INTERNATIONAL

union rights

Volume 17 Issue 2 2010

INTERNATIONAL CENTRE
FOR TRADE UNION RIGHTS

ICTUR

Focus on

Business and Human Rights

IUR critically examines the 'Ruggie' process and 'CSR'

- What are the human rights responsibilities of transnational business?
- How can businesses be held accountable?

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Volume 17 Issue 2 2010

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● Centro Internacional para los Derechos Sindicales
● Centre International pour les Droits Syndicaux

INTERNATIONAL union rights

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Editorial: Business and Human Rights

This edition of IUR attempts to help trade unionists to make some sense of the process that is taking place in the 'Ruggie' forums. It is not, unfortunately, a trade unionists guide to holding businesses to account for transnational human rights violations. But it might be helpful and/or interesting reading for anyone thinking of embarking on such a project. We begin with the man himself, Professor John Ruggie, interviewed briefly by the ILO earlier this year. Ruggie sets out in a very simple and accessible form exactly what it is he understands the Business and Human Rights process to be. Later in this edition, ICTUR's Director, Daniel Blackburn, sets out a little more detail of how the process evolved, and examines the extent to which trade unions have (or have not) engaged with the process to date.

For the majority of articles appearing in this edition of IUR we wanted to avoid simply reproducing a string of identical reports from CSR experts who would be eager to explain in minute detail the exact ramifications of Ruggie's latest pronouncements. Instead IUR sought out a different perspective on Business and Human Rights. We invited people who are very much involved in these issues at the frontline in their day to day work, but who are not formally part of the Ruggie machinery. This resulted in an unusual slant on the whole process, particularly notable being Surya Tjandra's report on the use of the criminal law against employers for violations of trade union rights. I hope you will enjoy reading this and all of our contributions this time around.

First up, Yemisi Illesanmi reports on what the Ruggie framework looks like from Nigeria, a country that has certainly had its fair share of frontline exposure to the business and human rights nexus. Although Yemisi voices concern that the Ruggie process seems somewhat remote from the perspective of Nigerian workers – Ruggie 'would have benefited more from interaction with the community', Yemisi suggests, rather than just the 'top echelons' – she also finds real substance in the basic principle of CSR. Kirstine Drew from the Trade Union Advisory Committee to the OECD reports on one specific framework under which some interesting efforts have been made to hold transnational businesses to account for human rights violations, specifically these being the OECD Guidelines for Multinational Enterprises. Although Kirstine suggests that the performance of most of the enforcement agencies (the National Contact Points or NCPs) has been 'mixed and mostly poor', she also finds that there are real success stories, notably arising from the UK NCP, which point to the potential that the Guidelines would seem to have as one of the important mechanisms for improving corporate human rights accountability.

Jeff Ballinger and Roy Adams are both thoroughly critical. Jeff roundly slams the whole industry that has sprouted up around the Ruggie process, writing off a circus that he sees as composed of 'parasitic social auditors'. Jeff argues that critics of the Ruggie process have been marginalised and he further criticises Ruggie's methodologies, especially in respect of the consultation meetings he has called at which only corporate law firms have been represented. Roy Adams is similarly unimpressed, but takes issue with different perceived faults of the Ruggie process. Why, Adams asks, was Ruggie not prepared to engage with a serious offer to examine how freedom of association could be 'operationalised' in Canada. 'If Ruggie is to be credible' Adams concludes, 'his framework must be applicable to all human rights in all of the nations of the world'.

Meanwhile, as usual the 'Focus' of this edition of IUR is not our only concern. Returning to one of the core themes that has concerned ICTUR for many years we present a vital report from ICTUR Colombia Coordinator Miguel Puerto. Puerto sets out his analysis of a disturbing new strategy of the Colombian government to sow confusion regarding the systematic nature of anti-union violence in the country. Meanwhile, also in the second half of the journal we take a look at the latest ITUC Annual Survey of Violations of Trade Union Rights, and report from the ITUC's Second World Congress.

Daniel Blackburn, Editor

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 illustrating the theme of articles are always welcome. All items must be with us by 30 August 2010 if they are to be considered for publication in the next issue of IUR.

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ILO interview with John Ruggie

One of the main goals of the UN Framework 'Protect, Respect and Remedy' is to identify and clarify standards of corporate responsibility and accountability for business enterprises with regard to human rights. Professor John Ruggie, Special Representative of the UN Secretary General on business and human rights, shared insights on the current phase and further steps towards operationalising and promoting this framework with participants of the 99th ILC. ILO Online spoke with Mr. Ruggie about design and development of the UN Policy Framework and its relationship to ILO's work.

ILO - *When you were appointed, what was the business attitude towards human rights issues?*

Ruggie - When I was appointed in 2005 the business community found the whole subject of human rights a bit mysterious and even scary. It seemed to be a world without boundaries increasingly held them responsible for things that they didn't think they had responsibility for or didn't know how to manage.

Over the course of time we have demystified the whole issue of human rights and brought it down to a level where it's understandable; for the corporate community, for smaller companies and for managers in terms of very simple responsibilities: not to infringe on the rights of others as they go about their business and the kinds of systems that they need to put in place in order to make sure that that happens.

ILO - *Why do you believe the topic of business and human rights now attracts such wide spread interest?*

Ruggie - There have been emblematic cases that have framed the public understanding and debate whether it's Shell in Nigeria or Nike in Indonesia. Public pressure and advocacy group pressure always helps to introduce new subjects to the public and this is no exception.

But over time also companies, especially large extractive industries, have found increasing pressure from the communities in which they operate and have looked for ways to manage their relationships with communities better. Investors and governments have raised questions and so increasingly this is a subject that business is familiar with and increasingly engaged in.

ILO - *How do ILO instruments fit within the framework?*

Ruggie - The work that the ILO does is of course very important in the context of workers' rights which are overall human rights as well. Because of the existence of the ILO I don't have to spend as much on workers' rights as I otherwise would. So I focus more on issues related to business impact on communities and society as a whole and how these could be more effectively managed.

In my view what's happening is that human rights is today where the environment was 30 years ago. No company had environmental impact assessment then, today almost everybody does. Thirty years from now companies will have human rights assessments. In fact many companies already do. It's part of the social evolution of the relationship between business and society that is focused on the need to have sustainable relationships with the physical environment but also with the social environment in which business operates.

ILO - *In the "protect, respect and remedy" framework, you assign different responsibilities to States and companies – who is ultimately responsible in this model?*

Ruggie - The human rights agenda initially was created by States for States and it had institutional mechanisms that were designed to deal with State abuses. Only gradually we have focused on the fact that business is having an enormous impact on human rights. We always understood that in relation to workers' rights but it's taken a bit longer to bring it into the broader social room.

ILO - *Each year, World Day for Social Justice draws global attention to efforts to eradicate poverty and promote social well-being, equality and full and decent employment. In 2010 this search for a 'society for all' faces severe challenges brought on by the global economic and jobs crises, resurging poverty and long-term social uncertainty. What does social justice mean today and how it might be achieved in the years to come?*

Ruggie - On the subject of social justice I take my cue from Amartya Sen, the Nobel Laureate and also a Harvard colleague, who says: look, we know that we are not going to be able to create a perfect world but we also know that there are remediable situations all around us and it is grievous when something that can be done isn't done. And so I'm committed like Sen is himself, to fixing problems that can be fixed and need to be fixed even if they fall short of a perfect society, which remains a long-term aspiration for us all. I am intrinsically optimistic, but I have a long-term perspective.

When I was appointed in 2005 the business community found the whole subject of human rights a bit mysterious and even scary

ILO communications department interviewed PROFESSOR JOHN G. RUGGIE, Special Representative to the UN Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises

CSR and Ruggie: a view from Nigeria

The 'protect, respect and remedy' framework looks good on paper but in practice there are many obstacles

YEMISI ILESANMI is Assistant Secretary National Youth Officer with the NLC in Nigeria and is currently based in London with the NUT

John Ruggie, Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises said in a press interview that "there isn't an internationally recognised right that some company somewhere hasn't violated". This statement aptly exemplifies the situation in Nigeria. Nigeria lacks the structural mechanisms for transparency and accountability, big businesses have identified this loophole and have over the years used this to their advantage to maximise profits at the expense of their host communities.

The Ruggie process rests on three pillars: first, the state duty to protect against human rights abuses by third parties, including businesses, through appropriate policies, regulation, and adjudication; second, the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and third, greater access for victims to effective remedy, both judicial and non-judicial. This process expects that a State's duty to protect meant that it must take steps to prevent, investigate, redress and punish abuse by third parties, including businesses.

However how does this process benefit countries that do not have the structures in place to implement these laudable recommendations. In theory, the 'protect, respect and remedy' framework looks good on paper but in practice there are many obstacles that could obstruct its effective implementation, especially in developing countries. Nigeria is a country with more than 140 million people; it is an oil producing nation with enormous natural resources and development potentials. It is however a rich country with poor people. Due to mismanagement of its resources, corruption of its leaders and an exploitative business environment, the majority of its people still live below poverty line.

Corporate Social Responsibility (CSR) is hardly considered an important issue in the Nigeria Business climate. A country riddled with corruption, Nigeria has attracted business corporations bent on exploiting the corrupt nature of the society to maximise their business profits. Corrupt politicians and civil servants are ready to remove the red tape and boycott bureaucratic processes in exchange for gratification. Companies especially multinationals have learnt to speak this corrupt language and use it to their optimal advantage.

Unfortunately, trade unions in Nigeria have not incorporated CSR in their programmes; unions so far have underestimated their roles in encouraging CSR. Although CSR is not legally binding, unions can influence its practice, monitor businesses and rate CSR performance. They can endorse and celebrate businesses that are able to meet a high level of CSR.

Since trade unions advocate for the implementation of core labour standards, it is very important that those standards are not only implemented in developed countries but also in developing and least developed countries. All workers of the world should be protected by these standards. Trade unions through organising can help monitor implementation of these standards. Trade unions can organise to promote ethical ways of doing business.

Trade unions in Nigeria need to mainstream CSR into collective bargaining and all negotiations. The unions need to build capacity through solidarity work, collaboration and partnerships. Also there is a need to organise campaigns, sensitisation and solidarity rallies etc to promote MDGs, core labour standards, and to build networks with civil society organisations to promote CSR.

The oil industry

By the early 1970s, oil emerged as the leading variable in the national economic scene. Since then, its dominance and overwhelming importance has left Nigeria operating an almost mono-culture economy with oil accounting for more than 85 percent of its national income while other natural resources have been ignored. Untold devastations have been unleashed on the locales where the oil resources are extracted especially the Niger-Delta region of the country. Their main sources of livelihood (i.e. rivers and farmlands) are polluted and destroyed. These damages often lead to conflicts between the oil firms and the host communities. Nigeria as an oil producing country has experienced its share of oil disasters, the environmental degradation of the Niger Delta Rivers and farmlands is a living testimony to the negative effect of environmental pillage. Oil companies like Shell, Chevron, and ExxonMobil that operate in the Niger Delta do not take enough responsibility for the environmental protection of the area. The ongoing oil spillage by BP in the gulf of Mexico has earned international attention and condemnation, however, worse disasters have happened and still happening on a daily basis in the Niger Delta but the world and especially the companies involve chose to ignore the enormity of this.

The BP oil spillage has gained attention because a big super power like the USA is involved, but what happens in small developing countries that do not have the big might of super word powers like the USA to fight their battles? Many indigenous communities are exploited daily and denied their livelihoods.

In November 1995, Ken Saro-Wiwa, a well-known Nigerian author and spokesperson for the Movement for the Survival of the Ogoni People (MOSOP), was hanged in Port Harcourt, in the

heart of the oil-producing region of southeast Nigeria, together with eight other Ogoni activists all involved in protests against the oil industry. The Saro-Wiwa case brought into the international headlines a debate over the role played by the oil multinationals in Nigeria that had already been raging for several years. Shell in particular was blamed both locally and internationally as the government first brutally suppressed protests by MOSOP, and finally tried and executed the core of the organisation's leadership.

The case of the Niger Delta is pathetic in that it lays the golden egg for the country at the expense of its waters and farmlands, its peoples are still poor and its land degraded. The Niger Delta is a volatile zone in Nigeria, prone to violence that has in recent pasts included abductions of foreign expatriates. The government of Nigeria recently granted amnesty to the fighters in Niger Delta in exchange for the submission of their weapons and a negotiated welfare package. However, there has been uproar again in the region that the government is not keeping its side of the bargain. There are fears that the peace in the Niger Delta might be temporary.

How can the Ruggie process work in a country like Nigeria

For the framework to work, the government must be ready to protect its people from exploitation. This poses a problem in a country where the government is also culpable in the exploitation of its citizens. Corrupt politicians have taken advantage of the weakness in the system to connive with unscrupulous business owners to further exploit the people. Where States have failed to adequately discharge their duties to protect the human rights of individuals, communities and indigenous people, who will put an end to human rights abuses involving businesses especially big companies?

In Nigeria, because of the lack of accountability, it is easy for businesses to escape living up to their responsibility to respect human rights of their host communities. Companies should build a good relationship with the indigenous peoples in a community, appreciating the community and not ever putting profit as the sole aim of business at the expense of mother earth. Capitalism might be all about profit, but there is a growing need for businesses to have a humane face. Although banks and telecommunications companies are making a lot of profits in Nigeria; not many have a CSR policy.

The Millennium Development Goals (MDGs) are supposed to be achieved by the year 2015, it is increasingly obvious that the 2015 target is fast becoming a myth, yet another unfulfilled promise to the people. The MDGS cannot be fully realised unless corporate organisations come onboard to make meaningful contributions. Development needs to be part of the agenda of businesses. Protecting the environment, development in the communities, encouraging accountability and transparency, ethical fair trade etc can go a long way in promoting development and good relationship. There is a need to assist in investment in education for example through the provision of scholarship. For the 'remedy' framework to be effective, there must be a fair judicial process that is accessible to all. In Nigeria, this is unfortunately not the case. The judicial process is slow, not always fair, and expensive. The long road to getting justice which could well be delayed and invariably denied is deemed not worth it by many.

In developed countries where there are appropriate mechanisms for effective monitoring of business activities, many companies are beginning to recognise the business benefits of CSR policies and practices. Their experiences are bolstered by a growing body of empirical studies that demonstrates that CSR has a positive impact on business economic performance and is not detrimental to shareholder value. However, value creation is also related to social issues such as health and safety, equality and environmental protection. Socially responsible businesses, with a purpose beyond making profit, can have a positive social, economic, and environmental impact at the country level by helping to improve the working and surrounding conditions, including those of its small business suppliers. The Copenhagen Declaration and Programme of Action established a new consensus on placing people at the centre of our concerns for development. Social integration was identified as one of the three overriding objectives of development, together with poverty eradication and employment creation.

