppliers in the Bursa region. These demonstrations were sparked by the fact that Turk Metal had signed a better collective bargaining agreement at the Robert Bosch company. Bosch workers had changed their union three years ago and resigned from Türk Metal. They were later forced to go back to Türk Metal by the employer after some dismissals and pressures in the workplace. In order to head off discontent and any possible union change again, the company and Türk Metal signed a much better contract. But they did not calculate that this would create much greater discontent in other workplaces. On 18 April,

workers at Renault Bursa began demonstrating at the end of their shift by chanting *'we don't want a union that's for sale'*. At that time, Renault factory in Bursa was employing 4800 blue collar workers, more than 90 percent of the workers joined this demonstration. When Renault workers saw that their demands are not being addressed by the company management nor the union, they decided to meet in front of the mosque of the industrial zone on 5 May to collectively resign from Türk Metal. When they met there, they were violently attacked. One worker was seriously injured and hospitalised. This attack only helped to strengthen the Renault workers' determination and also helped to spread the wave of resignations and actions to other factories. Workers from the Tofaş FIAT subsidiary organised a massive demonstration during their shift against their Türk Metal shop steward.

Renault management distributed a letter to the workforce, saying that *'their demonstrations are disturbing workplace peace and constitute a crime and they will be dismissed if they continue with these actions'*. For several days, workers waited in front of the factory until the last service bus arrived and would walk into the plant all together. So that if factory entrance card of any worker won't work, they will all leave the plant. Finally, on the 6 May night shift, when the workers of the 24. 00-08. 00 shift arrived, the cards of some workers did not work. The entire shift left the plant and workers from other shifts and from neighbouring factories coming off shift began to arrive in front of Renault and wait in the factory yard. In the same night, after couple of hours, company management made a declaration saying that dismissed workers would be reinstated, everyone is free to join or not to join any union they wish, and there would not be any dismissals because of workers union choice. So workers actually build the protection for union freedom by themselves which is not given to them by legislation. Management also asked for 15 days to formulate and deliver a promise about the pay rise issue. After this declaration, production resumed in the factory and workers went back to production with more confidence to their own power.

On 14 May, Renault management asked workers to arrive early for a meeting by general manager. When workers from the early shift arrived to meeting, company management told that they won't make any adjustment on the wages and if there will be any other action workers will be dismissed. When the workers of the the late shift arrived in the same day, they did not join the meeting with the general manager - since they know what he will say - and they marched inside the factory instead. At the end of their shift at midnight, when the next shift arrived, they did not leave the plant and the next shift did not go inside. After that workers stayed inside the factory for many days and they unknowingly initiated a wildcat strike in the auto industry of entire country.

The next day, workers from Tofaş (FIAT) joined them and also stopped production by not leaving the plant. Afterwards, workers from other workplaces like, Mako Magnetti Marelli, Johnson Control etc — suppliers for the auto industry in Bursa — joined them. In less than a week time, these wildcat strikes started in automotive factories in other cities. Ford and Türk Traktör (Case New Holland) joined them as well.

Government intransigence

Highest ranking Government officials, Ministers of Cabinet made calls to end the strikes and Governor of Bursa region acted as mediator to end the strike in Renault factory. In all the factories, workers formulated similar set of demands;

1. They want to choose their union freely
2. They want to elect their own representatives and shop stewards
3. They want a guarantee that no one will be dismissed because of these demonstration
4. They want to be paid a living wage that provides for decent living standards

These basic set of demands which are normally covered by related ILO conventions especially regarding the freedom of association, is not protected by trade union legislation in Turkey. President of the country and various Ministers, openly told that these demands and actions are illegal and workers who join the strikes might be prosecuted with criminal charges. Company and Government officials were telling workers that since there is already a collective bargaining agreement, they cannot address their demands for pay increase until next collective bargaining agreement which will be in September 2017. They were also adding that even almost all the workers in the factory resigned from Türk Metal union, they have to keep Türk Metal in the workplace as the only representative union until September 2017 because they have a collective bargaining agreement.

After a request by DİSK (Confederation of Progressive Trade Unions of Turkey), ILO addressed a letter to Turkish Government reminding these points and asking and urgent intervention by the Government ton resolve the issues raised in wildcat strikes. But Government didn't give any reaction to this letter for many months, finally when they send a reply they just quoted the relevant articles of Turkish legislation which violated all of the above mentioned principles. Finally the companies were forced to accept some of the workers demands in order to end the strikes, they negotiated with workers' spokepersons and signed protocols or made declarations on the terms of their agreement. Company managements in Renault, Tofaş (FIAT), Türk Traktör (Case New Holland) etc. made similar statements telling that;

(continued on Page 28...)

A series of 'wildcat' actions saw opportunities open up for supporters of the Birleşik Metal union but, under apparent government pressure, the companies have stepped back from this position

Syrian Refugees in Turkey
Employment and Trade Unions' Response

Syrians encounter many problems in the labour market, among them differences in cultures and life styles, a rise in the risk of child labour, informal employment and language barriers.

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The Syrian refugee crisis is one of the largest, most protracted and unpredicted displacements in the world, and since 2011 Turkey has become the major refugee-hosting country (UNHCR 2014). According to the latest statistics by the UNHCR, 4,808,229 registered refugees have been forced to leave Syria, primarily moving to Turkey (2,724,937), Lebanon (1,033,513) and Jordan (656,198) since 2011 (UNHCR 2016). In the face of the influx of Syrian refugees, the Turkish Government declared an 'open-door' policy and welcomed the movement of Syrian refugees, predicting that the conflict would end swiftly and allow Syrian 'guests' to return home (İçduygu, 2015). After the mass Syrian influx to Turkey, the Turkish government has set up emergency camps to locate refugees, which were extended in scope to 26 camp locations in 10 provinces providing shelters, education, health and other services. However, only 10 percent of Syrians are living in the camps, while the majority have chosen or were forced to live in the centre of cities in the hope of finding decent living and working conditions. The vast majority of Syrian workers are working in the informal economy and are unable to exercise freedom of association without their employers' applications for work permits and trade unions' actions.

In March 2016, Turkey and EU agreed to send migrants/refugees back to Turkey, in return for the disbursement of 3 billion euros initially allocated under the Facility for Refugees in Turkey and the guaranteed funding of further projects for persons under temporary protection. Participating EU member states also agreed to lift visa requirements for Turkish citizens by the end of June 2016 (to date, this has not been realised and is still a contentious matter). Under the deal, all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey; for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU.

Legislative Framework

The most important legislative developments for Syrians in Turkey are as follow; *(i) Temporary Protection Regulation Law No. 6458* which regulates the right to education, health and work for Syrians; *(ii) Regulation on Work Permits of Foreigners under Temporary Protection* which regulates work permits for Syrians who do not have residence permit; *(iii) The Law on International Labour Force No. 6735* which aims to balance between national and international labour forces and to attract qualified foreign professionals.

Syrian refugees are still considered as 'guests' (a word chosen instead of 'refugees') in Turkey. Syrians do not have 'refugee status' because Turkey still maintains 'the geographical limitation' to the 1951 Geneva Convention Relating to the Status of Refugees, which limits 'the refugee status' to individuals from European countries. Therefore, to respond to the crisis and to meet the emergency protection needs arising from the mass influx of Syrian refugees, the Turkish Government adopted the *Temporary Protection Regulation* in October 2014. The regulation defines 'temporary protection' as a *protection status granted to foreigners, who were forced to leave their country, cannot return to the country they left, arrived at or crossed our borders in masses or individually during a period of mass influx, to seek emergency and temporary protection and whose international protection request cannot be assessed individually.* Moreover, the Turkish government has more recently discussed the possibility of conferring Turkish citizenship on Syrians.

The *Temporary Protection Regulation* provides Syrian refugees with rights and duties and sets the framework for access to the labour market. Pursuant to this *Regulation*, the *Regulation on Work Permits of Foreigners under Temporary Protection* was introduced on 15 January 2016, as improving livelihoods and enhancing decent work opportunities for Syrians became rather crucial to supplement humanitarian aid and assistance. According to this regulation, foreigners may obtain work permits six months after the date of registration of 'temporary protection' and in the provinces where they are permitted to reside (mostly in South-eastern Turkey). In addition, foreigners cannot be paid less than the minimum wage. One much-debated article provides that foreigners cannot exceed 10 percent of the Turkish citizens employed at a workplace.

The new law on the *International Labour Force No. 6735* aiming to regulate non-Turkish citizens' entry into Turkey's labour market was adopted on 13 August 2016. Although there are no significant changes to the work permit procedures, some flexibilities for specific categories of professions are introduced in the new law, aiming to attract qualified foreign professionals

such as engineers and architects, medical personnel, academicians, research and development personnel, free trade zone personnel and partners of companies, cross-border service providers and the investors. The new law has been much debated as it allows foreign professionals to work based on their own statements regarding their professions (engineering, architects) without monitoring and also providing some flexibilities and opportunities for foreign qualified professionals without considering the prohibition of discrimination (Çelik, 2016).

Employment of Syrian Refugees

Syrians are mainly working in the informal sector, such as seasonal agricultural work, construction, manufacturing, textile and waste picking. The age demographics of Syrians in Turkey indicate that Syrian refugees are mainly at working age: 38 percent are under 14, 60 percent are 15-64, and 1.9 percent is over 65 (DGMM, 2016). Many Syrians already actively participate in working life and encounter many problems in the labour market, among them differences in cultures and life styles, a rise in the risk of child labour, informal employment and language barriers.

Tensions between Syrian refugees and Turkish communities have been gradually increasing with regards to competition over jobs, rising rent prices, cultural differences, strains on municipal services, health services and infrastructure, especially after the recent discussions on conferring the citizenship to Syrians. Surveys show that Turkish communities are divided in their attitudes towards Syrian refugees: although they recognise the humanitarian aspect of the crisis, they are also deeply concerned about the economic and social consequences of the protracted presence of Syrian refugees in their communities (Erdoğan 2014).

One field study carried out by the ILO conducted interviews with 579 enterprises and 1592 Turkish workers in Şanlıurfa. The results indicate a number of issues to employment of Syrians: 27 percent of the businesses surveyed employ Syrians; 33 percent of Syrians are earning below the minimum wage; 60 percent of employers mention that they can employ Syrians if there is a need; 32 percent says they would never employ Syrians; 50 percent regard language as the biggest obstacle; 32 percent regard social adaptation as a barrier.

The limited access of Syrians to formal employment led to the growth in informal employment, which in turn has caused unfair competition and downward pressure on wages in sectors where the majority of Syrian refugees are earning below the minimum wage. Since the regulation on work permits has been adopted, very few employers have applied for permits for Syrian workers due to the lack of information, guidance and promotion on the legislative regulations.

Trade Unions' Response

While the world and particularly European leaders are still negotiating different ways of responding to the crisis, Syrian refugees continue to suffer from the war and seek safer living conditions and decent work opportunities. Since 2011, the number of migrants/foreign workers in Turkey has doubled with the influx of Syrian refugees. It is obvious that Syrian refugees are not 'guests' any more. Their stay will be much longer than expected and they are already a part of Turkish society. This situation requires effective, immediate and applicable measures on supporting social integration and improving livelihoods opportunities for Syrians.

In this regard, trade unions play a crucial role in providing social integration/harmony and preventing discriminatory and hostile practices towards Syrian workers in Turkey. Although trade unionists have mainly shown empathy towards the migrant workers/refugees, the general approach of trade unions is to ignore the issue of worker's rights of migrants/refugees in Turkey and avoid going into the effort of organising Syrians refugees and other migrants as well. (Müftüoğlu, 2015). Some trade unions have raised concerns about increasing numbers of refugees and the potential negative impact on the labour market, while others (especially progressive ones) have called for improved living standards and decent work for Syrians and also provided humanitarian assistance to the refugees. However, to date, none of them has taken any action towards organising Syrian workers.

