Democracy, freedom of association and the ILO

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I. Introduction

The story goes that the large, imposing man with an amiable, inviting face behind a long dark beard peered at them over the round eyeglasses that had gradually slipped to the end of his nose, his mouth agape in surprise. “What! But it’s not possible! You don’t need a union structure here. Surely the representatives I invited the staff to elect will suffice to protect your interests.” The man was Albert Thomas; the year, 1920; the event, the creation of the ILO staff union, which despite his protestations was indeed constituted that year. But if such a reaction could spout from the mouth of the first Director of the International Labour Office with the most natural aplomb, then it is hardly surprising that, in the dawn of the 21st century, acceptance of and commitment to the fundamental nature of the right of workers to organize freely in the defence of their occupational interests has yet to be fully realized.

In order for true headway to be made towards the complete realization of the right of all workers and employers to form and join organizations of their own choosing to represent their respective interests, there must first be universal acceptance not only that democracy is the political model by which societies should be governed, but also that, without freedom of association in all walks of life, democracy is merely an illusion. Freedom of association for the partners in economic activity who jointly provide for society’s needs and make the economy run is no exception to this rule. And if a democratic society is the respected goal, all good intentions, just as those of the bearded man so many years ago, to provide workers with good wages and working conditions must not amount to a usurping of the workers’ right to express their own voice, and have the means to effectively do so.

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The ILO has had a special place in observing and reinforcing the role that freedom of association plays in the construction and development of democracies. Important instruments and mechanisms were shaped just after the Second World War by the multi-cultural and tripartite International Labour Conference that have placed freedom of association in the forefront of the rights synonymous with social justice and essential to the goal of universal and lasting peace. The adoption of the Freedom of Association and Protection of the Right to Organise Convention No. 87 and the Right to Organise and Collective Bargaining Convention No. 98, in 1948 and 1949 respectively, gave meaning to the reference in the 1944 Declaration of Philadelphia to representatives of workers, employers and governments joining in free discussion and democratic decision with a view to the promotion of the common welfare. The inclusion of these core rights into the International Labour Code guaranteed a protected place for organizational rights, which would become for many the backbone of the Organization’s work if not its very existence.

The primacy of these rights was subsequently reinforced by the creation of a special complaints procedure for the examination of alleged violations of trade union rights whether or not a State had ratified the relevant conventions. This procedure first gave rise to the setting up of a Fact-Finding and Conciliation Commission on Freedom of Association and shortly thereafter, to the creation in 1951 of the ILO Governing Body Committee on Freedom of Association. This latter body has held 161 meetings to examine complaints of freedom of association violations in 2,363 cases to date; ample experience from which to glean the role of freedom of association in the promotion of democracy and the impact that the ILO has had in supporting and accelerating its expansion. The albeit limited uses of article 26 of the ILO Constitution to establish Commissions of Inquiry to examine the non-observance of freedom of association Conventions in circumstances of heightened tensions have also provided valuable information in this respect.

The current Director-General of the ILO, when presenting this year’s Global Report, Organizing for social justice stated: “Over the past four years, it has become increasingly apparent that, to promote freedom of association as a human right at work, we need to understand its intimate connection with the enlargement of democracy, the efficiency of market-oriented development and social justice”.1 This article based on information emanating from the various ILO supervisory bodies aims at identifying some illustrative elements to assist in the appreciation of the connection between freedom of association as a human right at work and the enlargement of democracy.

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II. Looking back at workers’ organizations and their struggle for freedom of association and democracy

Freedom of association and democracy share the same roots: liberty, independence, pluralism, and a voice in decision-making. These fundamental freedoms cannot be suppressed in one sphere and flourish in another. If there is no democracy at the political level, there will be no right for workers and employers to join freely the organization of their own choosing and exercise their legitimate activities. If freedom of association is not recognized as a human right at work, the very foundations of a democratic political system will necessarily be shaken.

Over more than half a century, the ILO supervisory bodies have examined numerous cases where freely chosen, independent workers’ organizations became dynamic agents for change in the political, social and economic life of countries where the bedrock of democracy, and often the accompanying civil liberties, had not been ensured. Because of the important role they can play in this regard when other forms of organization may be more easily squelched, workers’ organizations have also often become the specific targets of repression under authoritarian regimes and military dictatorships, which rarely include change on their agenda.