A society for all must be equipped with appropriate mechanisms that enable their citizens to participate in the decision-making processes that affect their lives, and ultimately shape their common future. Participatory dialogue is an important policy tool that can offer a range of practical means. The grassroots people must be consulted and included in policy formulation that impacts on their lives and livelihood. Indigenous people are often bypassed during negotiations even though they bear the brunt of the devastation often brought in the name of development to their land.

However, international law is only just beginning to address the behaviour of nonstate actors such as transnationals. Activists are calling for international regulation of corporate activities. There is a general perception that home jurisdictions in vulnerable areas are powerless when it comes to the control of multinational corporations. While this assertion is largely correct, there cannot be effective control of multinational corporations ('MNCs') at international, regional or private level without the corresponding development of an effective minimum institutional framework at the domestic level. While CSR practice by MNCs is becoming well entrenched, this development cannot replace the need for effective host state regulation.In Nigeria, under the Companies and Allied Matters Act, the principal legislation on companies in Nigeria, the shareholders are recognised solely as the members of the company and the directors owe duties only to the company and its shareholders and thus have no legal responsibility or capacity to embark on any other duty apart from their duty to the company.

The Ruggie process would have benefited more from interaction with the community people rather than top echelons in the society alone who are already disconnected from their environment and whose loyalty is to profit rather than the people. CSR should be at the very heart of trade unions negotiation policies and made a workplace issue. Every union member anywhere should actively participate in ensuring a better living condition for all workers everywhere irrespective of colour, age, geographical location, class or sexual orientation.

The Ruggie process would have benefited more from interaction with communities rather than just the top echelons of society

Mind the Gap

Cases concerning G4S and Unilever demonstrate the effectiveness of the Guidelines where there is political will

KIRSTINE DREW is Policy Advisor at Trade Union Advisory Committee to the OECD in Paris

The OECD Guidelines for Multinational Enterprises provide a set of recommendations on good corporate behaviour that are endorsed and enforced by governments. The Guidelines cover areas of disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation.

Multinational enterprises head-quartered in countries that have adhered to the Guidelines are expected to comply with all the recommendations, even if they are non-legally binding. For their part, the forty-two adhering governments are required to set up National Contact Points (NCPs) to 'contribute to the resolution of issues' arising in the context of the implementation of the Guidelines. Trade unions and NGOs are able to submit cases concerning alleged breaches of the Guidelines to these government-backed NCPs.

The United Nations Special Representative for Business and Human Rights, Professor John Ruggie, as part of his mandate to develop and operationalise a policy framework for business and human rights, has identified the NCPs as having the 'potential of providing effective remedy', but has found that the majority of NCPs perform poorly, in the absence of minimum performance standards and consequences for companies.

TUAC agrees that the Guidelines and the NCPs have a potentially important role to play as a tool for addressing the governance gaps in business and human rights. However, the experience of 120 trade union cases raised over the past ten years shows that there is a need to upgrade significantly the substance and procedures of the Guidelines. There is also a need for a seismic shift in the level of political will of adhering governments and in the ambition shown by NCPs.

In 2010 the 42 adhering governments to the Guidelines agreed to conduct an update of the OECD Guidelines. The terms of reference for the update were adopted in April 2010 with the aim of ensuring that the Guidelines remain '…a leading international instrument for the promotion of responsible business conduct'. To succeed in this aim means ensuring that the Guidelines and the NCPs meet the requirements of the business and human rights agenda. If the Guidelines are to stay relevant, governments cannot afford to fail.

Trade union experience of the Guidelines

Trade unions have raised a total of 120 cases since 2000 representing an average of 12 cases per year. The number of cases raised was highest in 2004 (18 cases) and lowest in 2005 and 2008 (10 cases). The vast majority (93.4 percent) of trade union cases have cited Chapter IV Employment and Industrial Relations. Of these 66.7 percent concerned violations of article IV.1-a) 'respect the right of their employees to be represented by trade unions…' and 35 percent related to article IV.6 and the requirement for notice, information and engagement with employee representatives on changes to operations including closure. Over a quarter of cases raised by trade unions concerned Chapter II, General Policies.

The majority of cases, 68 percent, have concerned allegations of breaches of the Guidelines in adhering countries (OECD and non-OECD), with 39.1 percent of cases concerning violations in non-adhering countries. Trade unions have submitted cases to just 25 out of the 42 NCPs (59.5 percent). NCPs in the US, Brazil and South Korea have received the highest number of cases.

NCPs have accepted just over half of the 120 trade union cases submitted to date (51 percent). They have rejected 26 cases (21.5 percent) and suspended 9 cases (7.4 percent). Of the 62 cases that have been accepted 45 (72.6 percent) are closed and 6 (9.7 percent) have been withdrawn.

Of the 51 cases that have either been closed or withdrawn, 31 (60.8 percent) are assessed by trade unions involved in the case to have resulted in a positive outcome. The lead NCP is considered to have played a positive role in 27 (52.9 percent) of these cases and the Guidelines to have had a positive impact in 26 (51 percent) of these cases – 21.67 percent overall. In other words there are 5 cases where the trade unions were able to resolve the issues with the company outside the Guidelines process – often as a result of a wider campaign – even if the Guidelines case did not produce a positive outcome.

Parallel proceedings (judicial proceedings that address the same or similar issues at the same time) are the most frequently cited reason for rejecting, suspending or delaying cases. Out of the 120 trade unions cases, 51 involved parallel proceedings, which proved to be an obstacle in 34 cases – 66.7 percent of cases that involved parallel proceedings and 28.3 percent of the total number of trade union cases.

Building on Success

The two cases presented below concerning G4S and Unilever demonstrate the effectiveness of the Guidelines where there is political will. It is no coincidence, however, that both involve the UK NCP, which is widely regarded as the best performing NCP. The UK NCP demonstrates the 'potential', identified by Professor Ruggie, of NCPs to bridge governance gaps in business and human rights. This is the success on which the update has to build.

Learning from Failure

Such successes are, however, the exception, not the rule. Over the past ten years a number of

Improving living and working conditions: UNI v G4S

In December 2006, the Global Union Federation (GUF) Union Network International (UNI) raised a case with the UK NCP alleging that Group 4 Securicor (G4S) operating in several countries had failed to pay wages, refused to recognise unions, and in Malawi was paying half rates for overtime. The complaints concerning Mozambique, Malawi, Nepal and the Democratic Republic of Congo were successfully resolved by the UK NCP using an external mediator and resulted in the signing of a Global Framework Agreement by UNI and G4S.

Securing the right of workers to organise: IUF v UNILEVER

In March 2009, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) raised a case with the UK NCP concerning Unilever and its practice of using casual workers at its Lipton brand tea factory in Pakistan. The case was successfully resolved by the UK NCP using an external mediator. Among the terms of the agreement, 200 direct, permanent jobs were to be retroactively created. This is a landmark in that the UK NCP accepted a case built on the argument that the use of precarious employment constitutes a fundamental attack on workers' rights to freedom of association and to bargain collectively.

inter-related obstacles have combined to thwart ambition and impede effectiveness. These include, most fundamentally, a lack of political will on the part of adhering governments, but also weak procedures, narrow interpretation of the applicability of the Guidelines, low NCP capacity, inadequate resources and an absence of performance monitoring. In the Burmese case below, the Korean NCP demonstrated an unwillingness to accept a case concerning the operation of OECD-based companies in one of the world's most openly abusive regimes, as well as a lack of even-handedness in the weight it gave to information provided by the parties. The case also underscores the problem of unpredictability between NCPs with the Korean NCP's decision being at odds with a recent decision of the UK NCP. The Peruvian case illustrates how workers using the Guidelines are denied access to remedy through a combination of time delays associated with a newly established NCP, the existence of parallel legal proceedings in the host country, and procedures that do not assign the home NCP responsibility for dealing with a case.

Updating the Guidelines: bridging the gap?

The low success rate of the Guidelines so far – 20 percent for trade union cases – and the mixed and mostly poor performance of NCPs indicates that the Guidelines and the NCPs are a long way from being the effective tool that victims of labour and human rights abuses require. However, at the same time, the UK NCP shows what can be achieved. The 2010-2011 update must deliver a significant upgrade and in particular a major improvement in the performance of the NCPs across the board. Priorities include:

- international standards: change the text of the Guidelines to reference international standards, not just applicable law;
- human rights: introduce a human rights chapter, including guidance on human rights due diligence, whilst retaining Chapter IV on Employment and Industrial Relations;
- scope of the Guidelines: ensure that the Guidelines apply to a wide range of business relationships, including supply chains and indirect employment;
- minimum performance standards: introduce the six principles for effective grievance mechanisms recommended by the UN Special Rapporteur for Business and Human Rights: legitimacy, accessibility, predictability, transparency, accountability, rights-compatibility and equitability;
- mandatory peer review: introduce rigorous, transparent, participatory and adequately resourced peer review with published country reports including recommendations, in line with OECD best practice;
- parallel proceedings: develop guidance that requires parties to show that there would be prejudice to the parallel proceedings in order for a case to be rejected or suspended and require any such rejection or suspension to be subject to external oversight;
- mediation and adjudication: amend the procedural guidance to give clearer guidance on the roles of mediation or adjudication and set out a two-stage procedure whereby the NCP first seeks mediation. If this fails it should then move to the adjudication stage and give an impartial assessment of the case;
- home NCP: change the procedures to give the home NCP equal responsibility for handling a case;
- authority of the NCP: introduce consequences for companies that fail to engage in the Guidelines' process, or where there are findings against a company;
- capacity-building: the OECD should provide capacity-building support for NCPs in the start-up phase, as well as regarding ongoing training and provision of core skills, including mediation and fact-finding.

There is a need to upgrade significantly the substance and procedures of the Guidelines

Textile factory, Guatemala, Paz y Solidaridad, Spain (2009)

Labour and human rights in Burma

In October 2008, Earthrights raised a case with the Korean NCP on behalf of a coalition of civil society organisations, including two Korean trade union confederations, concerning allegations of human rights, forced labour, and environmental abuses in Burma by Daewoo International and the Korea Gas Corporation (KOGAS). In its rejection of the case, the Korean NCP appeared to accept general explanations from the company, such as the existence of a code of conduct, as being an adequate basis on which to reject the claims of the complainants. It also dismissed the need for due diligence, despite the context of the host country. This position is at odds both with decisions made by other NCPs and the direction of the work being undertaken by the UN Special Representative on Business and Human Rights.

Multiple obstacles in Peru

In March 2009, the Central Nacional de la Mujer Minera del Peru and CUT PERU raised a complaint with the Peruvian NCP concerning 47 contracted miners at Perubar S.A.'s Rosaura Mining Unit, who were allegedly illegally dismissed when Perubar decided to suspend operations at its Rosaura unit. The trade unions contended that Peruba terminated operations carried out by contracted mining companies without informing or consulting the workers. The newly-established Peruvian NCP was extremely slow in responding, despite numerous contacts made by trade unions in Peru, Geneva and Paris. More than one year later, the Peruvian NCP rejected the case on the grounds of parallel legal proceedings.

Imprisoning employers in Indonesia

The Trade Union Act is generally a paper tiger, with no implementation in practice

SURYA TJANDRA is a law lecturer at Atma Jaya Catholic University, Jakarta, and Director of the Trade Union Rights Centre, Indonesia

Although the situation cannot be compared to the three decades of union suppression under the authoritarian New Order regime, stories about workers who formed unions, were denied their rights to collective bargaining by the employer, and ended up with the dismissal of union leaders and further intimidation on their members, are not rare in today's Indonesia.

Despite the enactment of the Trade Union Act No. 21/2000 as a special law on trade unions, which supposedly protects trade union officials from dismissal due to anti-union conduct, such a practice is still frequent. One root cause of this is the unions' bargaining position in society, which remains generally weak.

The state's recognition of unions, at least formally, following the Reformasi in 1998, has not necessarily been followed by employers' acceptance for unions' involvement in arranging the daily issues in the workplaces.

Since the reform and relaxation of union formation regulations in 1998 unions have grown in numbers from only one in early 1998 to around 100 national federations registered in late 2009, including four national confederations. Indonesia has also become the first country in the Asia Pacific region that ratified all of the core conventions of the ILO, including Conventions 87 and 98 on the rights to freedom of association and collective bargaining.

However, the level of unionisation is relatively low with only six to seven percent union density in the formal sector, which numbers are actually decreasing every year. Fragmentation among unions and the lack of a strong central body might also contribute to the unfavourable position of unions.

Rights on paper: only a paper tiger?

Nonetheless, on paper, Indonesian trade unions have some legal basis to meet their traditional objectives to improve the pay and conditions of workers. The Trade Union Act, for example, provides that any group of ten workers may form a new trade union, and workers of one enterprise may associate with other workers in supporting industrial action. A worker may also be a member of more than one trade union.

Now, the Act does not use the word 'registration' but 'recording', which refers to the legal requirement for a trade union to get registered. Moreover, the Act, by article 28, clearly prohibits anti-union behaviour such as termination of employment, demotion, wage repression, intimidation or anti-union campaigns.

Indeed, the Act considers such conduct to constitute a 'grave criminal offence', which is subject to criminal sanction of between one to five years imprisonment, and / or a fine of Rp 100 million to Rp 500 million (approx. 9000 to 45,000 euro). But it is generally a paper tiger, with no implementation in practice.

General manager sent to prison

A court decision a year ago to sentence a general manager for violating trade union rights under the law was not only unprecedented, but for the workers involved it also signalled that justice might work in a real sense.

On 12 January 2009, the Bangil District Court in Pasuruan, East Java, sentenced to 18 months in prison the general manager of a private company who had signed the dismissal letters of four union leaders. The crime was violating trade union rights. It was the first ever case of an employer being jailed for violating the law. The Surabaya High Court upheld the verdict, as did the Supreme Court in June 2009.

According to the current system, in labour disputes workers should normally go to the Manpower and Transmigration Ministry, or to its regional offices, and/or to the Industrial Relations Court. But the two institutions have little credibility among workers. Labourers regard the Ministry and the Court as siding with the interests of the employers rather than the workers. District courts are an alternative for them.