The main problem in organising Syrian workers is that they are unable to become trade union members due to their informal employment. In Turkey the procedures for trade union membership are implemented through an e-government registration system. As only the formal workers are included in this system, only workers in the formal economy can be registered and become members of trade unions. This procedure covers both Turkish and foreign workers. However, only employers can apply for work permits for Syrian workers through e-government system. If Syrian workers wish to work formally, the employer has to apply for a work permit at the Ministry of Labour and Social Security. The work permit can only provide Syrian workers with formal employment for a one-year maximum term. Therefore, the formal employment of Syrians – and consequently their possibility of joining a union – depends on the employers' initiative. In these circumstances, as both work permits and job security for Syrians depend on their employers' initiative, trade union rights for Syrians in Turkey are an unlikely prospect in the near future.

Since the adoption of the regulation on work permits for foreigners under temporary protection, formal employment – and with it unionisation – has become a possibility for Syrians. But Syrians are still mostly employed informally and unfortunately this remains the biggest obstacle to organising Syrian workers.

This article reflects the personal views of the author and is not an official position of the ILO.

Under the registration system, the formal employment of Syrians – and consequently their possibility of joining a union – depends on their employers' initiative

This article was developed from the article entitled 'Protracted Displacement: Syrian Refugees in Turkey' by Özge Berber-Agtaş and Bilge Pınar Yenigün which was published on the Global Labour Column.

Legal Barriers to Freedom of Association and Collective Bargaining

Turkish labour law divides labourers into two groups: workers and public officers; both face significant restrictions on their rights to organise, bargain, and strike

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Turkey's current legal protection of trade union rights remains a long way from compliance with international norms. Labourers are divided into 'workers' and 'public officers'. The Law on Trade Unions and Collective Bargaining (Law 6356) regulates the trade union rights and freedoms of workers. The Law on Trade Unions and Collective Bargaining of Public Officers (Law 4688) regulates the trade union rights and freedoms of the public officers but provides public officers very limited rights of association, collective bargaining and strike. Besides, the parties to the collective bargaining under Law 4688 do not have to reach an agreement and the final decision is given by the Government. If the parties disagree, the public officers have no right to strike. This legal rule - enacted in 2012 - provides no rights to association, collective bargaining or strike for public officers to protect their interests. Therefore, the following analysis of these rights will focus on the Law on Trade Unions and Collective Bargaining (Law 6356).

Freedom of Association: only sector-based unions can be formed

The right to form a trade union and freedom of association are assured in Article 51 of the Turkish Constitution. However, Law 6356 was enacted with a limited scope in contrast with international norms. Article 3 says that a 'trade union is formed to operate in a certain sector'. This regulation contradicts Article 2 of Convention 87 of the ILO Convention 87 which accepts the 'liberty' principle on the matter of the freedom of association. Additionally, the ILO Committee on Freedom of Association (CFA) assessed Article 2 of Convention 87 and stated that workers can form a trade union with reference to the sector, profession or regional and other criteria. Moreover, Law 6356 Article 2 does not allow trade unions to organise themselves under umbrella organisations like federations or others, other than confederations. This is also in contradiction with the liberty principle in Article 7 of Convention 87.

Collective Bargaining Rights

The most important discrepancy in Law 6356 is that while it only permits the formation of trade unions in the sectors, the collective bargaining system is organised on the basis of the workplace or business. Apart from the workplace and business in the collective bargaining, it was not defined on the scale of country, industry and sector (Articles 33-4). This certainly violates ILO norms (Convention 98, Article 4). One of the most important obstacles in Turkey for trade union association and collective bargaining is the legal restrictions and thresholds to have authority for collective bargaining. There are two major problems in Turkey in the system of authorisation.

The first obstacle is having the majority in the country and then in the workplace and business, as the law requires. The prerequisite for collective bargaining rights is union membership of 1 percent of workers in respective sector in the country. After the trade union achieves this condition, if more than half of the workers working in the same workplace become members of this trade union, collective bargaining can be signed for the workers in this workplace. If the company has more than one workplace or branches, the union must also organise 40 percent of all the workers in all these workplaces. If a trade union cannot ensure these conditions, it has no authority for collective bargaining. For instance, according to the data from July 2016, there are almost 3,079,761 workers work in Sector 10 (Education and Commerce Offices). A trade union in this sector has to have at least 30,790 members working in this sector for a collective bargaining in any workplace. Otherwise, even if all 20,000 workers from a single workplace of 20,000 workers are in membership this trade union still has no legal power for collective bargaining.

The second is that collective bargaining power is given by the Ministry of Labour and Social Security – a political institution. The processes determining if a trade union meets those thresholds are controversial. These are implemented by the Ministry. If an employer or another trade union in the same sector objects to the processes to be performed by the Ministry, the authorisation process is suspended, pending court processes lasting years. Thus, even if the trade union obtains the majority in the workplace by meeting the requirements at sector level and workplace level, collective bargaining rights cannot be exercised due to those objections and the de-unionisation applications in these workplaces are successful. Together with these obstacles, the Ministry often facilitates the processes for trade unions that are deemed close in terms of their political and ideological aspects, and makes the

processes difficult for other trade unions which oppose the Ministry.

The Right to Strike

The most restrictive arrangements in Turkey on collective labour matters are on strikes. The law only permits the strike if the collective bargaining procedures fail. The Article 58/2 of Law 6356 says that:

'Lawful strike means any strike called by workers in accordance with this law with the object of safeguarding or improving their economic and social position and working conditions, in the event of a dispute during negotiations to conclude a collective labour agreement'.

All other strikes are illegal. There are serious sanctions for workers and trade unions organising illegal strikes. For a strike to be legal, many detailed regulations must be met. Where these are not complied with, the collective bargaining power of the trade union is withdrawn.

For example, according to the Article 60/1, a decision to call a strike may be taken in sixty days following notification date of the report on the dispute and put into practice within this period. The date of the strike shall be communicated to the opposite party six working days before. If a decision to call a strike is not taken or its implementation date is not communicated to the opposite party within the mentioned period, the authority to conclude a collective labour agreement shall end. According to Article 60/3, a decision to call a strike shall be immediately announced in the workplace/s that have taken this decision. Thus sudden strikes are not permitted and the employer is given the opportunity to limit the impact of the strike.

Under Article 62, it is unlawful to call a strike in the following works: Life or property saving, funeral and mortuary, production, refining and distribution of city water, electricity, natural gas and petroleum as well as petrochemical works, production of which starts from naphtha or natural gas; banking services; in workplaces operated directly by Ministry of National Defence, General Command of Gendarmerie and Coast Guard Command, fire fighting and urban public transportation services carried out by public institutions and in hospitals.

If a trade union can cope with all these obstacles and the strike starts, the Government has the authority to postpone the strike for 60 days due to the national security and general health.

With all these restrictions, bans and obstacles, Turkey is clearly not in compliance with ILO conventions or other international norms in terms of the right to strike.

Rights in practice

Many of the rights defined in these laws are violated in practice. The courts are ineffective for the exercise of trade union rights since it can take years to resolve a dispute. Until the decision of these courts, employers oppress the workers and threaten to fire them if they do not resign from the trade unions. The workers who resist the pressures and threats of the employer are really fired. Those workers who are fired also wait for a long time for a verdict after they file to the competent court. Therefore, while a trade union is trying to organise in a workplace, it is forced to act secretly like an illegal entity.

As is well known, following the 15 July coup a state of emergency was announced. The Aksiyon-İş and Cihan-Sen trade union confederations (and their affiliates) were closed on grounds of their links to the movement led by Fethullah Gülen – designated by the government as a terrorist organisation (FETÖ). Many people were dismissed and arrested on ground of their links with FETÖ and PKK – among them members of trade unions. Although a large segment of Turkish society considers actions against the coup plotters legitimate, it is considered that the government violates the human rights of many innocent people under the veil of the struggle against the coup plotters and terrorists, and many are resisting the arrests and dismissals of the members of trade unions. The current situation reveals an important truth: even trade union rights and freedoms entitled by the laws are not enjoyed in Turkey in practice.

Article 90 of the Constitution

The last paragraph of the Article 90 of the Constitution of the Republic of Turkey states:

'International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail'.

According to the provisions of this Article, if Laws 4688 and 6356 regulating unionisation rights and freedoms of the workers and public officers contradict with ILO Conventions, the ILO Conventions which are in favour of workers will prevail. In other words, where the ILO Conventions that Turkey has ratified and domestic legislation contradict, the authorities have to implement the ILO Conventions, and even the decisions of the ILO's Committee on Freedom of Association. This constitutional provision concerns laws to be enacted by the parliament and also directives and regulations under those laws. Unfortunately, trade unions and workers have not understood the importance of this provision in the Constitution, yet. The number of trade unions and unionists understanding the importance of matter is very limited. On the other hand, some knowing the importance cannot be brave enough to initiate the domestic legal

(continued on Page 28...)

Article 90 of the Constitution is an as yet underdeveloped tool for the promotion of international standards in Turkey

Note

1 Some trade unions, like Sosyal-İş have started to organise and collectively bargain in some workplaces with reference to the Article 90 of the Constitution and ILO Conventions. However, this method is not frequent, yet

Will new unions translate into new rights?

The failure to protect workers' rights has meant employers can dismiss workers with impunity. Workers report that employers are circulating blacklists

ROSS WILSON established the ILO Freedom of Association Project in Myanmar in 2012-2013. He was President of the New Zealand Council of Trade Unions (1999-2007) and is a lawyer and co-author of the Thomson Reuter New Zealand textbook 'Employment Law'

The past four years have seen the birth of a new union movement in Myanmar, after 60 years of brutal suppression of labour rights. More than 2000 labour organisations (unions) have been registered under the Labour Organisation Law (LOL), mostly small unions at enterprise level and concentrated in the agricultural, freight handling and manufacturing sectors, and with an estimated total membership of more than 100,000 workers[1].

Given the history of oppression and the continuing hostility from many employers, this is a remarkable achievement, and reflects the determination of workers to exercise their new rights to associate, organise and negotiate. Many of them are young factory workers struggling to understand the law and their role, and to meet the expectations of their members in a very difficult environment.

Despite the rather restrictive and inflexible provisions of the LOL a union movement is developing, with 115 township unions, 14 regional unions, 8 federations and one national confederation (the Confederation of Trade Unions of Myanmar, CTUM) having also been registered. The union movement is fragmented, and organised under three dominant federations: the CTUM, the Federation of Trade Unions of Myanmar (MTUF), and the Agricultural and Farmers Federation of Myanmar (AFFM).

The main education and training regarding the LOL, and the freedom of association rights it introduced, has been undertaken by the International Labour Organisation's Freedom of Association Project which was quickly developed in 2012 but which came to an end suddenly earlier this year.

It was very appropriate that the ILO should lead this work given that it, led by the Workers Group within, developed the pressure on the Myanmar Government to legislate for these fundamental rights. The ILO project launched an awareness raising campaign with education and advice for workers, government officials, and employers, but the core of the programme were bi-partite training workshops for the leaders of the new unions and their employers.

Building a new base for industrial relations

The new leaders took their first real steps as a national movement when they came together at the Labour Organisation Leaders' Forum in Yangon in April 2013. More than 363 registered labour organisations were represented, along with more than 100 related organisations, at this historic event which was the largest conference of elected worker representatives in more than 60 years.

Although the conference was dominated by the debates and voting processes relating to the election of a Worker Delegate to the ILO, there was keen interest by the union leaders in the Forum workshops on organising skills, collective bargaining and workplace health and safety. Delegates voiced their frustration at the lack of recognition and respect from employers for their role as the voice, and negotiators for, the workers they represented.

The ILO bi-partite workshops promoted a development model which builds constructive dialogue, including collective bargaining, at enterprise, industry and national level between the new unions, employers and (where appropriate) government. The model was founded on freedom of association and other labour rights and had a strong focus on building value, profitability and workers' incomes as a common objective. It also promoted union participation in industry development programmes which are benchmarked to labour standards, skill development and skill-based pay systems.