Indeed, no one would hesitate to say that freedom of association is by definition contrary to the model of single-party rule and totalitarianism. So, in countries where representative political parties cannot develop, it has often been observed that workers’ organizations have become the channel for expressing public discontent and the sole organized form of representation, whether lawful or not. While a democratic system is a necessary prerequisite for the full respect of trade union rights, trade unions may nevertheless take their liberties in hand, demand respect for basic rights and become catalysts for an overall political transformation to democracy. Some examples of such action on the part of workers’ organizations, their use of the ILO mechanisms to support their claims and the resulting impact not only in the world of work but also in the overall functioning of society are set out below.

1. Poland: democracy comes to Eastern Europe

Probably one of the most memorable moments in history was the toppling of communism that began in Poland when the suppression of an independent trade union movement became the subject of unremitting criticism on the part of the international community. When the remaining resistance to a democratic, independent and pluralistic trade union movement finally yielded to acceptance by those in power of the workers’ representative voice, the force of this act made way for democracy on a larger scale than could be imagined.
The first window on democracy began with the nascent trade union movements in Gdansk, Szczecin and Silesia leading to the signing in 1980 of the Gdansk agreements. These agreements, which were based on the ILO freedom of association conventions, included the right to found free trade unions, independent of the Party in power and ensured freedom of expression in public and professional life and freedom of publication. Acknowledging that the activity of trade unions in Poland had not until then met the hopes and aspirations of the workers, the Government had undertaken to introduce trade union pluralism in the legislation and to create conditions in which the new trade unions could be registered outside the hitherto solely recognized trade union central with full guarantees of independence and self-management. The Government also undertook to ensure that these new unions would have a real opportunity to participate in key decisions affecting the living conditions of the workers in respect of, among others, the principles of the distribution of national income between consumption and investment, the determination of wages policy and the long-term economic plan.2

On the workers’ side, the budding unions stated that they would defend the social and material interests of the workers and had no intention of assuming the role of a political party. The registration of Solidarity, the first union recognized outside of the central union structure, was confirmed in November 1980 and Lech Walesa addressed the International Labour Conference in June 1981 for the first time as the Polish Workers’ delegate. Solidarity adopted a programme of action in October 1981 that demonstrated its far-reaching vision of the changes needed to grapple with the rapidly deteriorating economic situation. In particular, it called for reforms in public life to lead to self-management, democracy and the possibility of holding different social, political and cultural views at all levels of society and in every level of decision-making. This call for pluralism was aimed both at political life and at the trade union movement.3

Two months later, in December 1981, martial law was declared and, with it, union activities were suspended and by 1982 their structures totally liquidated. The Government justified its actions stating that they were necessary to prevent a civil war and counteract signs of anarchy and economic chaos endangering the fundamental interests of the Polish nation and State. While ironically the Government stated that the sole purpose of this measure was to guarantee the far-reaching democratization of the social and political life of the country, the

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3 Ibid., paras. 188-197.
fear of the threat posed by the newly created unions to the established political system in Poland was obvious to many.\(^4\)

The unions thus fought for their rights and demanded recognition of the basic freedoms indispensable to the exercise of legitimate trade union activity, using ILO mechanisms to assist in bringing attention, support and international pressure to their cause. Their claims at a more circumscribed level ultimately reflected the voice of the people for restoration of their civil liberties and political pluralism.

The far-reaching effects of this struggle at the national level, coupled with extensive international action through a number of high-level ILO missions led by the Director-General and a comprehensive review of the situation by the Commission of Inquiry established in 1983, could be seen not only in Polish political life, but also in the reverberating echo heard throughout Central and Eastern Europe. The Polish Government representative recognized the broad and significant impact of the trade union movement on the political sphere when, in 1988, at the ILO Conference, he stated:

The problem of trade union unity or pluralism at the enterprise level which, in the light of Polish legislation, remains open in the longer perspective is connected with the general social, political and economic situation of Poland and directions of its future evolution. It also is one of the elements of the broad sphere of political pluralism in the public life of the country. Future solutions in this regard will be undoubtedly dependent upon more general ones in the field of policy which are at present being prepared in Poland and which cover the considerable broadening of the so called «dialogue with the political opposition» […] in connection with the initial stage of these political activities it is difficult to forecast their final direction and scope; it is only known that they are being carried out in an unprecedented scale for Poland and with the bold will of achieving completely new qualities in its political system.\(^5\)

One year later, amendments were made to the Polish legislation ensuring the possibility of trade union pluralism. The beginning of the 1990s would witness similar steps taken by the Baltic States and the State participants in the newly created Commonwealth of Independent States (CIS) following the break-up of the Soviet Union. For the 75th anniversary of the International Labour Organization, Lech Walesa, having by then moved from the ranks of the lead defender of Polish workers to the Presidency of the Republic of Poland, had this to say about the role of the ILO in the former communist countries:

\(^4\) Ibid., paras. 200-205.
The ILO’s report in 1984 on the violation of trade union rights in the People’s Republic of Poland helped to expose and unmask the true face of the communist regime, under which human rights were only an empty slogan, a catchphrase devoid of content. In our struggle for development, freedom and justice, the International Labour Organization has been our indefatigable ally.6

2. *South Africa: democracy and equality hand in hand*

When we think of democracy we think of an egalitarian and tolerant form of society. In its report on the complaint brought in 1988 against the Government of South Africa, the ILO Fact-Finding and Conciliation Commission on Freedom of Association noted that “in the land of apartheid, many liberties, counted as normal in a democratic society, were diminished or lost altogether”.7 The basic freedoms of association and collective bargaining lost under the apartheid regime are nothing other than the vital attributes of a free society.

Despite the formidable state machinery for maintaining the apartheid system and suppressing opposition, and particularly movements representing Blacks, a number of organizations and institutions became the focus of resistance. The development of a non-racial trade union movement and the increasing extent to which it had been composed of Black workers were noteworthy aspects of the social developments in the country. In default of other outlets to direct attention on urgent matters of social and economic concern, it was inevitable that the trade union movement would fill the institutional void. During the reign of apartheid, the union movement played a vital function in preserving the hope of freedom and of basic rights.8

The South African trade union movement’s continuing focus on these rights, as well as its recourse to the procedures of the International Labour Organization – which despite the fact that South Africa was not a member of the Organization, enabled an unencumbered investigation of the situation and amplified the international attention brought to it – largely contributed to the gradual change of public opinion that led to the Convention for a Democratic South Africa in December 1991 and ultimately to the election of Nelson Mandela in 1994. Led by the Government of Nelson Mandela, South Africa took possession of its seat in the international community as a staunch advocate for


social justice and rejoined the International Labour Organization as a truly
democratic State. The South African Minister of Labour, at the first Interna-
tional Labour Conference attended by a full-fledged delegation for over thirty
years, expressed his country’s recognition for the multitude of efforts made by
the ILO in its combat against apartheid: “on behalf of our President, Nelson
Mandela, and the Government of national unity and the people of South Africa,
I express our collective gratitude to the ILO for the selfless commitment which
has been shown over the years by the focusing of the energies and resources of
this Organization on overcoming the evil system of apartheid”.9

In addressing the challenges presented by an increasingly globalized
economy, he urged that greater attention should be focused on the elaboration
of core standards, like those embodied in Conventions Nos. 87 and 98, which
are so fundamental and universal that they should apply to all States regardless
of their level of development. While one should adapt to the ever-changing
world, that adaptation must never result in the gutting of international standards.
Within this expression of full commitment on the part of the new Government,
he undertook to push forward the rapid ratification of these two fundamental
Conventions, along with those on discrimination and forced labour, and pledged
his Government’s compliance with the recommendations of the Fact-Finding
and Conciliation Commission.10 Both of these promises were kept.

III. The continuing struggle for a voice

In the light of this historical picture demonstrating that freedom of asso-
ciation cannot thrive in a non-democratic, non-egalitarian state, the present-day
snapshot of countries where this fundamental freedom is violated is, regrettably,
neither surprising nor limited to a rare few.

1. Voices in exile

Under the military rule of Sudan, the basic freedoms are so entirely absent
that trade unions cannot even exist illegally and are thus deprived of the most
minimal right to carry out their struggle within their own country. After the
military coup of 1989, special measures had been taken which had extremely

10 Ibid., p. 9/8.
serious repercussions on the exercise of trade union rights and civil liberties, including the dissolution of all trade union organizations in the country, the imprisonment of trade union leaders and members without charge and without trial, and the confiscation of union assets and property by the military. Some work stoppages were even rendered punishable by death.¹¹

While the 1992 Trade Union Act repealed the military decrees, it nevertheless imposed a state-controlled trade union monopoly and seriously infringed the basic principles of freedom of association.¹² In 1994, the application in Sudan of the Right to Organise and Collective Bargaining Convention No. 98, ratified in 1957, was discussed in the International Labour Conference Committee on the Application of Conventions and Recommendations (hereinafter, the Standards Committee). In its conclusions, the Standards Committee reiterated the importance it attached to the interdependence that existed between civil rights and freedom of association and underlined that the guarantees stipulated in the Convention could not be effective unless they were truly recognized and protected as part of civil and political freedoms.¹³