Yet, this new development may also bring new dilemmas. The criminal justice system through the criminal court could not give solutions related to the issues of dismissal of the four union leaders and the collective bargaining rights of the union. These powers belong to the other system of labour dispute settlement with the Manpower regional offices and the PHI as the two main institutions, which have been regarded as problematic by workers.

Indeed, it is actually the failure of these two institutions that has led the workers to bring the case to the criminal processes. Moreover, such a decision may also enlarge the already large distrust between workers and employers within industrial relations practice in Indonesia.

In a statement to the press in response to the Court's decision, the employers' association in the Pasuruan Industrial Estate Rembang (PIER) reportedly expressed deep concern:

> *'Such a problem should have been solved through the industrial relations law [and not the criminal law]', the association stated, as reported by a local newspaper in January last year* (**Duta Masyarakat**, January 21, 2009).

The employers' association also complained about 'weak law enforcement' in Pasuruan, and

called for the government, and the President in particular, to provide 'legal certainty' for the risks and prospects of doing business in Indonesia. It expressed concern that the case might have a bad impact on the investment climate in the region.

In a statement just after the decision was handed down by the judges, a union leader said:

> *'We accept the decision and will monitor this case wherever it goes. We don't want the case to be a boomerang for workers.*
>
> *We, as workers' representatives, are quite happy with it, and we hope it will not happen again in the future, as this is a lesson for [labour] law violators'.*

This indicates the unionists hoped the case would discourage any more repression of union activists. The wish was not to imprison the employer, but simply to get the employer's genuine respect for the workers and their union.

In *The Behavior of Law* (1976), Donald Black identifies three styles of social control: 'penal style', 'compensatory style', and 'conciliatory style'. In the context of a dispute between workers and their employers, some people may argue that the 'conciliatory style' is perhaps offering better solution than the 'penal style'.

After the dispute, it is possible that the two parties may have to work together again, thus there should some room for negotiation for mutual agreeable outcome for both. This requires some willingness of the two to take some of the blame, while trying to restore the social harmony again.

As Black has explained, the role of the 'third party' is often important here to facilitate the parties to reach mutual agreement. Here we may refer to the institutions developed by the state through the so-called 'labour dispute settlement mechanism'.

In Indonesia, such ideal styles of dispute resolution in labour relations may still need some time to manifest. The distrust between workers and their employers has been corrupting the system for a long time, while there have not been many efforts to solve this.

Such a decision of imprisoning an employer for his misconduct against union activists, however controversial it is, must be seen as merely a stepping-stone to 'balance' the current 'disharmony' within the labour dispute settlement system.

This cannot be done through a single court decision; instead it should be taken up widely and systematically, involving all the stakeholders related: workers and their unions, employers and their organisation, and the government.

A court recently sentenced a manager to 18 months in prison for violating trade union rights

'Ruggied' individualism: you're on your own

Don't worry, we're taming the transnationals

The logic is seductively simple: a global brand meticulously monitors its supply chain because conscientious consumers - informed by the latest technologies – will punish it at the retail level for any transgression. Rather, according to Jeffrey Swartz, the CEO of Timberland, consumers don't care at all about workers' rights in the factories producing for the footwear and apparel company:

> *"With regard to human rights, the consumer expectation today is somewhere in the neighbourhood of, 'don't do anything horrible or despicable'... if the issue doesn't matter much to the consumer population, there's not a big incentive for the consumer-minded CEOs to act, proactively".*

In a 2008 interview he mused about his desire to "seduce consumers to care" so that his Corporate Social Responsibility (CSR) report was not mere "corporate cologne". The 'dirty little secret' of CSR is that nobody reads these reports; one of Sun Microsystems' team lamented the fact that only 247 out of 38,000 fellow-employees even bothered to download its 2007 CSR report. The cases of Nike (1996-2000) and the hand-stitched soccer ball industry (1996-98) are outliers (see below).

Reviewing the past decade of 'responsible business' strategies of the United Nations from a trade union perspective requires a brief, broad look at the development of CSR as practiced by transnational corporations since the early 1990s. Since the earliest 'code of conduct' requirements for supplier factories (i.e., Levi's, Reebok, Nike and Mattel), labour rights have declined nearly to the vanishing point in production-for-export areas around the world. Flexibilisation through contract-work has reached epidemic proportions; millions of workers are finding work in foreign countries in situations akin to bonded labour; factory managers skipping out on severance payments is becoming more commonplace – in short, work is becoming more and more precarious with each passing year, even as corporations tweak their 'codes' and trumpet new breakthroughs in 'free association' rights in their supply chains. Parasitic 'social auditors' – some operating in an ostensible 'non-profit' mode – post thousands of factory reports each year while workers continue to strike and corrupt governments jail and harass independent union activists.

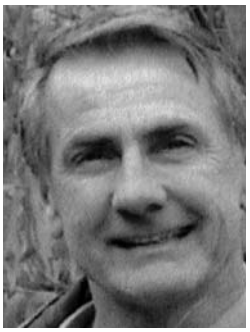
Leaving aside the question of 'why' former Secretary-General, Kofi Anan, felt the need to undertake a CSR programme, the 'what' can be characterised as ephemeral or nearly non-existent. Corporations join the UN's Global Compact (UNGC), pay a fee and agree to some vague and unenforceable principles. The only 'stick' is a risk of de-listing – it's happened to maybe 1,000 companies out of nearly 10,000 that have joined – because those firms quit reporting (on that company's own self-regulation regime), or quit paying the fees, or both.

Launched in early-1999 by Anan's CSR pointman, Prof. John Gerard Ruggie, the UNGC drew early criticism for 'bluewash' but, by this relatively late date in the development of corporate self-regulation schemes, such projects had gained wide acceptance by elite commentators; injudicious participation by many NGOs, foundations and even trade unions had significantly moderated the stigma usually attached to discussions with corporations that were not narrowly connected with collective bargaining or specific representational questions. As a result, the few critics were marginalised and self-regulation rolled along as ethical supply-chain management despite contrary evidence from workplaces across the globe. More than a bit defensive, Ruggie took aim at those of us who raised objections:

> *"If you want to make globalisation work for everyone, as we do, then it is worthwhile. But if you reject globalisation, global corporations, or even the system of capitalism itself, then you won't like what we're doing at all -- any more than your predecessors liked social Keynesianism or social democracy because such pragmatic innovations inevitably reduce the social rationale and political support for more polarised rejectionist postures".*

[To me, 'rejectionist' is not so pejorative and should not preclude discussions between those who critique the monitoring model and the proponents of corporate self-regulation. After all, most corporations claim to be 'uncompromising' about quality – can't labour rights campaigners resist compromise on basic rights such as collective bargaining?]

Within a few years, the Global Compact's annual meeting was a regular stop for CSR practitioners, which is to say it became one of the dozen or so global venues for international bureaucrats, politicians and corporate CEOs. At these meetings, the participants (usually only those 'invited') would hive off into working groups to discuss 'continuous improvement', 'silo-wide' opportunities, blended value or topics such as 'The New Metrics'. By 2005, Ruggie had acquired the title of 'Special Representative of the UN Secretary-General on Business and Human Rights' (SRSG) and he left the UNGC to a lieutenant, Georg Kell, while embarking on a grand quest to write human rights rules for global business. Harvard University granted him a special 'centre' at the Kennedy School of Government which is well-



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funded and staffed with the likes of Simon Zadek who authored a Harvard Business Review article with high praise for Nike's worker-friendly supplier factories.

In 2008 the SRSG laid out a hierarchy of problematic industries, putting mining and oil/gas companies at the top, with all others far down the list – with food and drink a 'distant second' (his characterisation). While the extractive industries are a popular target - with a ready list of spectacular and graphic abuses - the footwear/apparel/textile sector is arguably more responsible for the parlous state of human rights in the world today. My reasoning - in business school terminology - is 'opportunity cost'. How did deep democratisation and Keynesian reforms get traction in the middle decades of the 20th century? Trade unions and masses of fed-up workers propelled the drive for economic justice with responsive governance - consumer regulations, health and safety inspections and the like. Later, in the 1980s, defiant worker movements in Poland, Brazil, South Korea and South Africa pushed autocrats from power.

'Sweatshops', wrote Marc Miller in his biography of Yiddish writer Morris Rosenfeld, 'were a catalyst for change'. After two decades documenting how low-skilled assembly workers have been denied the right to form unions and bargain collectively, it seems clear that corrupt and repressive governments have become safe havens for many industries. In self-defence, they point to 'foot-loose capital' as the underlying problem. But in fact, the interests of the big brands and the dictators in the countries where they do business are congruent. While it is certainly true that some companies in the extractive industries are involved in a broad range of destructive practices from trampling indigenous rights, bribing officials, partnering with paramilitaries, environmental degradation and exploiting workers, this does not mean that merely abusing apparel and shoe workers - where companies have had twenty years to clean up their act - should be less of a human rights concern

That first report was an empty gesture; by turning a blind eye to sweatshops (putting them far down the list of 'bad actors'), the UN was denying Chinese, Thai, Mexican and Sri Lankan societies, the democracy catalyst that could be a jumping-off point for a game-changing strategy. One of the more exciting elements of this phenomenon are the North-South connections made when workers develop cross-border solidarity campaigns with groups in the 'consuming' countries; therein lay the template to resist the growing concentration of corporate power over our lives. While far short of the collective bargaining ideal, what I saw work in Indonesia was nonetheless impressive; between 1990 and 1996, real wages increased almost 300 percent, through courageous worker activism and international attention. Struggling new independent unions bring young people into the fight for justice and human rights, whether it be in Guatemala, Malaysia or elsewhere.

Ruggie's next gambit was to convene representatives from 19 corporate law firms (Toronto, late-2009), 'to identify whether and how national corporate law principles and practices currently foster corporate cultures respectful of human rights'. That gatherings such as this merely produce hortatory and 'wishful thinking' programmes can hardly be argued. A good analogy exists in the World Bank's much-hyped attack on corruption over the past fifteen years. One consultant – a professor at Yale University Law School – wrote a book in 2006 with the opening words, 'Corrupt governments will not enjoy economic development'. In fact, China and Indonesia got most of the Foreign Direct Investment that went to the developing world (1990-2005) even as these countries were ranked among the most corrupt. Here is a sampling of the SRSG's rhetoric:

> *'I have explained that in addition to compliance with national laws, the baseline responsibility of companies is to respect human rights. To discharge the responsibility, I have recommended that companies conduct ongoing human rights due diligence whereby they become aware of, prevent, and address adverse human rights impacts. The responsibility exists even where national laws are absent or not enforced because respecting rights is the very foundation of a company's social license to operate. It is recognised as such by virtually every voluntary business initiative, including the UN Global Compact, and soft law instruments such as the International Labour Organisation Tripartite Declaration and the OECD Guidelines on Multinational Enterprises'.* (April 7, 2008 – **Report to UN Human Rights Council**)

As mentioned earlier, two cases stand out as examples where outraged citizens demanded action on production practices. The Nike case was direct, with consumer rejection (measurable in the US, at least) based on anti-sweatshop agitation and the FIFA case was indirect, with pressure on the peak body of football clubs. The latter case was interesting mostly for the fact that the bureaucrats in charge of FIFA instinctively reached out to the global union movement for advice on ending abusive practices at football stitching centres in and around Sialkot, Pakistan. The unions, of course, had the FIFA team build a robust trade union component into the remediation plan; when the team owners were awakened to this fact by the big global brands (who actually purchased the balls), the 'code' adopted as a solution got rid of the unions and installed malleable non-profits, instead. How inefficacious this plan turned out to be was reported at the beginning of the 2010 FIFA World Cup by the Washington-based International Labor Rights Forum.

The Nike case stands apart because it involved the unprecedented action by labor-friendly NGOs from six European countries, Australia, the US and Canada; there were nine separate fact-finding teams that researched the sports shoe industry in Southeast Asia in the period 1992-96. As a result, incredible pressure was exerted on Indonesian officials to significantly raise the minimum wage.

Global union activists need to be much more circumspect about grand designs and the corporate-designed 'stakeholder' solution of codes-and-monitoring CSR. At the same time, new research into the potential power of global consumer pressure tactics is an urgent need to reverse the anti-worker, anti-union trends in neoliberal global governance.

The 'dirty little secret' of CSR is that nobody reads these reports

Sports industry: Football manufacturing unit. Saga Sports Factory. Sialkot. Pakistan. © International Labour Organization / Crozet M. (2005)

Honduras

On 12 June José Luis Baquedano, deputy general secretary of the trade union confederation CUTH, was attacked by armed men as he travelled in a van together with his daughter and three grandchildren. The attackers fired on the van, but Mr Baquedan was able to drive away, and no-one was injured. A short time later police stopped his van and accused him of being responsible for the shooting.

- On 10 June Oscar Molina, the brother-in-law of the vice President of the drinks industry union STIBYS, was shot and killed in an attack that took place in broad day-light in a busy public street. Mr Molina was shot 42 times.
- Also on 10 June Carolina Pineda, finance secretary of the teachers' union COPEMH, was fired upon with high-calibre weapons as she was driving her car. Ms Pineda escaped in the vehicle. Ms Pineda has received numerous death threats prior to the attack.

ICTUR has called for the authorities to take action to investigate these cases and to take steps to protect trade unionists from violence, harassment and intimidation. ICTUR further called for the authorities to identify and prosecute those responsible for the attacks. . ICTUR reminded the authorities that trade union rights are protected under international law, in particular ILO Conventions 87 and 98, both of which have been ratified by Honduras.

Indonesia

The ICEM is protesting against the dismissal of seven leaders of the SPE-SBSI trade union from the PT Kayan Putera Utama Coal company in eastern Borneo. The ICEM says that the dismissals are part of a series of attacks that the company has made against the union.

ICTUR has written to PT Kayan Putera Utama Coal to express solidarity with the dismissed workers and to support the ICEM's campaign. ICTUR observed that the ratification of ILO Conventions 87 and 98 by Indonesia just ten years ago had been seen as an important and progressive sign. ICTUR expressed the firm hope that the company would recognise the importance of respecting the Conventions.

Iran

On 9 May Farzad Kamangar, a teacher and member of the Teachers' Trade Association of Kurdistan, was hanged at Evin prison in Tehran. Mr Kamangar has been given the death sentence in February 2008 after a trial lasting less than five minutes which failed to meet either international or local standards. Mr Kamangar was accused of 'endangering national security' and 'enmity against God'. Education International reported that during his detention Mr Kamangar had been tortured and denied access to his family for seven months. The execution was carried out in secret, without the knowledge of Mr Kamangar's family or lawyer.