Employer resistance

However, few employers have been willing to recognise that the legal and political environment was changing and there has been only limited business commitment to building such an industrial relations system. As at 31 July 2016 only 30 employer organisations have registered under the LOL and many employers have not only declined to recognise the workers' rights but have been actively hostile to union organising activity. This has included widespread dismissal of workers for union organising and participation.

The already slim prospect of building a sound industrial relations system has been further undermined by the contempt which many employers have shown for the authority of the Arbitration Council by refusing to comply with its orders reinstating workers who have been unlawfully dismissed.

The disputes processes established under the counterpart Settlement of Labour Disputes Law have been widely used by workers but their credibility has been seriously damaged by the inability of the

Council, or the Courts, to effectively enforce the Arbitration Council orders.

The weakness of the law was acknowledged by the Ministry of Labour three years ago and an amendment was promoted to introduce a term of imprisonment for employers failing to comply with reinstatement orders. However a maximum fine of one million kyats (approximately $USD825) was substituted and the Ministry's Permanent Head has acknowledged its ineffectiveness[2].

The failure to protect workers' rights in practice has meant employers can dismiss workers with impunity. And workers report[3] that not only are they being dismissed for union activity but employers, factory owners in particular, are circulating blacklists and preventing them getting other employment.

With or without the ILO?

It is therefore surprising, and arguably irresponsible, that the ILO apparently decided to discontinue its Freedom of Association Programme in Myanmar earlier this year. There is no sign of it being continued despite a joint plea from the Myanmar Government, employer and worker representatives[4]. There is a need for an on-going commitment to education and training programmes for government officials, employers and union leaders if there is to be a realistic prospect of building a sound industrial relations system in Myanmar. It takes more than a modest three year training programme to reverse the impact of 60 years of suppression of labour rights by harsh military rule.

It will require a deliberate strategy, led by the Myanmar government, employers and workers, and their organisations, to build a modern industrial relations system. It will be a major challenge. The ILO core labour standards, as a minimum, should be implemented in practice as well as in law and the ILO tripartite supervisory processes must continue to actively monitor and ensure compliance.

This must be supported by an active ILO Freedom of Association Project which works closely with employer and worker organisations, locally and internationally, to develop effective social dialogue, including collective bargaining. And the reality is that the current laws will need to be amended to actively support the formation of strong, democratic, well-resourced industry unions.

Meanwhile, as the widespread flouting of the law and the Arbitration Council orders continues, workers have become increasingly frustrated and angry. An employer representative on the Arbitration Council, U Maung Maung Win, is reported[5] as acknowledging that 'most disputes are caused by employers who break the law' and that 'workers don't want to protest ..but if their grievances are genuine they have to'.

International pressure to improve industrial relations

Union leaders are looking to international brands to take a lead. The Chair of the CTUM, U Maung Maung, has said[6] 'International buyers won't want to deal with factories that keep firing workers for union activism. Unions are not the enemies of employers'.

A long-time labour activist and director of Action Labour Rights, U Thurein Aung, is also pinning some hope on foreign investors[7]: 'Overseas investors are improving labour relations at the factories they're involved with, running training courses for workers and management to improve relations. Things have improved compared to a few years ago'.

But the overseas investors are likely to only be an influence (albeit quite an important one) in some sectors, and the current responsibility to build a sound industrial relations system rests with the National League for Democracy Government and social partners, supported by the international community which has an interest in building a new Myanmar based strongly on international human rights.

And it is the ILO, as the responsible UN agency, which has a special responsibility to assist; not only by re-establishing a strong freedom of association programme in Myanmar, but also by working with the Government to upgrade the Labour Organisation Law so that it fully complies with Conventions 87 and 98, and to ensure freedom of association and the active promotion of collective bargaining in Myanmar, in both law and practice.

There is a need for an on-going commitment to education and training programmes if there is to be a realistic prospect of building a sound industrial relations system in Myanmar

Farmers unions as a political force

Special mention should also be made of the farmer unions which make up more than 60 percent of unions registered and 50 percent of total membership. The majority of farmer unions are in the Yangon, Mandalay, Bago, Ayarawaddy and Magway regions.

Organisation and registration of farmer unions has not been such a challenge as industrial unions because the membership of farmer unions are mainly self-employed small farmers and farm workers, who have not met opposition from employers as industrial unions have.

The focus of farmer unions is primarily political and legal issues such as land 'grabbing' and ownership, but they have also a strong interest in working as a collective to improve their access to modern farming methods to improve their livelihoods.

Given that Myanmar is a country of four main very fertile river valleys, with agriculture contributing about 38 percent of GDP and providing a livelihood for more than 60 percent of the workforce, there is huge potential for what was once the 'Rice Bowl of Asia', and which currently has the lowest per capita agricultural income in Asia.

So for the Myanmar small farmers freedom of association rights are opening up the potential for collective political influence to ensure their security on their land, as well as collective activity to modernise their farming methods, to expand value-added products, and to improve the livelihoods for the majority of the country's population. Although structural change in the economy will diminish the importance of agriculture, it will likely have a key role in reducing poverty in Myanmar for the foreseeable future.

Notes

1 Ministry of Labour Employment & Security July 2016
2 U Myo Aung Permanent Secretary Ministry of Labour, Immigration and Population *Myanmar Times*, 26 August 2016 www.mmtimes.com
3 *Myanmar Times*, 26 August 2016 www.mmtimes.com
4 U Maung Maung interview by author in Yangon 30 August 2016
5 *Myanmar Times*, 26 August 2016 www.mmtimes.com
6 *Ibid*
7 *Ibid*

Bolivia

On 24 August 2016, two protesting miners - Fermín Mamani and Severino Ichota - died of gunshot wounds at Sayari on the Oruro–Cochabamba highway, during a confrontation with police. At least two other miners (Rubén Aparaya Pillco and Pedro Mamani Massi) were also shot and killed by police in the following days. Miners in Bolivia are protesting in opposition to legislative changes to the operations of mining cooperatives. As a result of the escalating tensions, the Vice Minister Rudolfo Illanes - who had gone to the sites to negotiate - was also kidnapped and killed on 25 August. It is reported that the miners' killings have been referred to national government prosecutors who have opened investigations.

ICTUR wrote to the government to affirm that the use of lethal force against workers is the gravest of violations of the principles of freedom of association, enshrined in the International Labour Organisation Conventions 87 and 98. Bolivia has ratified all eight of the fundamental International Labour Organisation Conventions. ICTUR called on the government to ensure that prompt and effective investigations are carried out into the circumstances around the police actions which led to these deaths.

Brazil

On the morning of 3 August 2016, João Donizeti da Silva, the leader of the union 'Sindicato dos Metalúrgicos de Limeira e região', was stabbed and severely injured by private security guards of the Mercedes Benz plant in Iracemápolis, São Paolo, Brazil. It is understood that da Silva was preparing to hold an assembly of workers at the company to discuss wages.

ICTUR wrote to the Brazilian authorities to call for an independent judicial inquiry to be instituted immediately - in line with recommendations of the ILO's Committee on Freedom of Association - to investigate this attempted murder. ICTUR also wrote to Daimler to condemn the violent attack and called on Daimler to investigate the circumstances around these events and to cooperate with the proper authorities to ensure that the perpetrators are held to account and that the victims are given prompt and adequate remedy.

Cambodia

July 2016, three union leaders were arrested and detained, accused of inciting a strike action at the Cambo TDG garment factory in Kompong Trach district, Kampot. On 24 June, 21 workers had been fired at the factory for trying to establish a union. In response, nearly 400 workers went on strike to demand their reinstatement. During the course of the strike, Yon Sambou (deputy secretary of the Cambodia Labor Union Federation), Meas Touch and Sok Siden (of the Cambodian Federation of Freedom Union) were arrested and detained by police, accused of inciting the protest, which was peaceful. It is reported that the three were only released after the strike ended and workers returned to work two days later. The new Trade Union law - adopted in April 2016 - currently provides for penalties against employers but is inadequate to act as a meaningful deterrent for violations of workers' rights.

ICTUR wrote to the Cambodian government to call for the law to be repealed or amended in line with Cambodia's international obligations under ILO Conventions 87 and 98. ICTUR further called on the government to investigate these reports and undertake all necessary measures to ensure the fundamental freedoms of workers to join and form unions and to take action in defence of their interests.

Ecuador

The Ministry of Education has initiated proceedings for the legal dissolution of the teachers' union, Union Nacional de Educadores (UNE). This is believed to be in retaliation for public statements UNE made at the ILO Conference and the UN Human Rights Committee earlier this year, in which they described the government's systematic violation of workers' freedom of association. The government's justification for the union's dissolution is the implementation of Decree 16, which concerns the registration of non-profit organisations. However the Ministry of Labour had assured the ILO earlier this year that Decree 16 does not apply to trade unions.

ICTUR wrote to the Ministry to express its support for the demands of UNE and Education International that the government halt these legal proceedings against the teachers' union and heed its obligations under international law, in particular the ILO Fundamental Conventions, all of which Ecuador has ratified. The ILO's Committee on Freedom of Association has stated that dissolution of trade union organisations 'should only occur in extremely serious cases' and only 'following a judicial decision so that the rights of defence are fully guaranteed'.

Iran

Ebrahim Madadi and Davod Razavi, two members of the Tehran bus workers' union (Vahed Syndicate) have been sentenced to long prison terms. The two were arrested in April 2015 and Mr Razavi was sentenced to five years in prison in February 2016. On 10 August 2016, Mr Madadi was sentenced to five years and three months. Their convictions are as a result of their trade union activities and both were charged with 'gathering and colluding with intent to act against national security' and 'disrupting public order and peace by participating in illegal gatherings'.

- Jafar Azimzadeh and Shapour Ehsani-Rad (respectively chair and member of the Free Union of Workers of Iran) are also facing a trial on similar charges, including 'propaganda against the state'. Mr Azimzadeh was granted a retrial as a result of a 63-day hunger strike while serving a six-year sentence for his conviction in March 2015 on similar charges. It is understood that their charges are based on their involvement in a strike and the Safa Rolling and Pipe Mills Company, where around 1000 workers went on strike in April 2015 to protest working conditions and unpaid wages. Their trial began on 29 August 2016.

- On 13 June 2016, at least 24 workers for the Ahwaz municipality were also arrested for holding a demonstration to protest the non-payment of their salaries, which have not been paid since 20 March 2016.

ICTUR wrote to the government to condemn these actions against trade unionists in Iran and called on the authorities to release those trade union leaders and members still in detention, quash their sentences and to drop all charges against them.

Liberia

Four union leaders have been dismissed by the government for their trade union activities: George Poe Williams and Joseph S. Tamba of the National Health Workers' Association of Liberia (NAHWAL) and Mellish P. G. Weh and Jayce W. Garniah of Roberts' International Airport Workers' Union (RIAWU).

Williams and Tamba were dismissed in February 2014 following a strike by health workers to protest working conditions and lack of protective equipment for workers in the fight against Ebola. The government has further refused to grant NAHWAL its certificate of union recognition and has suspended a collective bargaining agreement of the RIAWU. The new Decent Work Act enacted in June 2015 protects only the freedom of association of private sector employees; the legislation which applies to public sector workers (the Standing Orders for the Civil Service) does not give them the right to organise into unions. However, the Constitution – as well as ILO Conventions 87 and 98, which Liberia has ratified – requires that freedom of association be extended to all workers.

ICTUR wrote to call on the Liberian government to reinstate the dismissed trade union leaders and ensure that the Decent Work Act is amended – or other relevant legislation implemented to ensure that freedom of association is guaranteed for all workers.

Malaysia

Attempts by workers at the company Sabah Forest Industries (SFI) to form a union have been repeatedly thwarted. Over 2000 workers have been denied the right to organise at the company for more than 20 years. The Sabah Timber Industry Employees' Union (STIEU) has repeatedly applied for formal recognition as a union, but since 2003 SFI has used judicial review processes to deny recognition on spurious grounds, including the existence of an in-house union. SFI was ordered by the Ministry of Human Resources to recognise the union on 3 March 2015 but the company has again used judicial review to oppose the decision. The application for review was denied on 27 June 2016, but SFI filed an appeal on 22 July. In the meantime, STIEU is still not recognised by the SFI. According to reports, conditions for workers at the company are very poor, with two fatal accidents in 2015, cuts to salaries and 12-hour workdays.