ICTUR has written to the Iranian authorities to express grave concern over the execution of a trade unionist on grounds that were not properly examined by a serious legal process. ICTUR has called for the authorities to review the legality of the execution and to ensure that the rights and guarantees of international law be respected in criminal and civil trials in Iran. ICTUR called for the authorities to respect in particular the rights protected under the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, and the rights protected by the Declaration of Fundamental Principles of the ILO.

Jordan

On 10 May the leaders of a workers' rights group, the Committee of Day Labourers, were arrested while protesting against the dismissal of a number of day labourers from the Ministry of Agriculture. Muhammad al-Sunaid and Ahmad al-Luwanisa, together with 30 day labourers, attended a lecture given by the Agriculture Minister in order to express their grievances. The two men were arrested and removed from the lecture. Human Rights Watch reports that the men have since been charged with five criminal offences pertaining to: illegal gathering; defamation of a public official; insult; causing noise and din; and interfering with the act of a public official.

ICTUR has written to the authorities to express concern about the criminalisation of the workers' protest. ICTUR noted that Jordan has ratified ILO Convention 87 which protects the right of workers to form organisations for the protection of their interests, and which recognises a right of workers to engage in acts of peaceful protest and demonstration in support of their social and industrial concerns.

Nepal

On 16 June police attacked a peaceful demonstration by civil servants, arresting up to 70 demonstrators and injuring a number of them in the process. Local media reported that the police 'thrashed' the protestors. The workers, led by the Nepal Government Employees Organisation, were attempting to deliver to the Minister for General Administration a memorandum over working arrangements. The three leaders of the union and 13 working committee members were among those arrested. Those arrested were detained for around four hours before being released.

ICTUR has written to the authorities to express concern over the police actions. ICTUR calls for the authorities to recognise the right of workers to engage in peaceful demonstrations in support of their social and economic interests. ICTUR reminds the authorities that trade union rights are protected under the Universal Declaration of Human Rights and under the ILO's 1998 Declaration of Fundamental Principles. ICTUR called for the authorities to engage with the union and to engage in collective bargaining and negotiation in order to reach a suitable resolution to the workers' concerns.

Philippines

On 14 June Benjamin Bayles, a farm worker and organiser with the sugar workers' union NFSW, was shot and killed in Sitio Antolo. Two individuals, who were carrying two 45 calibre pistols and identified as Roger M. Bahon and Ronnie L. Caurino, were later apprehended and sent to the Himamaylan City Jail, where they remain detained and have been charged with murder. The respected international human rights organisation OMCT reports that Kabankalan police officers made a statement on the radio that the two suspects had confessed to being regular members of the 61st Infantry Brigade of the Philippine Army. However, the Himamaylan PNP retracted from this initial statement the next day.

- On 3 June Edward Panganiban, a union leader at the Takata Philippines Corporation, was shot dead on his way to work. His assailants who rode a motorcycle addressed him by name and fired multiple shots. Mr Panganiban sustained 12 bullet wounds and died on the spot. He had been Secretary of the Salamat-Independent Union at the factory, which makes airbags and seatbelts in the Laguana Technology Park export processing zone.

ICTUR has written to the authorities to express grave concern in respect of the murders of Benjamin Bayles and Edward Panganiban. ICTUR recalled Professor Philip Alston's 2007 report for the United Nations in which serious concerns were raised over extrajudicial executions

of trade unionists in the Philippines. ICTUR further recalled that the Special Rapporteur's report had described the military as being in a 'state of denial' concerning the 'numerous extrajudicial executions in which its soldiers are implicated'. ICTUR expressed the hope that the authorities would make all efforts to ensure the safety of trade unionists in the Philippines.

Sierra Leone

In May 2010 workers at the Kings Production Industry soft drinks company succeeded in organising 113 workers to join the Hotel, Food, Drinks, Entertainment and Tobacco Workers' Union. The union subsequently encountered anti-union discrimination, beginning with the refusal of management to implement check-off procedures for the collection of members' dues. Following this, management announced the dismissal of 29 workers, all of them union members. As there is no unfair dismissal law in Sierra Leone the workers are dependent upon dialogue between the union, management, and the Labour Ministry if they are to recover their jobs.

ICTUR has written to the Sierra Leone Labour Ministry calling for an investigation into this case. ICTUR called for the authorities to take steps to secure the reinstatement of the dismissed workers, and to require the employer to cease its anti-union tactics. ICTUR noted that Sierra Leone has ratified ILO Conventions 87 and 98, and called for the authorities to ensure that industrial relations in the country should comply, at least, with the standards required under those Conventions.

South Korea

On 23 May 183 members of the teachers' union KTU were dismissed on grounds pertaining to their support for the Democratic Labour Party, which is a legal and well-established opposition political party. The teachers are accused of breaching political neutrality clauses that apply to teachers and civil servants under Korean law. Education International observes that some school principles have made donations to the ruling party but have not been dismissed. EI says that the sanctions have been taken disproportionately against union members and constitute anti-union discrimination.

ICTUR has written to the authorities to express concern over the dismissals. ICTUR called for the internationally recognised rights to freedom of expression and freedom of association to be respected in Korea. ICTUR expressed particular concern in the light of Education International's view that the dismissals constituted a form of anti-union discrimination. ICTUR reminded the authorities that trade union rights are protected under the Universal Declaration of Human Rights and under the ILO's Declaration of Fundamental Principles.

Swaziland

On 3 May the Swaziland Correctional Services Department announced that Sipho Jele, a trade unionist and supporter of the PUDEMO opposition party, had committed suicide whilst in detention. Two days earlier, on 1 May, police had violently interrupted a workers' demonstration at the Salesian sports ground, and had removed and arrested a number of people, including trade union officers. Sipho Jele was among those arrested.

Trade unionists around the world have denounced the death in custody of Sipho Jele, which ITUC labelled as 'suspicious'. COSATU, the South African trade union federation, has expressed the clear view that Jele was murdered by his custodians. The Swaziland Federation of Trade Unions and Federation of Labour have co-signed a letter with the National Association of Teachers expressing concern that the investigation that has been ordered by the authorities lacks credibility. The local unions called for an independent investigation, which they said should be chaired by a senior judge with assistance from the International Labour Organisation.

ICTUR has written to express grave concern at the death in custody of Sipho Jele. ICTUR called upon the authorities to recognise the concerns that have been voiced by local and international trade unions and to establish an independent inquiry. ICTUR noted the call by local unions and for the inquiry to be chaired by a senior judge, and strongly endorsed the view that an inquiry should seek be chaired by a member of the judiciary, and that it should request the assistance of the ILO. ICTUR called for the authorities to recognise that the death in custody of a trade unionist is an extremely serious matter.

Turkey

On 1 July shots were fired at a postal workers' rally in Izmir, where members of the TÜMTİS union had gathered to protest against the dismissal of 119 colleagues. The union believes that the dismissals constituted anti-union discrimination, and reports that a manager of the local subcontractor has been forcing union members to attend a notary's office in order to resign their union membership. No-one was injured during the shooting, and a suspect was reportedly detained by police. During the past two years repression against public sector trade unionists in Turkey has been a significant problem, with the criminal law used repeatedly against union activists:

- On 22 June 31 trade unionists associated with the KESK federation attended a brief criminal hearing as part of the prosecution against them that began with mass arrests of KESK activists in mid-2009. The full trial was once again postponed and is now expected to take place on 22 October 2010.
- On 19 June Meryem Özsögüt from the health and social services union SES was re-arrested, having recently spent eight months in an F-type prison.
- On 18 March husband and wife Ferit and Belkiza Epözdemir, both members of Tüm Bel Sen, were arrested. They are currently being held in a seriously overcrowded E-type prison, where their youngest son, aged 4 years, is occasionally admitted to spend time with them.
- Other trade unionists, including Seher Tümer of SES and Metin Findik of Tüm Bel Sen have been held in detention since March 2008 and June 2009 respectively.

In each case vague charges relate to alleged membership of illegal organisations. In each case lawyers have had limited or no access to the prosecution files. Public Services International has described the arrests as 'part of a deliberate policy by the Turkish authorities to misuse the courts in order to harass and intimidate trade unionists'. PSI further notes that the harassment is a particular problem against Kurdish activists and the KESK federation.

ICTUR has written to the authorities calling for Turkey to apply international standards to the preparation of prosecutions and to the conduct of criminal trials of trade unionists. ICTUR expressed grave concern at the extraordinary numbers of trade unionists who have been arrested and charged with criminal offences in recent years. ICTUR called for the authorities to respect the protections guaranteed to trade unionists under Article 11 of the European Convention on Human Rights and under Conventions 87 and 98 of the ILO. ICTUR noted that Director Daniel Blackburn had attended the November 2009 trial of KESK members and had raised serious concerns regarding the prosecution.

Applying the Ruggie Framework in Canada

In 2009 I contacted John Ruggie and suggested we work together to operationalise Freedom of Association in Canada

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At present UN Special Representative John Ruggie is in a phase of his work where he is attempting to operationalise his *'Protect, Respect, Remedy'* Framework. Developed in response to business reaction against demands for the legal regulation of corporate human rights responsibilities, the Ruggie framework says that although governments have prime responsibility to promote and protect human rights, corporations must take responsibility for human rights within their sphere of control and influence.

Even though he did not recommend legal compulsion at this point, Ruggie's effort has gotten the attention of the legal community. At a recent conference on freedom of association that I organised in Saskatoon, Saskatchewan in February 2010, Kevin Coon, a partner in the prominent management-side law firm of Baker and McKenzie, reported to the audience that his firm was now advising clients to put compliance with human rights standards high on their agendas.

In its 2007 BC Health Services Case the Canadian Supreme Court granted constitutional protection to collective bargaining and the impact of that decision was the central focus of the Saskatoon conference. Coon, however, told the audience that, in the long run, Ruggie's framework was likely to have the bigger impact. His comments are online at http://foa2010.blogspot.com.

Since the end of World War II an increasingly strong global human rights consensus has come into existence. Among its most sacred norms is that human rights are rights that are held by human beings simply as a function of their humanity. They are rights that are universal and indivisible. There is no legitimate human rights hierarchy. Each human right is equally sacred and deserves equal respect.

The explication of human rights is a complicated process that occurs via a congeries of international and national organisations. With regard to workers' human rights, however, one organisation stands out as the prime source of standards – the International Labour Organisation. Since its founding in 1919 it has developed a rich body of principles that provide a relatively explicit roadmap to nations and to corporations looking for guidance regarding compliance with workers' human rights.

In the spring of 2009 I contacted John Ruggie and suggested that we work together to operationalise one human right, Freedom of Association, in one venue, Canada. The objective was to determine what Canadian governments had to do to fulfil their international obligation to promote and protect the right, and what Canadian corporations had to do to respect the rights of their workers to organise and to bargain collectively. He declined, pleading insufficient resources to bother with conditions in such a rich and politically democratic country as Canada.

The result, in my opinion, is to place in jeopardy the credibility of his entire effort. Although human rights are supposed to be universal, Ruggie has focused almost entirely on human rights issues in developing countries. That is not surprising since the recent surge of interest in business and human rights has been led by NGOs demanding that globalisation benefit not only corporations, most of which have roots in the rich North, but also the people and nations of the poorer southern half of the planet.

Fair enough

However, many developing country leaders suspect that recent concern for human rights expressed by voices based in highly developed countries is a ploy to impose conditions that will hinder their development. By refusing to apply his framework universally to both rich and poor nations; by, in effect, giving rich countries and corporations operating from them a pass, Ruggie adds credence to that suspicion.

The strategy of focusing exclusively on developing countries also leaves unexamined the status of workers' rights in advanced countries. Ruggie's dismissal of my offer was almost certainly based on the unexamined assumption that Canada is largely free of human rights problems or that those that exist (such as lingering discrimination) are recognised and are being addressed. If so, with regard to the right to organise and bargain collectively, that assumption is, I submit, unfounded.

Approximately 70 percent of Canadian workers have their terms of employment unilaterally imposed by their employers. They cannot individually negotiate those terms because of an imbalance of power and because conditions in firms of any size are standardised and require a collective process to get at them. Questioning employer authority in the unorganised workplace is insubordination. Workers must do as they are told or face summary dismissal. At an unorganised workplace the employer may change conditions at will, putting workers in the position of abject resignation to their fate or quitting. In the unorganised firm, there is no objective, independent workplace justice system. Discipline is meted out according to the will of the boss.

As the Canadian Supreme Court stated in BC Health Services, collective bargaining deserves constitutional protection because it affirms and supports the Canadian Charter values of democracy, dignity, equality, and worker autonomy. In the unorganised Canadian firm, there is a deficit of those values.

As a member of the ILO, Canada is constitutionally committed not only to permit but rather to promote collective bargaining – to foster it and make its exercise easy and the norm. Its response to that obligation is to provide most workers with laws under which they may acquire collective bargaining rights if they are able to form unions and state-certify them as exclusive bargaining agents. But certifying a bargaining agent in Canada is not easy. The path to certification is strewn with obstacles.

Despite Ruggie's injunction that they avoid infringing the rights of others, Canadian employers commonly discourage their unorganised workers from making use of the certification process. The prevailing norm (fostered by employers and condoned by the state) is that workers should accept employer authority unless subjected to extraordinary abuses of that unilateral power. To unionise in Canada is, more or less, understood to be an act of rebellion against authority asserted to be legitimate.

In short, the prevailing norm is that autocracy should prevail so long as it is relatively benign. Moreover, prevailing custom permits autocrats to do what they consider necessary to hold on to power so long as they do not go too far in intimidating or fear-mongering or imposing discipline and conditions well below the norm. The notion is common that if employers behave like despotic oligarchs they bring unionisation upon themselves and if they behave like benign paternalists they are entitled to be free from the constraints of collective bargaining and union challenges to their authority. Unionisation is widely regarded as a punishment for bad management.

What is wrong with this picture? Collective bargaining was considered to be a fundamental right even before the appearance of the Universal Declaration of Human Rights after World War II. It is deserving of just as much respect and deference as the rights to freedom from discrimination, from child labour and from forced labour. But if employers anywhere were to try to discourage people of colour from applying for work at their firms, or were to come out explicitly in favour of child labour or forced labour they would be roundly condemned. Nevertheless, their aggressive defence of their authoritarian control over the workforce against the democratic alternative of collective bargaining is rationalised by Canadian society to be acceptable.

Unlike many human rights, the global machinery for promoting workers' freedom of association is well developed. Clear standards of appropriate behaviour have been evolved by the International Labour Organisation's Committee on Freedom of Association.

Established to flesh out the constitutional responsibilities of all ILO member states to promote and protect the right to organise and bargain collectively, the CFA has created a rich set of principles applicable to specific situations as a result of issuing public opinions on over 2700 cases of alleged violation of workers' freedom of association. In issuing opinions regarding legislation, the central question asked by the committee is: 'does this provision promote collective bargaining or not?'.

One such principle is that majoritarianism does not fulfil the obligation of the state to promote collective bargaining. Although certification of a majority union is permissible as an option, in order for collective bargaining to be used as widely as possible, workers should be able to negotiate through independent, non-certified, non-majority associations if they want to do that.

The implicit responsibility of employers is to recognise and bargain in good faith with all legitimate worker associations. The responsibility of the state is to promote collective bargaining through whatever independent mechanisms workers' organisations and their human rights compliant employers work out.

In Canada, employers generally assume that they have no responsibility to recognise and negotiate with employee organisations that have not certified as exclusive agents. That assumption has crystallised into a norm, accepted (until very recently) by all concerned: the state; employers; the legal community; workers; the media and – most astoundingly – unions.

Institutionally, unions are champions of certification because certification provides them with legal advantages and a framework with which they are familiar and comfortable. They fear the emergence of weak or bogus worker organisations outside of the certification system undermining their appeal and the rights they have fought to establish within the legislative scheme. These are reasonable concerns that need to be seriously addressed. But they do not trump workers' human rights. Working exclusively within the certification system is also, it seems to me, contrary to long-range union interests.

The bottom line is that the human right of most Canadian workers to co-decide their conditions of work is suppressed. Unilateral employer control is growing in Canada while workplace democracy through collective bargaining is in retreat. In the private sector, where collective bargaining has been in decline for decades, the percent of workers who are able to negotiate through state-certified agents is down to about 16 percent. A small percent over that have been able to work out independent bargaining arrangements. The rest are subject to an authority structure that has changed little from medieval times.

For most of the period since the end of World War II when Canada implemented a legislative model first developed in the United States (the Wagner-Act Model), individuals and institutions involved with industrial relations largely ignored international collective bargaining standards. However, in its BC Health Services case the Canadian Supreme Court drew heavily on international law. As a result of that decision, Canadians have looked more closely at global norms over the past few years. But the Supreme Court decision has not yet had a significant impact on practice. Corporations continue to discourage unionisation and governments have made little effort to reconsider their international obligations.

If Ruggie is to be credible his framework must be applicable to all human rights in all of the nations of the world. If rich nations are given a pass, on-going worker rights violations are implicitly condoned and the poor nations of the world are given reason to suspect the motives of all human rights discourse. In short, if the universality of human rights norms is not taken seriously then the entire project is a scam.

He declined, pleading insufficient resources to bother with conditions in such a rich and politically democratic country as Canada

What is Ruggie doing?

Ruggie is out to challenge what he describes as a 'permissive environment within which blameworthy acts by corporations may occur without adequate sanctioning or reparation'

DANIEL BLACKBURN is Director of ICTUR.

In the 1990s the United Nations ('UN') started to look at the question of corporate human rights compliance. By 1998 the UN Sub Commission on Human Rights had begun a process of drafting a provisional document that would ground corporate human rights obligations within the UN system. The process produced a remarkably progressive document, the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The Norms were radical because they clearly and specifically address transnational businesses directly. This was largely unprecedented in an international law system that overwhelmingly addresses only States.

As a sample of how direct the language was in that document, and also as an indication of precisely why the Draft Norms were relevant to the interests of workers, the following extract is instructive:

> *Transnational corporations and other business enterprises shall ensure the freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without distinction, previous authorisation, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant ILO conventions.*
> Article D (9), Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003).

The duty extends to a positive obligation to 'ensure' that the right is respected. And this duty is clearly and directly addressed to businesses themselves. The Norms were a revelation. Leading human rights organisations welcomed and promoted them keenly.

Unfortunately, the drafting process became temporarily stalled during the transfer of the Draft Norms developed by the Sub Commission on Human Rights to the higher tier UN body, the Human Rights Commission. The Human Rights Commission was not very impressed with the radical position adopted by the Sub Commission, and rather than assenting to the Norms and authorising the process under which they might eventually have gained status as a full instrument of international law, the Human Rights Commission essentially rejected the proposal and emphasised that in its 'draft' form the Norms had 'no legal standing'.

The process then stalled indefinitely when the UN underwent a restructuring of the bodies responsible for its human rights programmes. The Human Rights Commission and the Sub Commission were both wound up, and ceased to exist. Since then the Draft Norms have hung in a kind of legal limbo, half-finished, partly rejected, and lacking legal status, yet at the same time continuing to haunt the human rights community as a kind of ghostly reminder of what might have been. Various optimists occasionally wield the Draft Norms in legal arguments, but they are lonely voices. For most practical purposes, and for all their great promise, the Draft Norms are a dead duck, and they are going nowhere. They place neither clear moral nor legal responsibilities on corporations.

All was not lost, however. In 2005 the newly created UN Human Rights Council, effectively the successor body to the Human Rights Commission, adopted a Resolution authorising a new initiative. Under the terms of this, Professor John Ruggie, who had previously served with the UN's Global Compact initiative, was appointed as Special Representative to the Secretary General ('SRSG') on Human Rights and Transnational Corporations and other Business Enterprises. Ruggie was charged with mapping existing human rights obligations of corporate actors, and to develop strategic recommendations on the way forward.

Ruggie's initial findings in 2006 were contained in an Interim Report. In 2007 a technically interesting set of findings appeared that outlined existing frameworks of corporate responsibility. In the 2007 report Ruggie recognised that:

> [A] *fundamental institutional misalignment is present: between the scope and impact of economic forces and actors, on the one hand, and the capacity of societies to manage their adverse consequences, on the other. This misalignment creates the permissive environment within which blameworthy acts by corporations may occur without adequate sanctioning or reparation. For the sake of the victims of abuse, and to sustain globalisation as a positive force, this must be fixed.*

In a 2008 Speech at Chatham House in London Ruggie summarised something of the core of the problem, fleshing out what these 'blameworthy acts' might be:

> *The issue of business and human rights burst into global public consciousness in the 1990s. Some of the early cases have acquired iconic status: Shell accused of complicity for standing by silently as the Nigerian military government executed a leader of community groups demonstrating against the company's environmental degradation of the Delta region; BP*

accused of being responsible for alleged acts of murder, disappearances, torture, rape, and forced displacement of communities by a Colombian army brigade protecting its installation; allegations of sweatshop conditions and child labor in Nike's Indonesian, and the GAP's Salvadorian, suppliers.

But it was only in 2008 that Ruggie released his major report, *Protect, Respect and Remedy*, that set out the SRSG's emerging grand vision for a three-fold approach to tackling where responsibilities would fall. As he put it:

The framework rests on differentiated but complementary responsibilities. It comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.

On 18 June 2008, the UN Human Rights Council renewed the term of the Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, for three years. The key points of the new mandate required Ruggie:

- To provide views and concrete and practical recommendations on ways to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving transnational corporations and other business enterprises
- To elaborate further on the scope and content of the corporate responsibility to respect all human rights
- To set out recommendations, at the national, regional and international level, for enhancing access to effective remedies
- To promote the framework and to continue to consult on the issues covered by the mandate on an ongoing basis with all stakeholders

Since developing the *Protect, Respect and Remedy* framework Ruggie has maintained that his objective is now to 'operationalise' that framework. In practice, so far, this seems to mean that the SRSG participates in another process of consultation and discussion concerning the extent to which existing mechanisms, such as domestic tort law or the National Contact Points for the OECD Guidelines, serve to promote human rights compliance by transnational businesses. More recent reports have also begun to delve more deeply into questions about what Ruggie calls 'due diligence', 'corporate complicity', and the 'sphere of influence' of businesses. The stark language of his earlier reports is less evident, and it now seems unlikely that Ruggie will deliver anything as radical as the Draft Norms that preceded his work. Indeed, true to the blunt rebuttal that the Draft Norms received from the Human Rights Council, the SRSG's reports have conspicuously sidelined the Draft Norms.

But however much commentators may feel that the Ruggie process does or does not currently serve their immediate interests we should recognise that it presents a vital opportunity for human rights advocates to engage with the challenges presented by transnational corporations. Whether international law might in the future apply directly to non-State actors is an intriguing question, and it is absolutely and directly relevant to trade unions and to trade unionists. Not only for those who work directly for transnational employers, but for everyone who comes into contact with transnational corporations in their daily lives. Since such corporations are now routinely involved in the provision of public services that is an increasing number of people. It is therefore important that trade unionists make every effort to engage with the consultation processes that the SRSG is running.

The consultation process began reasonably well. The SRSG seemed to hand unions an open invitation to join the debate when he commented in his 2007 report that:

On purely logical grounds, a stronger argument could be made for direct corporate responsibilities under the ILO core conventions: their subject matter addresses all types of employers, including corporations; corporations generally acknowledge greater responsibility for their employees than for other stakeholders; and the ILO's supervisory mechanism and complaints procedure specify roles for employer organisations and trade unions'.

The key to the problem of non-applicability of international law to non-State actors, Ruggie seemed to be suggesting, was quite possibly the ILO, the one international legal forum with which trade unionists are particularly familiar. But there was no sign of a rush by unions to engage with the process following the 2007 report, nor did Ruggie make any notable effort to engage with unions. In their absence, the consultation process has been *utterly dominated* by business interests. Although a handful of NGOs and a few individuals sympathetic to the labour movement have responded to or participated in various of Ruggie's showcase discussion forums the overwhelming majority of those consulted can be regarded as business-friendly rather than labour-friendly.

The urgency with which the international labour movement needs to engage with this project cannot be overstated. We recite the mantra 'labour rights are human rights' and we complain about the lack of accountability for corporations that refuse to respect these rights. Yet we are currently under-involved in this centre-stage debate that is currently laying down the foundations that will underpin corporate liability for human rights for the future. It seems likely that whatever is agreed within the Ruggie process now will have ramifications for workers, for the environment, and for the human rights of all people affected by business operations for decades to come.

For the meantime the SRSG has clearly invited 'all stakeholders' to participate in his online consultation at www.srsgconsultation.org. While this is a poor second place to the feting of business leaders, academics, self-appointed corporate social responsibility experts and governments that have made up much of the consultation groups at the formal discussions, it will nonetheless be an important place for trade unionists to make their thoughts known. The IUF has already responded, and its submission has been prominently displayed on a number of websites that are engaged with the SRSG's mission. The labour movement will only be able to influence this vitally important discussion if other unions, particularly international unions, follow its lead.

But the process is a magnet for business-led lobbying and it seems unlikely that Ruggie will deliver anything as radical as the Draft Norms that preceded his work

Industrial suburb: petro-chemical complex. Germany. © International Labour Organization / Maillard J (1997)

The SRSG has invited 'all stakeholders' to participate in his online consultation at www.srsgconsultation.org.

Are these not systematic crimes?

The Colombian government has designed a strategy of confusion which aims to show that the violation of human rights is not systematic

MIGUEL PUERTO is Colombia and Latin America Coordinator for ICTUR

The Colombian government, in its rush to cover its responsibility for the violation of human rights, and particularly because of the frontal and systematic attack against the Colombian trade union movement, has designed a strategy of defence and confusion. The aim is to show that the murders of nearly 3000 trade unionists in the last 24 years in Colombia do not correspond to a systematic violation of human rights. The government is trying to demonstrate that it is not responsible for these extrajudicial executions. This matter has important implications for human rights in Colombia where thousands of union leaders and members have been killed, disappeared and threatened over recent decades.

The critical situation of Colombian trade unionists has been the object of great debate within the International Labour Organisation ('ILO'). Within the ILO processes, various strategies have been put into effect, such as the mentioning of the case of Colombia in so-called special paragraphs within the ILO Conference report on the application of standards, a Direct Contact mission, a Special Representative on the General Director, a High Level Tripartite mission, a Special Cooperation Program, etc. At the 2006 ILO Conference the representatives of the Colombian trade unions, together with the Colombian employers' representative and the Colombian Government, signed a document known as the Tripartite Agreement. The idea was that this would promote priority aspects for the exercise of rights and freedoms for Colombian trade unions.

The academic debate

During the last two years, a public debate about union violence have been intensified, as countries negotiating free trade agreements with Colombia, including the US, Canada and the European Union, clearly cited anti-union violence as an obstacle to finalising agreements.

In November 2009 an academic article was published, entitled *Is Violence against Union Members in Colombia Systematic and Targeted?* The article was written by two Colombian academics Daniel Mejia and Maria Jose Uribe, who questioned the idea that the assassinations of Colombian trade unionists fitted this characterisation. Their paper concluded that:

> *'…on average, violence against unionists in Colombia is neither systematic nor targeted'.* Daniel Mejia and Maria Jose Uribe, *'Is Violence against Union Members in Colombia Systematic and Targeted?'* The complete document can be accessed via the homepage of one of the authors: http://sites.google.com/site/danielmejialondono/research

In May 2010, in response of that statement Megan Price and Daniel Guzmán, US researchers from the Benetech Human Rights Program, published a paper which examines Mejia and Uribe's article, entitled, *Comments to the article 'Is Violence against Union Members in Colombia Systematic and Targeted?'*. In their response, Price and Guzmán present in technical and methodological detail the reasons they find the conclusions in Mejía and Uribe's study to be overstated. Price and Guzmán believe that weaknesses in the information, in the choice of the statistical model, and the interpretation of the model used in Mejía and Uribe's study, all raise serious questions about the authors' strong causal conclusions:

> *'The poor quality of these models, the unknown under registration inherent in the data, and the questionable modeling decisions mean that any conclusions should be very carefully qualified. Unfortunately, Mejía and Uribe [Nov. 2009] presents quite strong conclusions, which we believe are unsupported by the analyses'.*
> (The complete document can be seen at http://hrdag.org/resources/publications.shtml)

Price and Guzmán point out that if left unchecked those conclusions alter the truth about violence against unions and can mislead important social, economic and political decisions in Colombia. The authors believe that in-depth examination is needed to determine patterns and magnitude of union homicides in Colombia.

The ILO Committee on the Application of Standards

In June 2010, during the International Conference of ILO in Geneva, in order to avoid a debate in the ILO Standards Committee, representatives of the business sector in the Employers Group of the ILO successfully prevented the case of Colombia from being listed. Listing the case for discussion by the Application of Standards Committee would have indicated that it was one of the most serious cases of non-compliance with the Conventions.