ICTUR wrote to the Malaysian government calling for it to address the barriers to freedom of association at the company and ensure that the STIEU and its supporters are able to secure recognition from the employer and to properly exercise their rights in defence of their interests.

Nigeria

On 29 July 2016, two civil servants – members of the Nigerian Labour Congress (NLC) – Aliyu Abdullahi Umbugadu and Rabiu Mohammad Hamza were shot dead by police outside the gates of Nasarawa State Government House, while participating in a protest against measures taken by the state governor, including an arbitrarily imposed 50% wage cut and threats to dismiss and replace striking workers. Some civil servants have not been paid since January 2016. It is understood that the protest was peaceful, workers were unarmed and that at the time of shooting, the leadership of the NLC and the Trade Unions Congress of Nigeria were conducting a joint visit to the Government House to engage in dialogue over the labour dispute. Two other protestors – Musa Umar Saliu and Hajiya Sa'adatu Mohammad Agya – were also seriously injured in the shooting.

ICTUR wrote to the Nigerian government to demand that these shootings be promptly investigated by independent judicial inquiry to determine responsibility, in line with Nigeria's obligations under the fundamental ILO Conventions, all of which Nigeria has ratified. Following the interpretation of the ILO's Committee on Freedom of Association, the use of force by the authorities during trade union demonstrations should be limited to cases of genuine necessity. The 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principle 9) permits the use of firearms only in defence against imminent threat of death or serious injury and only when less extreme methods are insufficient. The Nasarawa State government has announced that the families of the two workers who were killed will receive compensation. However, two further protestors were left seriously injured. Moreover, adequate legal redress for the police actions also requires that the individuals responsible are held to account through criminal prosecutions where necessary.

South Africa

On 29 July 2016, Elliot Manyosi, a member of the South Africa Municipal Workers' Union (SAMWU) was shot and killed by private security guards outside the SAMWU head office in central Johannesburg. According to some reports, two further SAMWU members were shot and seriously injured in the shooting. It is understood that the security guards were contracted to work for SAMWU.

In a separate incident on the 11 August 2016, police fired rubber bullets against peacefully protesting members of the National Union of Mineworkers (NUM). The NUM members were protesting for better wages and conditions outside the Hendrina Power Station in Mpumalanga in a dispute with Eskom. It is reported that one NUM member was seriously injured and was admitted to hospital with a broken leg following the police assault.

ICTUR wrote to the South African authorities to call for prompt and independent investigations of both these incidents to ensure that workers are able to exercise their trade union rights free from threats of violence.

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Getting informed about unions is key to engaging workers in global supply chains

This 'blog' post was written by ICTUR for the Business and Human Rights Resource Centre seeking to persuade companies and the CSR industry that engagement with unions at a factory level is a key strategy for improving human rights in their supply chains

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Ciaran Cross is a Researcher with ICTUR

Companies today are expected to monitor and ensure human rights and social compliance throughout their supply chains. They are increasingly called upon to prevent or mitigate adverse human rights impacts in their operations, to increase supply chain transparency, to improve their interface with local managers, and to take effective steps to identify and deal with risks at all levels in their business relationships. Such responsibilities present a number of challenges, not least because of the diverse geographic areas and complex sourcing structures involved. Auditing remains the primary model for promoting compliance, but the scale, frequency and cost of this approach can limit its efficacy. The complexity of global supply chains and the significant 'gaps' in visibility left by auditing models mean that brands may still lack awareness of factory level risks.

Empowerment of workers is increasingly recognised as a key facet of effective compliance, by helping to keep companies in touch with real-time developments in worker-management relations, human rights impacts and workplace safety at the factory level. Recognition and engagement with trade unions, can streamline, improve, and facilitate relations to workers, and help companies to respond to factory level issues, as well as communicate and implement responses. This can help create an environment in which companies are able to identify and address concerns throughout the supply chain, as they arise, and before they escalate.

Over the over the past fifteen months, ICTUR has been mapping trade unions across the world. We have compiled a comprehensive and up-to-date guide to unions in every country. This was often a vertigo-inducing task. We catalogued thousands of unions worldwide, the sectors and industries they operate in, their affiliations and political identities. As the lead researchers on this mammoth project, we were often struck by the dearth of comprehensive data on trade unionism in many poorer countries. One thing that we believe our work highlights is the pressing need for an understanding of trade unions that digs deeper than 'scoring' or 'ranking' of countries. In the world of workers' rights, knowing the 'score' is not enough.

Mapping a complex reality

Governments in almost all countries impose some limitations on trade union rights. These restrictions sometimes make workers' attempts to exercise freedom of association practicably impossible. It is still a common tactic for governments and local interest groups to create or encourage weak unions, to recognise 'paper' unions, or to make membership of the unions they control mandatory. Despite global obligations to respect freedom of association, factory-level managers may tolerate or even encourage these schemes. In such situations, freedom of association on paper is little more than a façade in practice.

Nevertheless, hundreds of millions of workers across the globe are organised into unions. These unions take a myriad of different forms, and are underpinned by an incredibly diverse set of social, cultural and political trends. Internationally, trade unions encompass the entire political spectrum, every industry and every imaginable class of worker. The context in which unions operate differs enormously not only from country to country, but also sometimes from confederation to confederation. There are even significant differences of character between industrial unions affiliated to a single national confederation.

Trade unions are strongly rooted in their specific political, economic and legal context. In mapping this context for our new publication, we drew extensively on a myriad of sources to illustrate the diversity of organised labour across the world. We looked at unions' institutional base, their scope and organisation in relation to the national economy, as well as the relevant industrial relations frameworks and labour law. These elements are key to understanding why restrictions on freedom of association exist and how they can be overcome.

Effective engagement

If engagement with unions is to be a meaningful exercise, getting informed about the unions that already exist and operate in any given country – as well as any restrictions on trade union rights in law or in practice – must be a priority for companies. In a world of complex transnational relations, unmapped supply chains are a major risk to social compliance and – ultimately – to company reputation. Identifying relevant trade union organisations to engage with therefore requires insights into the situation in-country.

Relationships between businesses and trade unions are not always easy. But positively engaging with unions is necessary to comply with freedom of association requirements. Effective engagement also presents an opportunity to improve awareness, communication, and broader compliance. Reaching out to unions, building and maintaining relations, and encouraging the participation of local suppliers with organised workers in practice - these are essential to effectively supporting human rights and social compliance throughout the supply chain.

World Bank's first labour standard is deeply flawed

Ciaran Cross is a Researcher with ICTUR. Ciaran has a background working with trade unions and NGOs, and an LLM in international economic law, justice and development. He regularly acts as a consultant to Greenpeace on international trade and investment law issues

On 4 August 2016 the World Bank concluded its four-year policy review and adopted a new 'Environmental and Social Framework', which will become fully operational in 2018. The Framework replaces the Bank's 'safeguard' policies, and covers a wider spectrum of social issues, including a labour standard for the first time. In the words of one commentator however, 'the safety net got bigger, and so did the holes'[1].

This new development is well overdue. The private-sector lending arm of the World Bank group, the International Finance Corporation (IFC) adopted a labour safeguard in 2006. But the new standard adopted by the Bank is deeply flawed – not least with respect to trade union rights. Commenting on the adoption of the new Framework, Sharan Burrow of the ITUC writes:

- *Foremost among the flaws is the lack of any reference to the International Labour Organisation's fundamental rights conventions, which define the core labour standards (CLS) endorsed by the other [development] banks.*
- *The WB safeguard commits to prohibiting child labour, forced labour and discrimination in Bank-financed projects, but for the fourth CLS, freedom of association and right to collective bargaining, it adds the qualification that these rights must be respected only 'in a manner consistent with national law'.*
- *If freedom of association, the heart of democratic rights and freedoms, is absent or imperfectly protected in the country's legal framework, the Bank could allow working men and women in WB-financed projects to be at a higher risk of violation of their rights than those working in projects funded by others*[2].

The failure to protect freedom of association and associated rights in all World Bank funded-projects – whether or not they are protected under national law – is fairly typical of the Bank's historic approach to labour issues. The Bank's annual Doing Business reports rank countries on the 'ease' of establishing investment. For many years, these reports measured labour regulations as a barrier to businesses, without any qualification that labour regulation might have positive social impacts.

The major deficit in the Bank's new labour standard is likely to be exacerbated by the fact that – no matter what the content of these social and environmental safeguarding policies – the enforcement of such standards has long proved lacking. As Sharan Burrow notes, the new safeguard *'needs strong compliance measures to protect working people from the exploitation of corporate greed'*.

Experiences of compliance mechanisms within the World Bank group are unlikely to inspire confidence that implementation will be effective. It has been 23 years since the Bank established its Inspection Panel to investigate allegations of non-compliance with the institution's own policies. According to one recent assessment, the Panel has always operated 'with one hand tied behind its back'. An attempt in 2013 to trial a new dispute resolution procedure has resulted in re-routing complaints from the Panel and into negotiations, both undermining the Panel's authority to issue reports on non-compliance and perpetuating 'the power imbalance that already exists between the Bank, its clients and communities'[3].

While the IFC has led the way in establishing policies on labour standards for its financing operations, it too has faced serious difficulties in providing adequate remedies. As we report in this edition's Interventions pages, workers at the Sabah Forest Industries (SFI) company in Malaysia have been fighting for recognition of their union for more than 20 years, but SFI has repeatedly used judicial review processes to prevent them. In 2014, the IFC's Board approved a $250 million debt and equity investment to SFI and its parent company Bilt Paper. Following a complaint from the Building and Woodworkers International (BWI), the IFC's Compliance Advisor Ombudsman (CAO) is now investigating whether the IFC's risk assessment of the investment 'responded adequately to freedom of association issues identified in the client's Labor and Working Conditions Audit'[4]. But a finding of non-compliance by the CAO is just that: it does not necessarily have consequences and the President of the World Bank group retains discretion over disclosure of the CAO's report and the IFC's response.

Echoing an argument we recently made regarding social compliance in supply chains (see facing page), Sharan Burrow highlights that engaging with organised workers is essential to ensuring the labour safeguard is *'applied rigorously throughout all the projects and activities that* [the Bank] *finances'*:

'Early consultation with trade unions on risks of non-compliance in new projects is probably the most effective practice for preventing violations.'

Given that respect for union rights will not be guaranteed in these new projects, it remains to be seen what this means in practice. Indeed, the Bank has demonstrated rather well that consultation can amount to little more than lip service: the development of the new Framework was undertaken in 'consultation' with a variety of stakeholders – including the ITUC.

Notes

1 'Holes in the World Bank's safety net', Gretchen Gordon. 1 September 2016. Available at: http://www.rightingfinance.org/?p=1676

2 'The World Bank's New Labour Safeguard', Sharan Burrow. 16 August 2016. Available at: http://www.equaltimes.org/the-world-bank-s-new-labour#.V9KKiSMrLrs

3 'The World Bank's failed accountability experiment: Why the Inspection Panel's 'Pilot' is a dead end', Natalie Bridgeman Fields and Kindra Mohr. 4 August 2016. Available at: http://www.brettonwoodsproject.org/2016/08/world-banks-failed-accountability-experiment-inspection-panels-pilot-dead-end

4 See details on website of the Compliance Advisor Ombudsman, Case: Malaysia / Bilt Paper-02/Sipitang. Available here: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=238

Freedom of association in the United States:
When rights are needed most

On 27 July 2016, Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association issued the concluding statement of his visit to the US

Observing that the US remains *'an economic powerhouse, a military superpower, a global engine of technological development'*, the Special Representative pointed to the historical foundations of the country's present crisis: *'on land stolen from its indigenous Native Americans... on race-based slavery against people of African descent; and successive waves of immigrants* [who] *have faced discrimination, harassment or worse'...*

The right to freedom of association includes the right of workers to form associations, including unions, and the right to strike. During this mission, I met with a number of workers and organisations that represent workers who described the challenges they face in asserting their right to freedom of association. I also met with representatives from the Department of Labor and the National Labor Relations Board.