As is well known, each year the ILO debates the condition of compliance with ratified conventions in 25 countries, the list being defined by negotiation between the Workers Group and the Employers Group, who in turn base their discussions on the report of the ILO Commission of Experts on the Application of Standards.

According to the Colombian CUT and CTC federations the Employers Group refused to accept the listing of Colombia, arguing that 'there would be no list' if Colombia was put forward (Joint Statement by the CUT and CTC, 8 June 2010). The Workers and Employers Groups final agreement excluded Colombia from the list and in exchange the Colombian government voluntarily accepted an ILO High Level Tripartite mission. Such tripartite missions are used in extremely serious situations, recently in Philippines, Turkey and Guatemala.

With the support of the majority of the Workers Group the Colombian CUT and CTC federations maintained that Colombia should have been kept on the list due to the serious violations of labour and trade union rights. In the Plenary of the Standards Committee the Colombian unionists unmistakably pointed out that they would not approve the decision to remove Colombia from the list and in exchange accept a High Level Tripartite Mission. This situation shows that solutions presented by international organisations like the ILO have not been sufficient to improve the situation.

The actual governmental strategy to demonstrate a misleading vision of the real cruelty taking place has various objectives, but their principal objects are that the US Government and the European Union should not see the serious reality of the anti-union situation in Colombia so that they can soon approve their Free Trade Agreements. This new strategy also serves to prevent proper communication of the human rights situation in Colombia to the international instruments on human rights protection.

Systematic crimes and international law

The United Nations has stated that when a violation against the human rights becomes systematic, this becomes a crime against humanity. Colombia ratified a law through which it adopted the rules and the jurisdiction of the International Criminal Court. For the International Criminal Court, crimes against humanity are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. Murder; extermination; torture; rape; political; racial; or religious persecution; and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. (See article 7: Crimes against Humanity, Roman Statute of the International Criminal Court)

During the last two years, the ICC Prosecutor Luis Moreno Ocampo, has monitored the situation of Colombia and has even visited the country twice in an effort to promote the end of human rights abuses there. (See report of the American Non-Governmental Organisation Coalition for the International Criminal Court: http://www.amicc.org/docs/Colombia_Update.pdf)

Weaknesses in the information, the choice of statistical model, and the interpretation of the model, all raise serious questions about the conclusions

Conclusions

In conclusion the critical situation which is facing the Colombian trade union is an undeniable truth: nearly 3000 trade unionists assassinated is a fact that is not easy to hide, and hiding these facts will not solve the humanitarian crises in the country. The US, Canada, and the EU should not sign Free Trade Agreements with countries that commit or fail to prevent widespread and systematic violations of human rights. Colombia must respect the minimum standards of international instruments on human rights and union rights, because the country has ratified those instruments. A serious strategy of any democratic government must ensure that the perpetrators of violations of human rights should be identified, prosecuted and punished, and that steps be taken to ensure that these crimes do not happen again.

Military helicopter, Colombia. Jim Kennedy (2010)

Trade unionists protest the assassination of Alejandro Uribe, a leader of the local miners' union Fedeagromiscol. Fedeagromiscol (2006)

From the crisis to global justice

Second ITUC World Congress opens in Vancouver, Canada

The second ITUC World Congress took place in June in Vancouver, Canada. More than 1400 delegates from around the world gathered to debate the future of the trade union movement under the theme *Now the People, from the crisis to global justice*. With a total of 311 affiliated organisations, representing a total membership of 175 million workers from 155 countries and territories, the ITUC is, after four years of existence, incontestably the global voice of labour in this period of economic and financial crisis.

The ITUC Congress focused its debate on different themes, such as the global financial and economic crisis, and considered resolutions on peace, youth, human and trade union rights and equality. Delegates at Congress dealt with issues related to labour's demands for restructuring and reform of the global economy with an emphasis on themes such as workers' rights, migrant workers, climate change and HIV-AIDS.

The Canadian Labour Congress (CLC), which represents 3.2 million members, hosted the ITUC Congress. CLC President Ken Georgetti reminded delegates of the province of British Columbia's "proud and militant history of trade unionism". He proposed that those traditions of labour solidarity should serve to stop the CEOs and banks who "put greed before need" and caused the global recession, and who are now pressuring governments to undertake "mindless deficit reduction" instead of protecting jobs and public services.

In a live broadcast address from New York, George Papandreou, Prime Minister of Greece, spoke of his country's current economic problems and pointed out that Greece does not have a lavish welfare system, as some conservative commentators have claimed, but that the crisis originated in economic mismanagement. "During the current crisis, trade unions are needed more than ever to fight for workers' rights, sustainable development and a just world order", said Papandreou. He also endorsed the creation of a financial transaction tax (FTT) to provide needed revenue for job creation, the green economy and development assistance, and to help "control destructive speculation".

ITUC President Sharan Burrow noted that trade unions had warned global decisions-makers of the dangers of global imbalances and the lack of regulation to rein in corporate greed well before the global financial system came to the brink of collapse in 2008. Political leaders initially recognised the need to rebalance the global economy and put employment at the heart of economic recovery, but in the past two months, "one European government after another is being forced into a premature and suicidal rush to implement austerity measures to pacify reckless financial markets. The possibility of a double-dip recession has now become a probability".

"Nobody argues that fiscal consolidation is not important over time," said Burrow, "but it is the timing that is critical and it requires a growth strategy that can soak up debt, without further attacks on the livelihoods and living standards of working people, and the threat of further economic turmoil". She rejected the approach of those who would return to the failed "Washington Consensus" policies of the 1980s and 1990s and instead advocated the alternate policy options put forward by the global trade union movement, consisting of income-driven growth, improved social protection, green jobs, investment in education and research, and protection of workers' rights.

ILO Director General Juan Somavia, in a message delivered in his absence, stated that "trade unions are an indispensable part of the economy and democracy" and that "the world needs the strong unions that you are building more than ever", since they remind decision-makers of "the need to focus on the social deficit" rather than solely on fiscal deficits.

On the fifth and final day of its second World Congress in Vancouver (Canada) Sharan Burrow was elected to succeed Guy Ryder, the first General Secretary of the ITUC, the world's largest international trade union organisation, founded in Vienna in 2006. Sharan Burrow will leave her post of President of the Australian Council of Trade Unions (ACTU), that she has held since 2000, to become the first woman at the helm of the ITUC.

"It's a very proud moment for me, but I hope it will be also a very proud moment for every woman around the globe," commented Burrow after her election.

"The ITUC is still facing many challenges in the wake of the global financial crisis. Although we have seen some exceptional results in a small number of countries including Brazil, Argentina, China and Australia, the recovery in jobs has not been universal. Global unemployment and underemployment continued to rise throughout 2009 and during the first half of this year" Burrow added.

The election of the first female General Secretary of the ITUC is historically significant for the global trade union movement and occurs at a time of high participation for women at the ITUC Congress with 50 percent of delegate's seats being held by women.

ITUC PRESS DEPARTMENT

101 Trade Unionists Murdered in 2009

The ITUC's Annual Survey of Trade Union Rights has documented a dramatic increase in the number of trade unionists murdered in 2009, with 101 killings – an increase of 30 percent over the previous year. The Survey, released today, also reveals growing pressure on fundamental workers' rights around the world as the impact of the global economic crisis on employment deepened.

Of 101 murdered, 48 were killed in Colombia, 16 in Guatemala, 12 in Honduras, six in Mexico, six in Bangladesh, four in Brazil, three in the Dominican Republic, three in the Philippines, one in India, one in Iraq and one in Nigeria. Twenty-two of the Colombian trade unionists who were killed were senior trade union leaders and five were women, as the onslaught of previous years continued. The rise in violence in Guatemala and Honduras also followed a trend developing in recent years.

"Colombia was yet again the country where standing up for fundamental rights of workers is more likely than anywhere else to mean a death sentence, despite the Colombian government's public relations campaign to the contrary. The worsening situation in Guatemala, Honduras and several other countries is also cause for extreme concern", said ITUC General Secretary Guy Ryder.

A further ten attempted murders and 35 serious death threats were recorded, again mostly in Colombia and Guatemala. Furthermore, many trade unionists remained in prison and were joined by around hundred newly imprisoned in 2009. Many others were arrested in Iran, Honduras, Pakistan, South Korea, Turkey and Zimbabwe in particular. The general trade union rights' situation has continued to deteriorate in a number of other countries, including Egypt, the Russian Federation, South Korea and Turkey.

Anti-democratic forces continued to target union activity, aware that unions are often in the front line in the defence of democracy. This was evident in Honduras during the post-coup violence and in Guinea during a protest demonstration against the ruling junta which turned into a terrible massacre on 28 September.

Numerous cases of strike-breaking and repression of striking workers were documented in each region. Thousands of workers demonstrating to claim wages, denounce harsh working conditions or the harmful effects of the global financial and economical crisis faced beatings, arrest and detention, including in Algeria, Argentina, Belarus, Burma, Côte d'Ivoire, Egypt, Honduras, India, Iran, Kenya, Nepal, Pakistan and Turkey. Dismissals of workers due to their trade union activities were reported in many countries. In Bangladesh, six garment workers on strike for a pay increase and settlement of outstanding wages died after a police intervention.

Union busting and pressure continued to be widely used by employers. In several countries, companies threatened workers with closure or transfer of production sites if they organised or joined a trade union. Often employers simply refused to negotiate with legitimate workers' representatives while the authorities did nothing. Some labour codes were amended to permit more 'flexibility' and to unravel social welfare systems, which often impacted the existing industrial relations systems and thus curtailed trade union rights.

The undermining of internationally-recognised labour standards saw more and more workers facing insecurity and vulnerability in employment, with some 50 percent of the global workforce now in precarious jobs. This affected workers in export processing zones, especially in South East Asia and Central America, domestic workers, particularly in the Middle East and South East Asia, and migrants and agricultural workers. Many of the worst affected sectors have high concentrations of women workers. Furthermore, the growth of informal employment and the development of new 'atypical' forms of employment were seen across both regions and industrial sectors. The difficulties faced by these workers to organise or exercise their trade union rights are directly related to their highly vulnerable position in the labour market.

The Survey also highlights many cases where, while trade union rights are officially protected in legislation, restrictions on legal coverage and weak or non-existent enforcement added to the vulnerability of workers already struggling in the depths of the crisis. Severe restrictions or outright prohibition of strikes also exist in a large number of countries. Furthermore, complex procedural requirements, imposition of compulsory arbitration and the use of excessively broad definitions of 'essential services' provisions often make the exercise of trade union rights impossible in practice, depriving workers of their legitimate rights to union representation and participation in industrial action.

"This year's ITUC survey shows that the majority of the world's workers still lack effective protection of their rights to organise trade unions and bargain collectively. This is a major factor in the long-term increase in economic inequality within and between countries. Inadequate incomes for much of the world's workforce helped cause the global economic crisis, and is making it much harder to put the economy on a path of sustainable growth", said Ryder.

Colombia was yet again the country where standing up for fundamental rights of workers is more likely than anywhere else to mean a death sentence

The ITUC's Department for Human and Trade Union Rights each year prepares the Annual Survey of Violations of Trade Union Rights.

The report is available online at www.ituc-csi.org

On Saturday 12 June 2010, ICTUR hosted its annual Administrative Council discussions in Geneva, Switzerland. The high profile annual event brings together trade unions, lawyers, academics and human rights organisations to make recommendations on strategies and action for ICTUR's work on trade union rights in the year ahead. More than 50 delegates attended, including representatives of international trade union organisations, including six of the Global Union Federations. Trade unionists from Colombia, Costa Rica, Egypt, France, Japan, Nepal, New Zealand, Norway, Mexico, Turkey, Spain, the USA and the UK also participated in the meeting, together with lawyers from more than ten countries, and NGO representatives.

Interpretation was provided in English and Spanish. The meeting was chaired by ICTUR Vice President Professor Keith Ewing.

ICTUR's activities

The Council approved the report of Daniel Blackburn, Director of ICTUR (copies on request), and the proposals for future activities. Rita Olivia, lawyer for TURC Indonesia, and Miguel Puerto, Colombia Coordinator for ICTUR, gave presentations about the work of the Trade Union Rights Centres in Indonesia and Colombia.

ICTUR's key projects this past year had included:

- Responding to trade union rights violations
- The journal, International Union Rights
- Continuing work to defend and promote trade union rights in Colombia
- Launching an online Spanish language journal
- Legal analysis on international labour issues
- Consultancy projects for a number of trade unions and GUFs

The above work will continue for the year ahead, and new projects will include:

- Trial observers project
- New edition of world map on freedom of association
- Updating and republishing the reference book Trade Unions of the World;
- Supporting a number of small projects with the NOTU trade union centre in Uganda

Presentations and discussion

Aron Nielson (Chair), labour lawyer for UNISON, UK introduced the main topic for discussion. Mr Nielson presented apologies on behalf of guest speaker Utku Kilinç, a lawyer from Turkey who had been due to talk about legal aspects of the trade union rights situation in Turkey. Mr Kilinç was unable to attend the session due to visa problems.

Klaus Lörcher, legal expert, Germany gave a presentation on the questions of how European law was relevant to trade union rights in Turkey, and how the pronouncements of European supervisory bodies in respect of trade union rights in Turkey have consequences for workers across Europe. Mr Lörcher explained that Turkey is not a member of the European Union ('EU') but that scope exists within the context of ongoing discussions concerning Turkey's relationship with the EU for pressure to be placed on Turkey to improve the situation of trade union rights. Turkey is a member of the Council of Europe ('COE'), however, and Mr Lörcher believed that scope existed also within the context of this relationship for further pressure to be placed on Turkey to improve its trade union rights record. Turkey does not recognise Articles 5 and 6 of the European Social Charter, which is an instrument of the COE, but Mr Lörcher recommended that more could be done to make Turkey aware of the importance of these Articles during the coming year, as Turkey is due to Chair the COE this year.

Turning to the European Court of Human Rights ('ECrtHR'), Mr Lörcher argued that the Demir case represented a reversal of previous jurisprudence from the Court by determining that the right to collective bargaining was covered by Article 11 of the European Convention on Human Rights. The judges made use of international law in coming to their conclusions, including ILO provisions. The Yapi Yol-Sen case more recently expanded the principle being developed to include the right to strike. The Court in both cases, Mr Lörcher explained, had condemned Turkey for violations of Article 11. The new interpretations of Article generated by these cases have implications that extend beyond Turkey. Mr Lörcher explained that they will affect concrete issues in industrial law in many national contexts across Europe. In Germany, he continued, the right to strike is frustrated in some areas of the public sector. Mr Lörcher reported that legal efforts to challenge this are in process, and that the aim is to obtain a ECrtHR judgement. But he recognised that this will take time, since there are four stages of domestic appeal. Despite the possible delays in moving from the national to the European context, Mr Lörcher explained that he was very hopeful that the ECrtHR will eventually make Germany abide by the new interpretation of Article 11. The Demir and Yapi Yol-Sen cases, he concluded, are therefore very important indeed for the promotion of trade union rights in any European state where the right to strike is restricted.

Professor Keith Ewing, Vice President, ICTUR said that Demir may be 'the best case' he had seen in his career as a lawyer. He wondered whether it may be 'the best case ever' for taking forward trade union rights. Of course the case should not be regarded as a panacea, Professor Ewing warned, but, he continued, it has given the trade union movement opportunities and tools to fight back against more restrictive interpretations of trade union rights. Professor Ewing then outlined the facts of the Demir case. A Turkish court had found that a public sector trade union was free to exist but had no right to enter collective agreements. Workers were required to repay money that they had earned under a collective agreement. Management negotiators were also told they would be required to pay for any funds that could not be recovered. The facts of the case seemed particularly harsh and made participation in collective bargaining impossible in the public sector in Turkey. The case took many years to reach the ECrtHR, but when it did the Court found against Turkey and ruled that there had been a violation of Article 11.

This, Professor Ewing explained, would have been reason enough for trade unions to celebrate. It was an important and progressive decision. But it was only a Chamber decision. The Turkish government, Professor Ewing argued, then made a' monumental error of judgment' when it insisted that the case be heard before the Grand Chamber. We should be thankful that it did, however, because the Grand Chamber was unanimous, and ruled 17-0, that this was a clear violation of trade union rights. This was a spectacular result, and it will now be very hard for this case to be challenged. We are now moving, Professor Ewing said, in the right direction. The Court was presented with a long line of jurisprudence that said Article 11 does not guarantee particular kinds of rights to collective bargaining, strike, etc. But the Convention is a dynamic, living instrument. The court, he explained, recognised this and changed the position. The court won't change its interpretations often, Professor Ewing said, and he believed that the new position could now be regarded as 'a clearly established position'. Collective bargaining, he added, is now an essential component of Article 11.

In arriving at its new position, Professor Ewing explained that the Court had looked at ILO instruments and the Council of Europe Social Charter, even though Turkey had not ratified the latter. The Court had said that the protection for collective bargaining must be at the level protected by ILO Convention 98. Paragraph 166 of the judgement makes clear that this means that interpretations must meet the standards of the jurisprudence of the ILO Committee of Experts' decisions, not just the bare bones of the Conventions. Several decisions have since followed this new standard, Professor Ewing concluded, and the 47 Member States of the COE are now legally bound by this decision

Daniel Retureau, CGT France commented that Europe has been struck by the Viking and Laval cases coming from the EU's European Court of Justice ('ECJ'). He wondered whether the ECJ understands human rights, but said that in his view the ECJ feels that it is the superior court. Unfortunately, he said, the ECJ cases could not be appealed and only a political solution could overturn the new ECJ position. The Demir and Yapi Yol-Sen cases from the ECrtHR were therefore, he believed, a big help for the European trade union movement.

Dick Blin, ICEM, Gaye Yilmaz DISK, Turkey, and Burcu Ayan, Tek Gida-Is, Turkey all expressed concerns about the potential for enforcement of the ECrtHR decisions. They asked whether the solutions were political or legal, and what mechanisms could ensure that the decisions would be implemented in Turkey.

Professor Keith Ewing said that in his view a legal solution can be a political solution and that the labour movement would need to be proactive. The ECrtHR, he continued, does have power to award compensation, and he said that there is 'an expectation' that the law will be changed once a country has been found in breach of the European Convention. The Council of Europe follows up its judgements and assesses whether or not decisions have been implemented. Governments can ignore these decisions, this is very unusual but does happen. However, he explained, the COE does have a follow-up political process.

Jim Catterson, ICEM believed that the ECrtHR decisions had 'immense ramifications' for Turkish labour law, but wondered whether implementation would actually happen. He spoke about restrictions on organising in Turkey and observed that there had been numerous criticisms of this legislation in the ILO for years but that little had changed.

Kemal Ozkan, ICEM said that Article 90 of the Constitution of Turkey provides that international treaties should override domestic law when the two are in conflict. He said there was a need to pursue this instrument. He complained that Turkish labour law uses very complex technical provisions that act as barriers to freedom of association. He added that the government intervenes in assessing support levels when unions seek to meet organising thresholds.

Hans Christian Monsen, lawyer, Fagforbundet, Norway said that in Europe there are two Courts travelling in different directions. He thought that the ECrtHR should be the superior court in respect of human rights questions, but felt that not everyone in Europe would agree. Mr Monsen explained how one decision from the ECJ (Laval) had found that Swedish law was incompatible with European law. Sweden had agreed to change the law, but after the Demir case Swedes had started to ask, why should they change their laws? Mr Monsen wondered whether the Laval judgement should still be considered binding after the ECrtHR decisions, but he said that the Swedish parliament had already written a law to implement the ECJ's decision.

Professor Keith Ewing said that there is a strategy. He argued that it was necessary to send a national court decision applying the Laval decision to the ECrtHR. Professor Ewing was of the view that the ECrtHR would overrule a decision from a domestic court that applied this formula and that this would produce a clear conflict of interpretation between the two courts. He argued that the Lisbon Treaty 'makes clear' that the ECJ must yield to the ECrtHR on the question of Convention rights.

Daniel Retureau wondered whether it would be useful to prepare a study of what provisions of ILO Conventions and jurisprudence can be considered to meet the legal concept of being 'self-executing' (ie – that are capable of being applied directly to a national context without requiring implementing legislation)? This research, he believed, would help in future cases to ensure that Article 11 could be read consistently with ILO principles.

Hyewon Chong, IMF said she was interested in the Committee of Ministers and the follow-up process of the COE. She asked whether unions could submit reports, and whether it would be useful to do this?

Shane Enright, Amnesty International agreed that legal strategies are political strategies. He said that Amnesty was currently working on Turkish labour law compliance with ILO Conventions 87 and 98. Amnesty's recent Turkey appeal, he added, had resulted in 10,000 cards sent and he felt there had been a strong response and that Amnesty activists were concerned about the situation of trade union rights in Turkey.

Hyewon Chong complained that a dismissal case involving union activists from the Sintra-Metal union in Turkey has now been adjourned seven times. She expressed interest in the ICTUR trial monitoring project and asked whether court monitoring might be helpful in this case.

Gaye Yilmaz wondered whether the ILO process was to be trusted and observed that Colombia had been excluded from the list of cases to be discussed by the Conference Committee on the Application of Standards. In her opinion, the case of Colombia should have been more urgent than that of Venezuela, which had been discussed.

ICTUR Administrative Council, 26th session, ICTUR (2009)

Aida Auella, Arlac, Switzerland said that there is no right to life in her home country of Colombia. She said that if there is no right to life then there are no other rights. More than 3000 trade unionists have been killed in Colombia. The last one was killed last week, when Colombia was being removed from the list of cases at the ILO. She wondered, is the right to life a right at all?

Zita Tinoco, CUT lawyer, Colombia thanked ICTUR for providing this space for discussion. She endorsed Aida's remarks in respect of Colombia.

Ramesh Badel, GEFONT Nepal said that essential services are a major problem in Nepal. He explained that the Government simply decides what is essential and bans strikes on these grounds, even in banks and hotels. He asked ICTUR to provide information about the ILO definitions on higher level civil servants' rights to strike and do they have the right to join the normal civil servants union.

Rita Olivia Tambunan, TURC, Indonesia said that sub-contracting and precarious work are major problems for organising in Indonesia. Unions, she added, face difficult questions about how and whether to recruit these workers. Courts, she said, work against workers. Bribery is still a big problem in the current legal system. Lawyers for workers, Mr Tambunan explained, usually lose cases because the courts are against them, despite great arguments. The labour law struggle, she believed, can still be significant if there is also coordination with the trade union movement. She thought also that unions should be more proactive around legal case work and should not just sit down and wait for rulings. Her organisation, TURC, had recently begun putting criminal cases against employers for violating trade union rights.

Martin Espanza, SMA, Mexico said that the problems are universal. He said that the International Financial Institutions, with the complicity of governments, promoted precarious work. He spoke of the violent response of the State to strikes at the Cananea mine and explained how 45,000 members of his union had been dismissed overnight during the privatisation of the Mexican power company. Judges, he said, had political interests, and he observed that the Mexican Supreme Court had denied requests from the trade unions.

Keith Ewing observed that he had been attending the ICTUR Administrative Council meeting for twelve years. Each year, he remembered, Colombian delegates had told very moving stories. Colombia is not primarily a legal problem, he said, but a global solidarity problem. He argued that stronger global action by the international labour movement could increase the pressure on the Colombian authorities. Responding to the concern expressed by Gaye Yilmaz about the failure to include Colombia in the list of cases before the Standards Committee, Professor Ewing said that the ECrtHR defers to the Conventions and jurisprudence of the ILO but not to its political processes.

Klaus Lörcher said that work around the Constitutional Court of Turkey, perhaps trainings and cooperation with international judges, may be useful. He was not sure of the exact procedure for communications to the COE Committee of Ministers, but he thought sending letters to the Committee calling for close supervision of the implementation of the Demir decision would be a positive contribution.

The Council closed with thanks to the interpreters for their assistance and support.

worldwide

Business and human rights

The International Commission of Jurists, an international lawyers' organisation, has released three new guides as part of a series *Access to Justice: Human Rights Abuses Involving Corporations*. The three guides examine the extent to which Polish, South Africa and Colombian law provides victims of human rights abuses involving corporate entities with remedies. The guides look at the use of domestic civil and criminal law as well as the role of international law in helping victims to obtain remedies in human rights cases. The Colombian guide is in Spanish, while the other two guides are in English. Copies are available via the ICJ website at: **www.icj.org**.

Business and human rights

The International Federation for Human Rights (FIDH), an international NGO, has produced a guide for victims on recourse mechanisms in cases of corporate-related human rights violations. *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms* begins from the premise that 'victims of corporate-related abuses still struggle to obtain justice and as a result, impunity prevails'. The guide weighs in at an impressive 536 pages and covers different frameworks and mechanisms for approaching instruments and enforcement mechanisms, including domestic, international, and voluntary legal systems. The guide can be accessed online in .pdf format. French and Spanish editions will be available in future. See: **www.fidh.org**.

Business and human rights

The United Nations Global Compact, a voluntary agreement under which corporations agree to work towards promoting minimum human rights standards, has published the *Guide on How to Develop a Human Rights Policy*. The Guide examines how corporations can take practical steps to go about developing a human rights policy. It looks at a number of examples of corporate human rights policies in respect of different aspects of human rights, including a substantial section on labour rights. Available via: **www.unglobal compact.org**.

Business and human rights

The UN Special Rapporteur on the Right to Food, Olivier De Schutter, has issued a new report *Agribusiness and the Right to Food*, which sets out strong recommendations addressed to governments and corporations with respect to their obligations in helping to realise this key right. The international foodworkers' union IUF has welcomed the recognition in the report of the obligations that corporations have, given the extent to which these entities dominate the world food system. The report also gives specific recognition to the fact that over half the world's hungry are food producers, a point which makes clear that action to address global hunger issues will require action within the food system itself. The report urges ratification and implementation of all relevant ILO conventions, the establishment by law of a minimum wage, the devotion of sufficient resources to national labour inspectorates, the establishment of social security protection, and the negotiation of global framework agreements with global unions. The report is available in English, French and Spanish at: **www.srfood.org**.

Business and human rights

OECD Watch, a Dutch NGO, has published the report *10 Years On – Assessing the Effectiveness of the OECD Guidelines for Multinational Enterprises to Responsible Business Conduct*. The report examines the implementation and effectiveness of the Guidelines over the past 10 years, analysing the numerous cases that have been filed by NGOs and by unions against corporations alleging violations of the principles, which commit corporations to protect not only labour rights but also to respect a core of environmental and social obligations.

Child labour

The International Labour Organisation ('ILO') marked the annual World Day Against Child Labour with an appeal to end child labour by 2016. The ILO Director General Juan Somavia pointed out that 'while billions are caught up in the excitement of the football World Cup, some 215 million children are labouring for survival'. Progress towards ending child labour, Mr Somavia noted, 'is slowing down'. The Director General said the world needed to take inspiration from the energy, strategy and commitment of the World Cup and apply these to the goal of ending child labour.

Domestic workers

The long-running campaign to secure international legal protection for the rights of domestic workers has secured an important victory at the key first stage discussion in the ILO. During the debate, employers argued that high levels of employment protection would reduce employment opportunities, and that the instrument to be adopted should be a recommendation only rather than a convention. Ultimately those arguing for stronger legal protection won the argument. The proposed convention will return to the agenda of the ILO conference in 2011 for a second discussion.

Europe

The European industrial relations research network EIRO has published a new survey *Trade Union Strategies to Recruit New Groups of Workers*. The paper brings together reports from each of the 27 EU Member States and Norway looking at developments Europe-wide in respect of new strategies and initiatives that unions have adopted, particularly those that reach out to workers outside of traditional core union sectors and industries. The report is available at: **www.eurofound.europa.eu/eiro**.

Worldwide

Europe

The annual review *Industrial Relations Developments in Europe*, looking at developments in 2009, has been published by the EIRO European industrial relations network. The report looks at the political context, levels of collective bargaining coverage, and trends in pay bargaining over the year. The report also takes in working time and a number of other topics across the 27 EU Member States and Norway. The report is available at: **www.eurofound.europa.eu/eiro**.

Forced Labour

The ITUC has produced a guide book, *How to Combat Forced Labour and Trafficking*, which examines best practice examples of strategies that have been implemented to combat contemporary forms of slavery, forced labour and trafficking around the world. The manual is intended to serve as a training manual to encourage trade unionists to increase their awareness of forced labour issues and to understand some of the effective strategies that can be used to tackle the problem. The Guide is available online at: **www.ituc-csi.org**.

Global

Unions have criticised a G20 Leaders' Communiqué, which John Evans of the OECD Trade Union Advisory Committee said 'frequently contradicts itself'. Sharan Burrow, General Secretary of the ITUC, said that it was 'the wrong communiqué at the wrong time'.