The overarching concern expressed by workers was the lack of robust protections of their labour rights. This was corroborated in discussions with State interlocutors who spoke to the neutrality that the State maintains in labour disputes between employers and employees; the limited resources provided for the monitoring and enforcement of labour standards; and a general lack of political will to strengthen these standards and penalties. International human rights law explicitly sets out the rights of workers, including the right to organise and the right to strike, and is equally clear about the State's duties not only to respect these rights but also to protect and actively facilitate their enjoyment.

I would like to touch on three issues that raised particular concerns in this context – the rights of migrant workers to organise, the ability to establish unions and the right to strike.

Maina Kiai is a Kenyan lawyer, human rights activist and since 2011 the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

Migrant workers

From my discussions with various groups, I learned that the situation of migrant workers throughout the United States is characterised by the precariousness and exploitation of their employment situation, retaliation for drawing attention to adverse working conditions and a fear of taking action to seek improvement of the violations.

A broad range of workers are affected – documented and undocumented, skilled and 'unskilled', seasonal and or long-term. Migrant workers, of whom I met many in Arizona and Louisiana, are routinely subjected to harassment, intimidation, physical, sexual and psychological abuse, with those attempting to form or belonging to unions and organisations such as the Congress of Day Laborers being targeted for reprisals. Compounding these challenges, many of these workers cannot return home voluntarily because of the debts they incur in order to cater for migration and settlement expenses, plus fees charged by recruitment agencies to find them work.

Migrant workers' rights are violated by multiple actors who are motivated by perverse incentives that often converge to the detriment of migrant workers, including private sector employers, recruitment agencies, union-busting firms, Immigration and Customs Enforcement Agency, local police forces and sheriffs' offices, and private detention facilities.

Undocumented migrants face tremendous challenges in exercising their right to freedom of association. I would like to emphasise that under international law all workers are entitled to their human rights, including the right to freedom of association. Crossing national borders – whether legally or otherwise – does not take away these rights. As such, the testimonies of undocumented workers subjected to raids, random stops and searches – especially based on racial profiling – and arrests were particularly troubling. In the context of my mandate, the harsh treatment in immigration detention centres, many of them run by private companies who slash services to boost profits, is also unacceptable. This is particularly concerning given that many employers threaten to (and do) report migrant workers to ICE if they attempt to organise. I heard incredibly disturbing reports about these detention centres, where migrants can face solitary confinement, physical abuse, and denial of medical attention.

Documented workers fare no better. I met teachers from the Philippines who were brought into the United States on H-1B visas by a recruitment agency in circumstances that a court determined amounted to human trafficking. The recruitment agency provided the teachers false information about the terms and conditions of work, financially exploited them, restricted their freedom of association and movement, and threatened them with deportation and loss of their jobs if they did not. It was however gratifying to hear that the teachers were able to organise themselves, join a union and together

struggle for better working conditions with much success. Their achievements were necessarily because they were able – despite the odds facing them – to work in association rather than individually.

Seasonal or guest workers on H-2B visas experience similar vulnerabilities such as exploitation by recruitment agencies, isolation, unsafe working conditions, and appalling living arrangements provided by employers. Attempts to organise are met with threats and in some cases, job loss and deportation. Visas are typically tied to a specific employer who exercises immense control over the employee, can terminate the employment contract arbitrarily, call in immigration enforcement to initiate deportation proceedings and illegally withhold wages without severe penalty. This ensures that the balance of power favours the employer rather than the employee. This arrangement is unfortunately, not dissimilar to the Kafala system of bonded labour practiced in a number of countries in the Gulf region.

The role that ICE plays in enforcing immigration laws, often in collaboration with local police and in disregard of the labour disputes that may be the cause of retaliation by the employer, has the effect of aggravating violations of migrants rights, including of assembly and association. Federal government interlocutors have taken measures to ensure that workers are not subjected to deportation proceedings while pursuing redress for workplace violations, but these only apply on a case-by-case basis rather than systematically across the board. They are also weak protections in the face of an enormous problem affecting thousands of workers. More needs to be done.

At the local level, I was informed that the New Orleans Police Department, following advocacy by civil society, recently issued a policy which makes a clear distinction between its criminal law enforcement role and ICE's civil immigration law enforcement. This policy measure enhances the confidence and cooperation of the community in police actions.

Labour unions

The right to establish unions is an important one through which workers collectively can level the playing field with employers. It was therefore disturbing to hear all the impediments facing workers who want to exercise this right.

In law, workers are not prevented from forming unions. However, in practice the ability to form and join unions is impeded by a number of factors: the inordinate deference given to employers to undermine union formation; a so-called 'neutral' stance on unions by authorities, when in fact international law requires that they facilitate unions; weak remedies and penalties for intimidation, coercion and undue influence by employers; and political interference and overt support for industry at the expense of workers. While employers can hold captive audience meetings and one-on-one meetings with supervisors to dissuade employees from unionising, workers have no right to distribute union literature in the workplace, conduct meetings without management being present or engage in protest activity on the employer's property. The pervasiveness of employer interference practices are vividly illustrated by the strength of the $4 billion dollar 'union-busting' industry.

I was shocked to see that in states such as Mississippi, the lack of unionisation and ability to exploit workers is touted as a great benefit for employers. The dangers of this are exemplified by the situation at the Nissan plant in Canton, MS, where the company has aggressively worked to prevent unions from organising. Workers, meanwhile, have suffered greatly. The company no longer even hires new employees directly; they are all outsourced to a temp agency, which pays significantly lower wages and benefits. The figure that stands out for me is this: Nissan reportedly operates 44 major plants throughout the world; all of them are unionised, except for two of them in the US south. Why not Mississippi?

Even where unions are able to form, there are no requirements for an employer to engage in collective bargaining with the union with a view to concluding a contract; negotiations are often left intentionally open-ended and unproductive. The effect of this long, drawn out process is to demoralise and frustrate union members, thus weakening their bargaining power. The case of AZARCO workers in Arizona exemplifies this problem.

In so called 'right to work' (a euphemism I find misleading) states such as Louisiana, Arizona among others, workers who do not wish to join unions are protected from forced membership in the union or from paying dues to the union. However, unions are required to represent all workers in the workplace whether – even if they do not pay dues. I find this to be a particularly insidious way of weakening unions, because it removes any incentive for workers to join. Coupled with the intense pressure by employers against unionisation, it also gives enterprises a free pass to unilaterally set terms and conditions of employment to the detriment of workers.

The National Labor Relations Board, charged with the responsibility of protecting workers rights is unfortunately unable to issue penalties for employers' violations of rights. The remedies issued by the Board do not serve any deterrent purpose and underfunding severely limits the number of cases that the Board can investigate. The enforcement arms of the NLRB and the Department of Labor need to be strengthened dramatically in order to effectively address the challenges workers face in exercising their rights to freedom of association.

The pervasiveness of employer interference practices are vividly illustrated by the strength of the $4 billion dollar 'union-busting' industry

The right to strike

I was informed that in some situations, employers are permitted to replace striking workers permanently – which renders the action ineffective. The right to strike is one of the very few tools that workers can use to leverage their bargaining position with the employer. Where this right is infringed or altogether denied, workers are unable to effectively express their support or opposition to employers' policies.

The Special Rapporteur's full statement is accessible here: http://freeassembly.net/news/usa-statement

The final report on the US will be published in June 2017

Bargaining Over Corporate Investment: Innovation or Trap?

Collective bargaining has generally set the job question aside and focused on improving the compensation and conditions of work

Herman Rosenfeld is a retired national staffperson with the Canadian Auto Workers (CAW, now Unifor), and worked in their Education Department. He previously worked in a GM plant for 15 years

Ever since the sit-down strikes of the 1930s, the cycle of 'Big Three' auto bargaining has been a major economic and political event, an indicator of the progress of the class struggle in North America. If such interest has sagged of late, it charged back into the news with the aggressive declaration of Unifor's president, Jerry Dias, that winning new investments for Canada is at the top of the union's agenda in its current bargaining round with General Motors (GM), Ford and Chrysler. Dias followed up this challenge to management's right to unilaterally decide investments with the audacious warning that if these US-based corporations don't deliver on bringing a fair share of investments to Canada, they can expect a strike.

This has set up a confrontation with GM in particular, which has adamantly stated that it won't negotiate over where to put its profits. Its investment decisions, it asserted, will be made by GM alone and only after the contract has been put to bed – effectively saying, with GM's typical amalgam of arrogance and paternalism, that it will decide once the workers have shown they will behave.

A remarkable aspect of these incompatible stances between GM and Unifor is that both the company and the union are taking different positions than they have in the past. The truth is that when it suited GM, it regularly brought its investment decisions to the table. In every bargaining round in the US since the end of the 70s, GM used the threat of withholding investment and the promise of bringing new investments to get wage restraint or, more often, concessions from the UAW. And for its part, the Canadian section of the union has, over most of that same period cautioned, against its current position, that collective bargaining is not the terrain for dealing with new investment. Jobs were a political issue to be resolved at the level of the state and to attempt to deal with it in bargaining would, the Canadians claimed, only lead to disaster.

In the current context, as courageous as it may seem for the union to declare that it will go on strike for investment and jobs, it does seem incongruous to threaten to close plants that the companies don't seem all that interested in keeping going. Currently, North American sales have recovered since the deep crisis of 2008-9 (sales are strong in the US and have been at record levels in Canada). Profits are impressive by any measure. Yet the recovery of production has varied sharply across North America. US assembly of vehicles has surpassed pre-recession levels and Mexican assembly is booming, but Canadian assembly seriously lags. Going forward, things look to be even worse; announced investments in North America have, as the media and the union have noted, dramatically short-changed Canada. A good part of the Canadian auto components sector is under threat.

It is true that workers can, even in bad times and in plants destined for closure, impose significant short-term costs on their employer and so defend or improve their compensation. It is, however, another thing to imagine that such short terms costs, on their own, could be enough to reverse long term strategic decisions over investment. The Unifor leadership certainly has enough bargaining experience and savvy to appreciate this limit. The union may be using the high profile of bargaining in the auto sector, and the drama of a possible strike, to highlight the jobs issue politically, and thereby place it firmly on the political agenda. This is where the union has argued in the past the jobs issue in the auto industry always belongs.

But does Unifor's attempt to secure new investments through collective bargaining represent a powerfully militant, innovative approach on its part? Or could it be walking into a trap the automobile companies have set? If the government offers subsidies – the only public response being bandied about so far in the media, the industry or the union – is this really a solution?

The Quagmire of Investment Bargaining

It isn't surprising that the overwhelming concern of workers with decent-paying jobs is hanging on to them, all the more so in an era that has witnessed the overall decline in comparable full-time jobs. Yet unions have also traditionally grasped that this couldn't be resolved in bargaining. The availability of jobs was understood to be dependent on a wide range of factors largely beyond the scope of bargaining: the state of the economy, the quality of the product, the age of the facility, corporate competency and technological expertise, the strength of the supplier base, impact of exchange rates, new competitors, strategic decisions to directly enter new markets, etc. And so collective bargaining,

even in bad times, has generally set the job question aside – reduced work time to share the work being the singular exception – and focused on improving the compensation and conditions of work.

In the early 80s this issue became a major point of conflict between the Canadian side of the union and its American parent, and eventually a key factor in the subsequent breakaway of the Canadians to form their own union. While the Americans put jobs at the centre of their demands, the Canadians argued that if new investment was the main bargaining demand, the company would undoubtedly counter by insisting that any significant union demands got in the way, and that it would only offer the investments in exchange for concessions – basically that the workers 'buy' their jobs. Bargaining would shift from workers making demands for improvements, to corporations being the demand-initiators. Moreover, any concessions made by workers in one facility would create pressure to do the same in competing facilities. The cancer of concessions would therefore create a downward spiral in wages and working conditions without alleviating the worker insecurity. Having opened this door, concessions would become a regular feature of bargaining and the union's role would largely be constrained to repeatedly begging for jobs and selling the consequent concessions to their members as 'successes'.