Ms Burrow added that it was a 'descriptive text' which indicated 'unacceptable complacency in the face of a worsening jobs crisis, at a time when unemployment risks surging again as a result of premature deficit reduction measures'. G20 leaders had spent more time liaising with business leaders than engaging with unions, Ms Burrow continued, observing that 'they should take care: working people around the world are getting angry at the assumption that they will meekly pay the price for the crisis'.

Migrant workers

A new ILO study *International Labour Migration: A Rights-Based Approach* examines trends in international labour migration, the impacts of migration on countries of origin and destination, and the conditions of work that migrants experience. The study concludes that 'the logic and phenomena of globalisation are clearly driving forces in migration today. Globalisation has extended the mobility of capital, goods, services and technology, inevitably leading to demands for greater mobility of labour'. The report notes that 'migrants from developing countries work in almost every type of job' but notes also that they 'tend to be concentrated at the bottom and top of the employment ladder'.

North America

In June the US Steelworkers and the Mexican mining union Los Mineros announced a joint declaration to create a 'cross-border commission' that they say would 'explore unification of a potential union representing one-million industrial workers in Mexico, Canada, US and the Caribbean'. IUR readers will recall that the Steelworkers recently announced a transatlantic cooperation agreement with the Unite union in the UK.

Romania

The five national trade union centres have set up a crisis committee in response to a sweeping programme of public sector wage cuts and budget reductions developed by the Government in agreement with the International Monetary Fund ('IMF'). The agreement, which took effect in June, has cut all public sector wages by 25 percent. All pensions, unemployment benefits and subsistence allowances have been cut by 15 percent. The union crisis committee says that the Government is ignoring social dialogue and that the Government was shifting the burden of the economic crisis onto workers, pensioners, and vulnerable members of society. The unions held a general strike on 31 May.

Trade union project management

The European Trade Union Confederation ('ETUC') has, through its research arm the ETUI, published the 7th updated edition of its study on Trade Unions and Transnational Projects. The handbook looks mainly at issues pertaining to project management for programmes supported by the European Commission. The booklet is available in numerous languages (some of these are available only for early editions) via: **www.etui.org**.

Turkey

The ITUC has issued a statement calling for the protection of human rights defenders in Turkey with specific reference to the case of trade unionists and to the use of what the ITUC terms 'judicial harassment and threats'. The ITUC continues 'defence lawyers can initially not look into their client's files, sometimes even for more than a month'.

Turkey

Tens of thousands of trade unionists and political activists gathered in Taksim Square in Istanbul on 1st May to participate in May Day celebrations that had, for the first time in more than 30 years, been sanctioned by the authorities. In recent years the entrance to the Square has been the site of clashes between police and trade unionists as the latter have attempted to enter the Square in order to mark the anniversary of a violent crackdown which occurred on May Day in 1977.

WFTU

In May the WFTU launched a new publication, *Reflects* magazine. The first edition contained a report on social and political issues in Swaziland; looked at labour issues in Nepal, examined the use of CS gas; and featured an article about Simon Bolivar. It also contained several reports of recent WFTU meetings. Available at: **www.wftucentral.org**.

Trade unionists on trial:
ICTUR international legal observers network

In June 2010, in response to a series of abusive and repressive criminal prosecutions of trade unionists, ICTUR launched a new programme, a legal network that will provide international legal observers for serious criminal trials and certain civil actions in cases where local unions believe that the law is being used to repress trade union activities.

For each trial monitoring case, the new programme will meet the costs of travel and expenses. ICTUR intends to be able quickly to respond to calls for assistance. The programme is now up and running and aims to despatch an international lawyer at short notice to monitor an anti-union trial anywhere in the world, at no or minimal cost to the local organisation.

The project seeks to revitalise the 'activist' element within ICTUR's international legal networks. The idea has been fuelled by the experiences of ICTUR Director Daniel Blackburn who attended the trial of KESK activists in November 2009 (see *IUR 16.*5, 8-9).

Following that trial, Daniel, a barrister by training, said: "I could literally see that the judge was conscious of our presence…he kept looking at us. When we spoke with local lawyers they said we had made a big impact on him".

Demonstration at court building prior to November 2009 trial of KESK activists, ICTUR (2009)

- As the ITUC Annual Survey reported this year, many trade unionists remained in prison during 2009, and they were joined by around a hundred who were newly imprisoned. Many others were arrested, including in Iran, Honduras, Pakistan, South Korea, Turkey and Zimbabwe in particular.
- The ITUC has issued a statement calling for the protection of human rights defenders in Turkey with specific reference to the case of trade unionists and to the use of what the ITUC terms 'judicial harassment and threats'. The ITUC continues 'defence lawyers can initially not look into their client's files, sometimes even for more than a month'.

Trial monitoring project in action

Since announcing the project ICTUR has received enquiries from three global union federations about mobilising the network.

- In June ICTUR was making plans to despatch a lawyer to a hearing of the KESK trial in Turkey along with observers from Education International, though the planned trip was cancelled when local lawyers realised that the case would be adjourned within a few minutes of opening. ICTUR intends to send an observer to the re-hearing, currently scheduled for October.
- In July the International Metalworkers Federation contacted ICTUR and asked for a lawyer to be sent to observe a civil hearing in which a case involving the mass dismissal of trade unionists from the Sintra Metal union in Turkey has been adjourned seven times and in which the local union believes its members are being unfairly denied the right to be heard in good time. In August an ICTUR legal observer will attend the Sintra Metal hearing.

Each observer will be asked to donate one or more days of their time to monitor the trial and to prepare a brief report for ICTUR, setting out the extent to which the trial complies with international human rights standards, whether the lawyer observed any signs of bias, mistreatment, or other abuses of the legal process.

- Lawyers interested in participating in the network, or simply in hearing about the cases that we are examining, are encouraged to contact ICTUR on ictur@ictur.org so that we can log your contact details on to our database.

We believe that not only will trade unions be prepared to donate to support the programme, but that lawyers organisations, bar associations, and human rights funders will also be attracted to the proposal.

- Donors interested in supporting this project, and lawyers interested in signing up to join the trial observers network, please contact Daniel Blackburn on ictur@ictur.org or call +44(0) 20 7498 4700.

American Bar Association International Labor & Employment Law Committee Meeting

In May ICTUR Vice President Keith Ewing and Director Daniel Blackburn attended a meeting of the American Bar Association International Labor & Employment Law Committee that was held in Istanbul, Turkey. The meeting gave ICTUR an opportunity to share experiences gathered from recent ICTUR missions to observe a strike and criminal trial in Turkey and to comment on key developments in international labour law.

- Professor Ewing delivered a presentation on the dramatic developments in European labour law that are promised by the Demir decision of the European Court of Human Rights and contrasted this with the more problematic decisions of recent years issued by the European Court of Justice (see also the discussion at ICTUR's annual meeting on pages 22-23 for more on this issue).
- Daniel Blackburn joined a panel discussing labour issues in Bahrain and Turkey and drew parallels between some of the trends and developments in respect of trade union rights that could be observed in the two countries, notable relating to privatisation, but noting also the substantial differences that exist between the two countries.

The ABA's officers thanked the ICTUR delegates for participating in the session and indicated that they would seek ICTUR's participation in future discussions on questions relating to international trade union rights.

Public sector delegation to Colombia

In early August, British public sector union UNISON and German public sector union Ver.di will travel to Colombia on a joint delegation to meet with a range of public sector unions who are representative of the various regions, sectors and political currents in Colombia. During these meetings UNISON will seek to focus on the potential for initiating new work or projects.

UNISON and Ver.di are concerned by the fact that public sector unions in Colombia have faced some of the worst attacks on their rights as trade unionists and on the basic human rights of their members and leaders. The unions are seeking to campaign against restrictions on public services workers' rights to organise and bargain collectively and to investigate issues of women's involvement and privatisation.

UNISON has asked ICTUR to assist with the practical and logistical issues attaching to the organisation of the proposed delegation. Colombia Coordinator Miguel Puerto is helping the unions to organise a schedule of travel, accommodation, and meetings with a diverse group of public sector unions representing the various regions, sectors and political currents in Colombia. Miguel Puerto will accompany the delegation on the trip.

New edition of ICTUR World Map

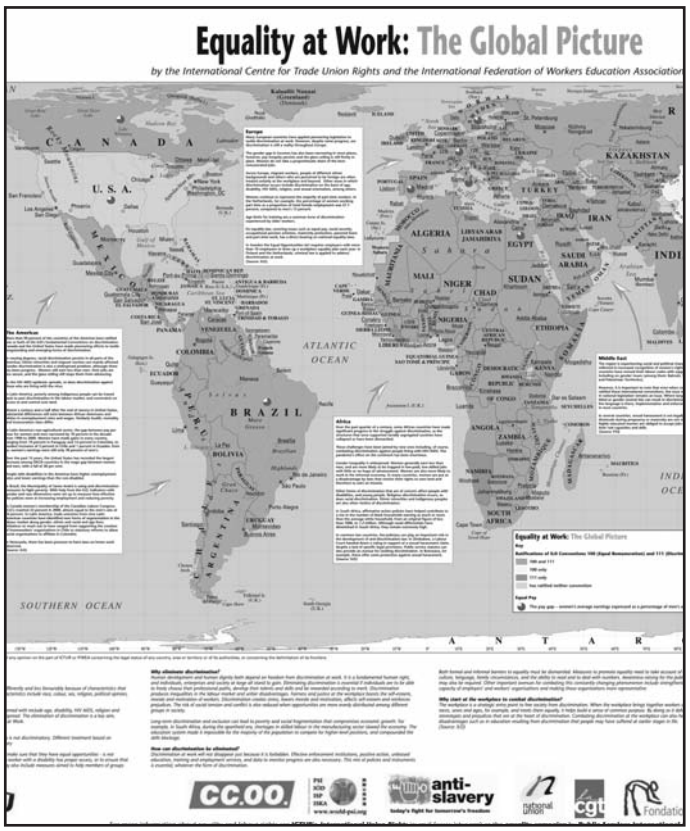
In 2006 ICTUR produced some of our most successful publications to date, the world maps on freedom of association and other core labour standards.

Since then, trade unionists, lawyers and educators have written to ICTUR from all over the world to express their support for the maps, to order copies, to say how useful they have found them for getting a clear picture of how ILO Conventions are ratified and respected (or not) around the world.

ICTUR has been planning for some time to produce updated editions.

Earlier this year ICTUR handed out the very last copy of its 2006 English language freedom of association map, which was the most popular of all of the maps produced. At around the same time ICTUR reached agreement with a number of trade unions to sponsor new editions of both the freedom of association map and the child labour map.

- ICTUR wishes to invite other unions to consider providing sponsorship for the project. If your union would like to see its logo on the 2010 / 2011 edition of the world map – and to receive a bulk shipment of promotional copies of the map – please get in touch on ictur@ictur.org.



Trade Unions of the World

During 2010, the International Centre for Trade Union Rights ('ICTUR') plans to update and revise the international reference book *Trade Unions of the World (TUW)*

Over six editions, TUW has remained the key source of information on trade unions worldwide, presenting both a contemporary snapshot of trade unionism across more than 200 countries and outlining significant aspects of trade union history around the world.

In order to support the very substantial commitment of research and editorial time required by this publication ICTUR is seeking financial sponsorship for the project.

Format

ICTUR propose a 450-page reference book, containing:

- For every country, basic social, economic and political information, together with outline information and contact details for national trade union centres;
- For the majority of countries, the book will also contain detailed information on the historical development and character of the national trade union centres;
- For the majority of countries, details are also included for industrial and sectoral trade unions.
- The book will also include substantial regional and international profiles on union organisations and structures

The book, when completed, will be available in both print and electronic formats.

A number of copies and subscriptions will be available to trade unions in developing countries at no charge.

Why sponsorship is needed

Trade Unions of the World is a very substantial book: it is crammed full of facts and data.

The fact-checking and editorial work required to support the project is demanding, time-consuming, and can only be carried out by highly skilled researchers who are familiar with international trade union issues, and with the political, economic and historical situations of the countries in question.

ICTUR needs to raise funds to cover the costs of a three member research and editorial team and a network of co-contributors over a three month period.

Sponsorship

Sponsoring unions will be credited in the publication as sponsoring organisations, and will be given a number of print copies of the book and access to the online edition. UNISON (UK) and the SEIU (USA) have already agreed to sponsor the project.

ICTUR requests that other trade unions consider whether they can assist by co-sponsoring the project.

- Unions wishing to sponsor the project please contact ICTUR Director Daniel Blackburn on ictur@ictur.org or +44 (0)20 7498 4700.

"An invaluable and comprehensive guide"

(New Internationalist magazine, review of *TUW 2005* edition)

Spanish journal

In April this year ICTUR upgraded its electronic Spanish-language newsletter from a short, simple, unformatted email to a longer, full-colour, and professionally-set journal format.

The newsletter, now sharing IUR's name in Spanish, *Derechos Sindicales Internacionales*, is being widely distributed by email, reaching thousands of Spanish-speaking trade unionists. The newsletter is currently available at no charge, thanks to the generous support of the Fondation des droits de l'Homme au travail (FDHT).

In fact, we do not believe that a subscription-based model will be sustainable for the Spanish-language journal, however, we do believe that it can play an important role in helping to fulfil the constitutional mandate of ICTUR, which is to protect, defend, promote and increase awareness of trade union rights among trade unionists, lawyers, academics and human rights defenders around the world.

We therefore intend to finance the continued production of the Spanish newsletter through seeking sponsorship and support from solidarity organisations.

ICTUR's model takes truly international news. DSI will report stories not only within the traditional Spanish language sphere of Spain and Latin America (nor even just extending to the EU or US) but rather we will be aiming to introduce into Spanish language debate news, views and opinions from a more diverse section of the world, including Africa, Asia, and Australia, for example.

The first edition features several key contributions from Latin America, but also features articles on the right to strike in the UK and in Norway, along with IUR's regular global news coverage.

International Federation of Chemical, Energy, Mine, & General Workers' Unions

ICEM

Giving Practical Solidarity to Trade Unions Across the World

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Uniting Food, Farm and Hotel Workers Worldwide

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Building global solidarity

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General Secretary: **Ron Oswald**
President: **Hans-Olof Nilsson**

Public Services International

PSI is a global union federation representing 20 million workers, members of public sector trade unions, in 160 countries.

PSI and its affiliates are committed to building quality public services that meet the needs of workers and communities.

Priorities include global campaigns for water, energy and health services. **PSI** promotes gender eauality, 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**

Education International

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