Which is of course what happened. The United Auto Workers (UAW) came out of every bargaining round from 1979 on heralding an 'historic breakthrough' that 'guaranteed job security'. But there was no way to enforce the corporate side of the trade-off. Investment promises take a number of years to implement and the companies might either be unable to fulfil those promises or simply refuse to do so in light of 'changing circumstances'. In line with the agreement, plants weren't closed during the life of the agreement, but they were instead temporarily 'mothballed' until the agreement expired, at which time the companies were free to permanently close them. The companies then announced a new list of closures going into the next bargaining round, leaving the union desperately focused on shortening the list and 'winning' another 'historic agreement' – a cycle that was, all too predictably, to repeat itself over the following decades. With worker compensation and conditions eroded while job security remained as elusive as ever, the strength and credibility of the American union steadily faded. Before the concessions began, the UAW had some 750,000 members at the Big Three in the US based on historical sources; today they have under 120,000, according to the UAW.

Markets and Rules: Their Freedoms vs. Ours

What then of government subsidies as the answer to jobs? Through most of the 20th century, it was generally accepted that the Canadian auto industry, dependent on US-based corporations, could not survive under conditions of free competition with the US market, where the technology, productive capacities and decision-making were overwhelmingly concentrated. For the Canadian industry to survive, direct state intervention was deemed essential, and it first took the form of imposing an import duty (tariff) on the entry of vehicles made entirely outside the country, to encourage US-based corporations to come and produce within Canada (with the added inducement that, if a company located production in Canada, it qualified for duty-free entry into other countries of the British Commonwealth).

The tariffs did bring assembly plants but as they relied on expensive component parts unavailable in Canada the trade deficit in the auto industry kept growing. In the mid-60s, this dilemma was resolved by the Canada-US 'Auto Pact': the Canadian and US industries would be integrated, with the free flow of vehicles and components moving both ways but with one crucial caveat: Canada was allowed to have certain 'safeguard' protections. The union had lobbied hard to win these safeguards, which basically stipulated that if any of the auto majors wanted duty-free access to the Canadian market they would have to match Canadian sales with Canadian assembly. The significance of the safeguards the union won in the Auto Pact was made especially clear in the late 1970s, as the Japanese companies dramatically expanded their share of the US market and this led the UAW leaders there to agree to collective bargaining concessions to make 'their' companies more competitive. The Canadians, backed by the Auto Pact's safeguards, instead focused on mobilising for new politically-enforced safeguards. They demanded further state regulation of foreign corporations, preventing them from undercutting other workers. This, they argued, was key to really defending jobs.

But with the coming into force of the Canada-US free trade agreement, the Canadian auto industry was left to the whims of the 'free market'. Though free trade agreements rigorously limited state intervention to impose social standards, they did not prevent state subsidies to foreign corporations to affect the location of production. Competitive subsidies became an add-on to free trade. This left unions in the position of calling for subsidies on behalf of corporations who were already among the wealthiest corporations in the world and increasingly favoured by competitive cuts in corporate taxation. Unions calling for subsidies for 'their' companies – while other workers faced layoffs and closures, and while curtailed spending on public services impacted public employees and their clients faced the consequences of curtailed spending on public services – were unlikely to gather many allies.

Without a more ambitious political campaign speaking to all workers in the name of full employment, social justice and collective services, any union calling for subsidies risked being seen as simply 'taking care of its own'. And in the end,

Free trade agreements rigorously limited state intervention to impose social standards, but did not prevent state subsidies to foreign corporations to affect the location of production

Sam Gindin, now retired, was an Assistant to two Presidents of the Canadian Auto Workers (CAW)

subsidies did not prevent the auto industry from shifting its plants from the Great Lakes area to the American south and Mexico.

In 2009, in the midst of the Great Financial Crisis, Canada made a commitment to contribute $10.8-billion to GM and $3.8-billion for Chrysler, based on each company's share of North American assembly in Canada. The implication was that as the industry emerged from the crisis, Canada's share of continental assembly would be maintained. Yet once GM had the money, Canada's share of assembly fell and remained significantly below the 16 percent share of production that the subsidy had been based on. Offering the big dollars but leaving the unilateral power of investment decisions in the hands of corporations proved, once again, to do little for Canadian jobs.

Reframing the Problem

The problem with trying to get new investments through collective bargaining is that it may effectively become the only demand

The problem with trying to get new investments through collective bargaining is not that it's a bad demand – the union can hardly ignore this concern – but that it may effectively become the only demand, while the company is virtually invited to raise concessionary demands. And absent a broader political campaign, the pressure on the companies to commit to investments is limited, as is the pressure on the government to insist on such commitments and then guarantee that they are actually met. Moreover, if is not backed up by a forceful broader campaign, the union will inevitably find itself on the defensive in the court of public opinion.

Going into this round of bargaining, Unifor has various things going for it. No-one can plausibly put the blame for the crisis in the Canadian auto industry on the workers. Investing in Canada comes with no penalty to the companies and the union in fact has the economic space to make gains. As Dias has constantly emphasised, independent studies rank the Canadian plants among the very top plants in North America in terms of productivity and quality. Moreover, the social and political climate has changed over the past few years. A growing backlash against the extremes of corporate power and inequality is ready to be tapped. When unions could win their demands based on their workplace power alone, such considerations weren't all that important. Today they are crucial.

The obvious strategic demand to focus on in bargaining is ending the shameful two-tier wage structure under which newly hired workers, who do the same work as other unionised workers, start at 60 percent of the wage, remain there for three years, and only reach parity with their co-workers after completing their 10th year, while they are forever excluded from achieving an equivalent pension plan. This is not only a matter of a 'just' demand and one that speaks to strengthening the union for future battles, but it also positions the union to gain popular support for its immediate struggles. Heady calls for union renewal – now common in the labour movement – can't help but sound hollow when the members expected to carry out that renewal are alienated from the union because of the wage discrimination that two-tier involves. Taking on the struggle against two-tier, including striking over it, would add to rather than take away from the focus on bargaining for new investment.

Corporations have over recent decades gotten almost everything they asked for in the way of free trade, taxes, social service cutbacks, and labour legislation. Instead of elected governments standing idly by while unelected corporations destroy or move the country's productive capacity, what needs to be placed on the agenda is the development of the state capacity to take over such facilities and its equipment, an engineering capacity to convert them, and a planning capacity to integrate them into production for social use. In the case of the auto industry, if the companies continue to refuse to invest and facilities are put at risk of shutting down, the government should stand ready to take over these facilities and look to integrate them (and component plants affected by the lack of investment by the auto majors) into a plan that keeps people working to address otherwise unmet needs.

The key for such projects would be the environmental transformations that will be needed through the rest of the century. Reorienting the economy to planning would also mean coordinating with like-minded governments and social forces for planning more socially just international economic relations, not coordinating to the ends of freeing markets to the benefit of multinational corporations.

Conclusion: Is this winnable?

With the changes in the Canadian auto industry, the union doesn't have the Big Three strike leverage it once had. But we never know what is actually possible until we test it. It may seem a long road from a union trying to protect jobs to a union setting out an alternative agenda for the economy. But surely the main lesson of recent years is that since capitalist corporations think big as a matter of course – as globalisation and their determination to build a world 'in their own image' affirm – then we will surely lose if we continue to think small. The options in society have indeed narrowed but that is not a reason to narrow our hopes; it is rather why we need to expand those options by putting more radical alternatives on the agenda. It's the radical that is now the only thing truly practical. If we don't raise our expectations, they will be lowered for us.

A longer version of this article was first published by the Socialist Project (www.socialist project.ca)

German Federal Labour Court orders compensation for illegal strike

In its ruling of 26 July 2016, the German Federal Labour Court (Bundesarbeitsgericht, BAG) held[1] that the Air Traffic Controllers Union (Gewerkschaft der Flugsicherung, GdF) has to pay FRAPORT AG high compensation (possibly euro 5 million) for the strike action it organised at Frankfurt Airport in February 2012. The exact amount of damages will now be determined by the Regional Labour Court of the State of Hesse (Landesarbeitsgericht Hessen, LAG). Contrary to the previous instances ruling in the principal proceedings, the BAG found the strike action to be illegal, as the obligation of the collective agreement to keep the industrial peace still applied to some of the union demands. The BAG did however dismiss the damage claims brought against the GdF in the same proceedings by third-party aviation companies for flights cancelled as a result of the collective action.

In the previous instances, the Frankfurt/Main Labour Court (Arbeitsgericht Frankfurt am Main, ArbG) and the LAG had ruled that FRAPORT did not have any justified damage claims. Both previous instances were convinced that GdF would have undertaken the strike action at the same place, the same time, and with the same extent even without the ancillary demands violating its obligation to keep the industrial peace, so that the damage would also have occurred with a lawful alternative action by the GdF. Because of this lawful alternative action, GdF would therefore not be liable for the damages claimed by FRAPORT. In the principal proceedings, the previous instances had also dismissed the action insofar as it concerned the damage claims of third-party aviation companies, because – as the BAG afterwards confirmed in its final ruling – third parties may not claim damages from the trade union undertaking the strike, even if the strike was unlawful, as it did not constitute a direct intervention in their business activities.

The BAG ruling of 26 July 2016, which has only been released as a press statement, constitutes another restriction of the unions' right to collective action, insofar as it concerns the damage claims awarded to FRAPORT. According to the BAG press statement and contrary to the previous instances, the BAG did not uphold the principle of lawful alternative action, as it did not follow the GdF view that the same damages would have occurred in a strike action without any demands violating the obligation to keep the industrial peace[2]. The BAG decision is negative for the trade unions and illustrates the risk unions are exposed to in all their strikes. To enforce their bargaining claims and to exercise their right to free collective bargaining enshrined in Article 9 Section 3 of the German Constitution (Grundgesetz), trade unions depend on strike action. Even now, the German unions' right to strike is subject to multiple restrictions starting with the rulings of the European Court of Justice (ECJ) in the cases of Viking/Laval[3], on the employers' option to be members of an employers' association without being committed to a collective agreement (OT Membership)[4], or the legitimacy of so-called 'flash' resignations/changes of membership to an OT membership[5], or the requirement that a legitimate strike must have an objective which is suitable for regulation by collective agreement.

Furthermore, the coverage of collective agreements has registered a downward trend for years; just short of one third of all companies in Germany are bound by collective agreements (West Germany: 31 percent; East Germany: 21 percent); these same companies employ close to 60 percent of all employees (East Germany: 49 percent)[6]. Further restrictions of the right to strike are therefore highly problematic. The BAG must be commended for confirming an earlier ruling of 2015 saying that third parties not involved in a strike action cannot claim damages from the striking trade union, as there is no relation of their intervention to the business of said third party. This means for the present case that there was no direct intervention in the business activities of the aviation companies suffering cancelled flights[7].

Background to the strike

The BAG decision of July 2016 was based on the following events: the claimant company FRAPORT AG and GdF had concluded a bargaining agreement for the employees working in apron control and central air traffic control of FRAPORT AG in 2007. The agreements provisions were partially terminable as of 31 December 2011 or 31 December 2017, respectively. Following a partial termination of some provisions of this collective agreement, failed bargaining rounds and arbitration proceedings ending in a recommendation by the arbitrator, GdF decided to take strike action to enforce the

The union will have to pay compensation (possibly euro 5 million) for the strike action it organised at Frankfurt Airport in February 2012

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arbitrator's recommendation which also referred to some bargaining provisions which had not been terminated yet. In a letter dated 15 February 2012, GdF therefore announced a temporary strike at FRAPORT for 16 February 2012, which was to concern the sections for apron control, central air traffic management and apron supervision of FRAPORT AG. This collective action was carried out – albeit with interruptions – as announced and then repeatedly extended until 23 February 2012. GdF stopped its collective action on 23 February 2012 when negotiations resumed.

As a result of bargaining failing again, GdF announced to FRAPORT in a letter dated 25 February 2012 that it would carry out further collective actions in the sections for apron control, central air traffic management and apron supervision in the period from 26 February 2012 until 1 March 2012. In a letter dated 28 February 2012, GdF also announced to a further company responsible for the operation of air-traffic control for the entire German airspace at Frankfurt airport that GdF members working in the Tower division at Frankfurt tower would call a temporary solidarity action to support the ongoing collective action in apron control, air traffic management and apron supervision. However, this collective action was forbidden by ArbG Frankfurt Main by a temporary injunction granted on the same evening, 28 February 2012, in injunction proceedings[8]. Another temporary injunction was granted on 29 February 2012 to prohibit GdF from continuing its main strike action[9]. Due to a violation of the obligation to keep the industrial peace, the collective actions organised in connection with the main strike were also held to be unlawful. ArbG Frankfurt said in its decision in the temporary injunction proceedings that the violation of the obligation to keep the industrial peace could not be remedied by changing the objectives of the strike during an ongoing collective action[10]. The solidarity strike was ruled to be unlawful, as it could not be regarded as supporting collective action because of its consequences and because it had the same weight as the main strike[11]. As a result of the rulings by ArbG Frankfurt, GdF stopped its collective action on 29 February 2012 and cancelled the intended solidarity strike it had previously announced. The GdF strike action carried out prior to the injunctions resulted in numerous flight cancellations and delays, but FRAPORT managed to organise training for its staff at short notice and could therefore compensate for the majority of the activities, which had been discontinued in the sections for apron control, central air traffic management and apron supervision as a result of the stoppages, and the vast majority of all air traffic could go on as planned[12].

During the entire period of the strike, FRAPORT managed to maintain approximately 90 percent of all flights

FRAPORT and the third-party aviation companies, which had been affected by flight cancellations due to the strike and were now involved in the action as co-plaintiffs, held the view that the collective action carried out or announced by GdF was not permissible as it violated the obligation to keep the industrial peace resulting from regional collective agreement no. 32/2007, which had not been terminated at the time of the collective action, as well as the principle of proportionality. GdF would be liable for damages, as the strike actions it performed and announced constituted an unlawful and culpable intervention in the established and pursued business activities of the plaintiffs. They argued that the basis for these damage claims was provided by § 831 or § 823 of the German Civil Code (BGB) in conjunction with § 31 of the German Civil Code (BGB). They also argued that the justification of the damage claims by FRAPORT and the aviation companies affected by flight cancellations was provided in § 280 BGB, as the collective agreement between FRAPORT and GdF had only been partially terminated and constituted an agreement with a protective effect in favour of third parties. In the action brought by FRAPORT and ultimately decided by the Federal Labour Court (BAG), FRAPORT therefore demanded damages from the GdF amounting to euro 5. 2m, and the other claimants - two aviation companies - demanded euro 3. 9m and 131,000 respectively[13].

The decision of the BAG in detail

In its decision of July 2016 and insofar as this may be concluded from the BAG press statement, the BAG held a view on the FRAPORT damage claims which clearly differed from both previous instances. According to the BAG press statement, the BAG said that the strike in its present form was unlawful and constituted a uniform indivisible action,[14] as it was intended to enforce the arbitrator's recommendation which also referred to non-terminated elements of the collective agreement. With respect to the non-terminated provisions of the collective agreement, the obligation to keep the industrial peace would still be valid and GdF had violated it by its collective action.

The GdF objection that the same strike with the same damage would have been carried out without the bargaining demands supporting the existing obligation to keep the industrial peace was held by the BAG to be irrelevant, as such an event would have been for a different strike goal and therefore constituted a different strike[15]. The objection of lawful alternative behaviour was therefore held by the BAG to be unsubstantiated. Both previous instances in the principal proceedings had ruled, however, that the GdF invoking lawful alternative behaviour and referring to previous rulings by the BAG and BGH courts had to be considered as relevant for granting damages[16]. The relevance of an objection referring to lawful alternative behaviour would be governed by the protective purpose of the respective violation of a legal standard. The previous instances were convinced that the strike would not have taken a different course and that the effect of the strike would have been identical, if GdF had not

included the arbitrator's recommendations on the non-terminated provisions of the collective agreement. In such an event, the strike would have been lawful. The protective purpose of the obligation to keep the industrial peace would not be contrary to GdF presenting an objection based on the principle of lawful alternative behaviour.

In the previous instances it was held that the present case constituted a special case which differed from the other cases which the BAG had previously decided (eg. in 1958) and concerned the objection of lawful alternative behaviour in collective actions. The ArbG said that the purpose of the obligation to keep the industrial peace was not to prohibit collective actions altogether but to prevent the subjects of provisions regulated in a valid collective agreement from being turned into the objectives of collective action. If, as in the present case of the GdF, a comprehensive package of demands contained individual demands of secondary significance which clearly did not have any impact on the course of the negotiations, on the issue of when and how strike actions are taken or on the obligation to keep the industrial peace, a dismissal of the objection of lawful alternative behaviour would result in a unilateral risk or liability for the collective action being imposed on the striking trade union to an extent not intended in the obligation to keep the industrial peace[17]. This would be inappropriate and therefore the courts in previous instances held the view that the GdF could invoke the objection of lawful alternative behaviour. Unfortunately, BAG did not follow this reasoning. It remains to be seen when the detailed judgement is published why the BAG has not followed previous instances.

According to the previous instances, the collective action of GdF neither interfered with the parity of disputes nor was the collective action disproportionate so that this did not constitute a reason for FRAPORT to claim damages. During the entire period of the strike, FRAPORT managed to maintain approximately 90 percent of all flights and approximately 84 percent of all air traffic on strike days by deploying substitute personnel, which was trained at short notice[18]. The previous instances held the view that the main strike action had not been disproportionate either. A collective action would only be disproportionate, when it constituted an unjustified restriction of other legal positions enjoying an equal protection by the constitution, i.e. when it was intended to destroy the opponent or threatened its economic existence. This did not apply in the present case[19]. Damage claims would not be justified on the basis of an announcement of solidarity strikes, as it had not been substantiated that there had been damages resulting from the mere announcement of such action.

As regards the damage claims brought by third-party aviation companies affected by flight cancellations during the strike, all instances in the principal proceedings including the BAG ruled that there was no intervention in the business activity of the aviation companies, as this collective action had not been immediately directed against the business activities of these aviation companies, and that claims based on § 823 of the German Civil Code (BGB) were thus excluded - a ruling which must be welcomed and confirms the decisions in previous cases. The flight cancellations suffered by the aviation companies only constituted an indirect consequence of the stoppages performed by FRAPORT employees and called by the GdF, especially as they were subject to externally determined mechanisms and followed interdependencies not created by the defendants. In the view of all courts deciding in the principal proceedings, there were no valid claims based on § 280 of the German Civil Code (BGB) in conjunction with the collective agreement, as the sections attributing liability in a bargaining agreement and forming the basis for the obligation to keep the industrial peace, did not constitute an agreement with a protective effect for third parties[20].

That the same damage would have occurred with a lawful alternative action was held to be irrelevant

Notes

1 Cf. BAG - 1 AZR 160/14.
2 Cf. BAG Press Statement no. 38/16.
3 Cf ECJ Viking of 11 Dec 2007 – C-438/05; ECJ Laval of 18 Dec 2007 – C-341/05.
4 OT membership means the membership of an employer in an employers' association without being committed to the collective agreements concluded by the association. On the legitimacy of OT memberships, see the BAG decision of 18 July 2006 - 1 ABR 36/05 - and the ruling by the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) of 1 December 2010 – 1 BvR 2593/09.
5 On the BAG decision of 2015: BAG of 19 June 2012, 1 AZR 775/10.
6 Ellguth/Kohaut, Tarifbindung und betriebliche Interessenvertretung: Ergebnisse aus dem IAB-Betriebspanel 2015 [Commitment to bargaining agreements and worker representation on the company level: results of the IAB Corporate Panel], in: WSI-Mitteilungen 4/2016, p. 283-291.
7 Cf. BAG decision of 25 August 2015 – 1 AZR 754/13 and 1 AZR 875/13.
8 Cf. ArbG Frankfurt 9 Ga 25/12.
9 Cf. ArbG Frankfurt 9 Ga 24/12.
10 Cf. ArbG Frankfurt 9 Ga 24/12.
11 Cf. ArbG Frankfurt 9 Ga 25/12.
12 On the statements ikn this paragraph, see ArbG Frankfurt Main of 25 March 2013 - 9 Ca 5558/12 and the BAG Press Statement no. 38/16.
13 See also ArbG Frankfurt Main of 25 March 2013 - 9 Ca 5558/12.
14 See also ArbG Frankfurt in the temporary injunction proceedings - 9 Ga 24/12.
15 See BAG Press Statement no. 38/16.
16 On the content of this paragraph, see the pooling of ArbG Frankfurt Main - 9 Ca 5558/12; LAG Hessen of 5 Dec 2013 - 9 Sa 592/13.
17 ArbG Frankfurt Main 9 - Ca 5558/12; LAG Hessen of 5 Dec 2013 - 9 Sa 592/13.
18 Cf. ArbG Frankfurt Main - 9 Ca 5558/12 et al.
19 ArbG Frankfurt Main - 9 Ca 5558/12.
20 Cf. an earlier BAG decision of 25 August 2015 – 1 AZR 875/13.

The author thanks the translation office M. Blomen GmbH for the translation of this essay to English.

worldwide

Bangladesh

In July, UNI Global Union filed an OECD complaint against the Dutch company VimpelCom complaining of union-busting at the second largest telecommunications company in Bangladesh, Banglalink. UNI says that union leaders were sacked and faced intimidation at the company after applying to register the Banglalink Employers Union (BLEU). Despite having exceeded the support required for registration of the union, both the company and the government opposed the application and registration was denied.

Europe

A new report published by the European Trade Union Institute (ETUI) examines in depth the legality of the measures taken by the EU, alongside the European Central Bank (ECB) and the International Monetary Fund (IMF), in the wake of the financial and debt crisis. In *Collective social rights under the strain of monetary union,* Florian Rödl and Raphaël Callsen demonstrate how the EU's post-crisis agenda - focused on a flexible, productivity-based wage policy - has unlawfully interfered with the autonomy of existing national collective bargaining systems. The authors conclude: 'Many of these limitations cannot be justified in the light of the principle of proportionality pursuant to Article 52(1) of the Charter, as they are neither necessary nor proportionate in the narrow sense of the term. The Council recommendations in question and the Commission's involvement are therefore unlawful, being in violation of Article 28 of the Charter… The Member States concerned and the parties to collective bargaining can seek judicial remedy against Council recommendations for corrective action and the Commission's decisive involvement in the agreement of MoUs by means of an action for annulment pursuant to Article 263 TFEU [Treaty on the Functioning of the European Union]. National provisions implementing recommendations for corrective action and MoU conditions can be reviewed in the light of their compatibility with Article 28 of the Charter in a preliminary ruling issued pursuant to Article 267 TFEU'. The publication is timely: according to the ITUC, the 'Troika' (EU/ECB/IMF) is preparing 'to impose a new round of cuts to minimum wages, weakening of laws protecting workers facing dismissal and further erosion of trade union rights' in Greece. The national centre – the General Confederation of Greek Labour (GSEE) – has reported that a '21-page directive sent to Greek officials includes measures that would cut the minimum wage for skilled and experienced workers by around 30% as from 2017'. The full report is available to download from **www.etui.org**

Finland

The power of collective agreements in Finland is under attack from business and industry organisations, supported by right-wing politicians of the National Coalition Party (NCP). Historically the Finnish labour market model allows for generally binding national collective agreements between employers' associations and trade unions, which apply even to employers who are not members of the employers' associations. The system has provided for a very high proportion of workers covered by collective agreement: 100% in the public sector, 75% in the private sector. Following recent reports by two influential think tanks, the NCP chair and Minister of Finance, Petteri Orpo, has come out in favour of scrapping the principle that the agreements should be generally binding.

Forced labour: US/Asia

US and Thai firms are facing two lawsuits concerning the use of forced labour in food production supply chains. In August, seven Cambodian villagers initiated legal actions against four suppliers to US supermarkets, alleging that they were trafficked and subjected to forced labour in a shrimp and seafood factory in Thailand between 2010 and 2011. The complaint is addressed to two Thai exporters and two California-based importers. Their case will be heard in a federal court in California. The firms have sought to have the case dismissed on jurisdictional grounds. In separate proceedings, a group of migrant workers from Myanmar filed a lawsuit in September against a major Thai food exporter at a labour court in Saiburi province. The workers – who are supported by the Migrant Workers Rights Network (MWRN) – allege that they were held in slave-like conditions for years on a chicken farm which supplied the firm Betagro. Since the allegations were made in June, Betagro has reportedly stopped sourcing produce from the farm, where workers claim they received wages below the minimum wage, faced deductions for utility and accommodation and slept on the floor with the chickens during peak times. The Thai poultry industry exports over 40% of its goods to Europe.

Forced labour: US

Working conditions akin to 'slave labour' in a number of US prisons has prompted inmates to organise what may have been the largest prison strike in US history. The Free Alabama Movement (FAM) and the Incarcerated Workers Organizing Committee (IWOC) of the Industrial Workers of the World (IWW) called for the strike action, which was anticipated to take place in as many as 24 states on 9 September. A work stoppage was previously organised at six state prisons in Georgia in 2010. Approximately 900,000 inmates work in prisons across the country, but prisoners are legally barred from forming a union, or collectively bargaining, due to a 1977 Supreme Court ruling. According to a report in The Nation (7 September 2016): 'In states such as Colorado and Arizona, inmates earn as a little as a few cents per hour for their work. In Texas, Alabama, Georgia and Arkansas, incarcerated people are forced to work for free'. The FAM released draft legislation (the Freedom Bill) on reform of the state penal system as part of its demands. Reliable data on the size of the 9 September strike are not yet available.

Forced labour: US/China

Earlier this year, US border agents seized a shipment of soda ash from the Tangshan Sanyou Group on the grounds that it was produced by forced prison labour in China. The seizure on 29 March was the first such measure by US Customs since 2001. It was made possible by a legislative reform earlier this year to address a loophole that had prevented the enforcement of laws against importation of goods produced by

forced or child labour if the goods met 'consumptive demand'.

G20 and World Social Forum

At the G20 Summit in Hangzhou China on 4-5 September, the Labour-20 (L20) representing workers of the G20 countries issued a statement highlighting that 'the current policy stance of loose but ineffective monetary policy combined with contractionary fiscal policy and a structural weakening of collective bargaining institutions is not working. The outcome of the 'Brexit' vote shows once again that the time of business as usual is long behind us and that trickle down strategies do not work. 65 to 70% of households in advanced economies, up to 580 million people, have experienced falling or flat real income growth'. The full L20 statement is available here: **www.tuac.org**

A month earlier, on 9-13 August, over 50,000 people attended the World Social Forum, the largest international gathering of civil society, first established in 2001. This year saw a much higher presence of trade union organisations than in former years, indicating increasing cooperation between organised labour and other social movements.

'Gig economy' strikes

In London in August, couriers for the food delivery service Deliveroo staged a two-week wildcat strike. The London drivers went on strike to protest the company's decision to trial a new payment system, moving from an hourly rate to a piecework – at just £3.75 per job. With a high profile social media campaign, the drivers won back a guaranteed rate during peak hours and the trial is now voluntary. The UK government also intervened, telling the company that it must pay workers the national minimum wage unless they are declared self-employed by a court. A landmark industrial action for the growing 'gig economy' – which is modelled on flexible labour and short-term contracts – the Deliveroo strike may prove highly significant. Companies which promote this model – such as Uber – are booming across the world. The rival delivery service, UberEats now faces similar protests from couriers in London over wages.

India: general strike

On 2 September 2016, a 24-hour general strike was held in India. The strike was organised by ten national trade union centres after negotiations over the minimum wage for unskilled workers with Finance Minister Arun Jaitley broke down. According to some sources, it was the largest general strike in history, with over 150 million workers participating. Workers demanded that the government dump its plans to close unproductive factories, raise foreign investment caps in some industries and privatise state-run companies. The unions are also pushing for a living minimum wage, proper enforcement of labour laws and universal social security cover.

According to the ITUC, unions also called for the government to ratify ILO Conventions 87 on Freedom of Association and 98 on Collective Bargaining. ITUC General Secretary Sharan Burrow said 'with 90% of jobs in the informal sector, the government should take heed of the joint union platform as the right pathway to decent and secure jobs for the many rather than the few… Ensuring that labour laws are respected, and avoiding casualisation, privatisation and outsourcing are crucial for India's further development and to the needs of the many millions who live in abject poverty'.

In Delhi, the city government invoked the Essential Services Maintenance Act (ESMA) to try to prevent some 20,000 nurses working in government hospitals from joining the nationwide strike. The All India Government Nurses Federation had declared an indefinite strike over demands for a better entry-level pay-scale. Declaring the action illegal, the Delhi government released a statement threatening arrest, detention and termination of services. Media reports on the numbers of actual arrests vary widely. According to some, police briefly detained more than 200 nurses protesting at Ram Manohar Lohia Hospital, before the ESMA had even been invoked. Two union leaders were reportedly sent to Tihar jail. After negotiations with government, health ministry officials agreed to send the demands to the Finance Ministry and the strike was suspended. Workers were assured that strikers would not be further penalised.

Peru

UK-based NGO Bananalink report that the main trade union in the banana sector in Peru has signed a historic agreement with producers' associations. The agreement formally recognises the Sindicato De Trabajadores Agrarios del Peru (SITAG), and provides for check off facilities and conflict resolution procedures involving the participation of the Peruvian Fair Trade Producers' Coordinating Body (CNCJ) and the Coordinating Body of Latin American Agroindustrial Workers' Unions (COLSIBA). Signed on 15 August, the framework agreement was reached after several years of struggle with the producers' associations to win union recognition.

Thailand

British migrant rights researcher Andy Hall has been convicted in a criminal defamation case arising from a report he prepared for the Finnish NGO Finnwatch in 2013. An earlier case was dismissed in 2014. Hall received a 4 year sentence, suspended for two years and a fine. IUR will report on his case next edition.

World Federation of Trade Unions

The WFTU will hold its 17th World Congress in Durban, South Africa on 5-8th October, under the slogan 'Struggle – Internationalism – Unity Forward!' In advance of the Congress, the WFTU has published its *Report of Action 2011-2016*, available to download from **www.wftucentral.org**

worldwide

(continued from Page 7...)

1. No-one will be dismissed because of these actions,
2. Company will recognise workers right to choose their union and they won't force them to join Türk Metal,
3. Companies will recognise workers' chosen representatives
4. They gave promise to make an increase in the wages in a month-time

After these promises, production resumed in all factories. But company managements didn't keep these promises for long and after one month after these declarations, mass dismissals took place in all of these workplaces except Renault, these dismissals were also including workers representatives who negotiated workers' demands with the management. Since workers own committees and internal organising were strong, Renault management didn't want to risk another strike by dismissing workers' representatives.

Prospects for resolution

While the situation calmed down in all other factories with dismissals, Renault workers kept their organising and they collectively joined the Birleşik Metal İş union in July 2015. While the Birleşik Metal İş union started to represent more than 80 percent of the workforce by October 2015, company refused recognise any representatives of the union and they refused to talk with the union publicly neither, company was using Turkish legislation as an excuse on not to recognise the newly elected union. But in the same time demonstrations and actions were going on in the plant, finally company agreed to held elections inside the factory for a committee which will be called 'Social Dialogue Committee', this committee supposed to be responsible for communication between workers and the factory management in order to address workplace problems. This Committee was formulated after lengthy discussions between Renault management, IndustriALL Global Union and Birleşik Metal İş. But just after this elections were declared, Minister of Labour called factory management and invited General Manager and HR Manager to Ankara, capital of the country and in a lengthy discussion, Minister himself explained company that they shouldn't organise this elections. After a while, Minister of Labour himself even openly declared this to press too.

So suddenly Renault management stepped back on their commitment and they told that the elections which supposed to take place on 29 February 2016 won't take place because of the Government pressure on them. On 1 March, Renault started to dismiss all the workers' spokepersons who were responsible for communication between management and workers since the strikes in May 2015 and who were also officially recognised by company management. Also in order to prevent, any actions by the workers, watercannon and riot police started to wait in front of the factory and they attack the workers with tear gas and batons who were trying to come together in front of the factory in order to protest dismissals. Some workers were hospitalised, 26 workers and union officials were detained and afterwards taken the court. Afterwards, criminal court case opened against union officials and demonstrating Renault workers just because of the demonstrations which will have its first hearing on November 2016. Company went on dismissals after that day, they dismissed all the workers' representatives in each production post, in total 75 workers were dismissed without severance package. Also they used a tactic for intimidation in order to force to leave the work voluntarily for the rest of the active union members. 325 workers were called one by one and they were told that there is a disciplinary investigation against them because of their involvement in the demonstration and they might be dismissed without severance package that's why they were suggested to leave the work by accepting severance package. And since then, whenever any of the dismissed workers or Birleşik Metal İş union officials go in front of the factory, in less then 10 minutes time police show up and tells them to go away from the factory otherwise they will be arrested.

Turkey is member of Customs Union with EU since 1999 since then Turkey's export to EU grow quite fast, the cars produced in above mentioned factories are mainly sold in stores all over the Europe while the new production lines of these factories in Turkey are also financed by European taxpayers' money through loans of European Bank of Reconstruction and Development (EBRD) and European Investment Bank (EIB). Now Turkey is EBRD's second biggest market. But while economical integration of Turkey with EU goes very fast, human rights and specifically workers rights are far behind the EU labour standards and relevant international legislation.

(continued from Page 11...)

remedies on the basis of unconstitutionality of the laws to be enacted by the government[1].

The crucial positive arrangement in the last sentence of Article 90 of the Constitution was not added to the Constitution as a result of the struggle of society to develop and harmonise trade union provisions with the international norms. Rather the discussions in 2004 - when this provision was ratified - concerned the UN's International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, ratified in 2003. The level of rights and freedoms of trade unions in Turkey was determined by the aforementioned norms which were considered in general. These laws, too, regulate the bans and restrictions, rather than providing assurances for the rights and freedoms. But Article 90 of the Constitution cannot be used effectively due to the pressures and negative attitudes of the government and competent courts.

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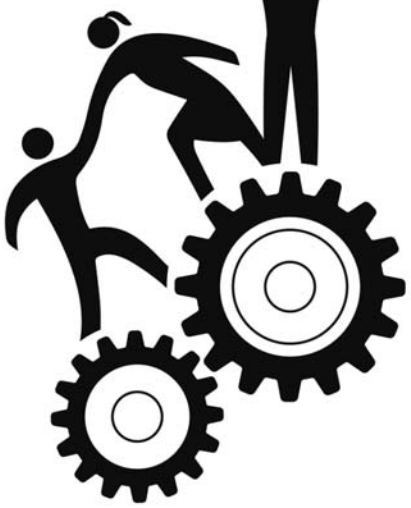

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Uniting Food, Farm and Hotel Workers Worldwide

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Building global solidarity

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

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Public Services International

PSI is a global trade union federation representing 20 million working women and men who deliver vital public services in more than 150 countries.

PSI works with our members and allies to campaign for social and economic justice, and efficient, accessible public services around the world. We believe these services play a vital role in supporting families, creating healthy communities, and building strong, equitable democracies.

Our priorities include global campaigns for water, energy and health services. PSI promotes gender equality, workers' rights, trade union capacity-building, equity and diversity. PSI is also active in trade and development debates.

PSI welcomes the opportunity to work co-operatively with those who share these concerns.

Visit our website **www.world-psi.org**

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