Regrettably, the ILO continues to receive grave allegations of deaths, torture and imprisonment of trade unionists in Sudan. This situation has forced any independent trade union movement underground, while the Sudan Workers’ (Legitimate) Trade Union Federation has no choice but to operate in exile. Exiled voices continue to defend the cause by relaying information abroad and, with continued recourse to the ILO Committee on Freedom of Association, alerting the international community to the plight of these workers. While, in reply to follow-up examination of a complaint brought against Sudan in 1995, the Government referred to a new Trade Union Act adopted in 2001, the Committee on Freedom of Association could not comment on any progress eventually made in protecting freedom of association given that this new legislative text had not yet been communicated to any of the ILO supervisory bodies.¹⁴

Military rule in Myanmar also gave rise to trade unions working in exile. Initially, the Government of Burma (as it was then called) had been repeatedly criticized by the ILO supervisory bodies for non-compliance with the Freedom of Association Convention No. 87 that it ratified back in 1955, largely due to a 1964 law that imposed a trade union monopoly. New hope sprung forth in 1988 when the will of the people expressed their desire to abandon the socialist, single-party system and advance towards democratic elections within a multiparty context that would also pave the way to trade union pluralism. According to the Government representative speaking before the Conference Standards

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¹⁴ See 328th Report of the Freedom of Association Committee, Case No. 1843, paras. 77-78.
Committee, the concomitant changes, reforms and restructuring were in full swing in all sectors of life in the country namely, political, economic and social spheres. The prospective scenario of labour organizations and movements in Burma could be no other than one that was in tune or harmony with the multi-party democratic system and hence in conformity with Convention No. 87.15

Martial law unfortunately rapidly followed and, Myanmar, as it then became known, regularly referred to the priority of drafting a new Constitution that would be the basis for a multi-party democratic system and would incorporate the rights of all workers to form their own independent trade unions in conformity with such a system.16 While noting the Government’s statement that with the abolition of the one-party political system, the unitary workers’ organization no longer existed and the Act and Regulations organising the single trade union system had automatically become obsolete, the ILO supervisory bodies could only observe that a system of trade union monopoly had apparently been transformed into a system in which there were no trade unions at all and where there was a total absence of guarantees for trade union freedoms.17

In the mid-1990s, the Government continued to stress its firm commitment to freedom of association principles, a multi-party democratic system, a free-market economy and a modern and developed State in which all segments of society would enjoy justice and human rights.18 Yet more information was brought to light concerning trade union leaders who were forced into exile following military rule and who ultimately established the Federation of Trade Unions of Burma (FTUB), banned inside the country as a terrorist organization. Leaders who remained behind were arrested and received long prison sentences.19

In the absence of any progress in the application of Convention No. 87, the Conference Standards Committee continued to discuss this case year after year and placed its conclusions in a special paragraph for continued failure to implement the provisions of the Convention.20 In its most recent examination, the Standards Committee noted with great concern the information provided about a number of individuals who had been convicted of high treason for maintaining contacts with the ILO or for having been affiliated to the FTUB. It underlined that respect for civil liberties was essential for the exercise of freedom of association and urged the Government to take the necessary measures so that workers and employers could exercise the rights guaranteed by the Convention in

a climate of complete freedom and security, free from violence and threats.\textsuperscript{21} It is crucial that, regardless of the progress made in elaborating the long talked about Constitution, the respect referred to by the Standards Committee is understood as a prerequisite for any advances that are to be made towards the Government’s oft-repeated pledge to create appropriate conditions for a multi-party democratic system and the basic principles of freedom of association.

2. \textit{Trade union rights and civil liberties}

Since the mid-1990s, the Committee on Freedom of Association (CFA) has examined eight cases brought against the Government of Zimbabwe for serious violations of trade union rights, including police assaults on trade union demonstrators, arrests and detention of trade union leaders, government interference in internal trade union affairs, harassment, intimidation and threats. In 2002, the CFA called upon the Government to refrain from interfering in the trade union activities of the Zimbabwe Congress of Trade Unions (ZCTU) and from arresting and detaining trade union leaders and members for reasons connected with their trade union activities.\textsuperscript{22}

While the Government continued to assert that the demonstrations organized by the ZCTU were motivated by political elements within the Congress, the CFA recalled that trade union activities cannot be restricted solely to occupational matters since government policies and choices are generally bound to have an impact on workers. This was particularly true in the recent series of demonstrations in 2003, which concerned the high cost of living and trade union rights.\textsuperscript{23}

The violation of trade union rights and civil liberties cannot be justified by concerns that there may be elements within the trade union movement that oppose policy choices made by the Government. Freedom of association by definition means that everyone has the right to think differently, to hope for other policy options, and to make those hopes known in a peaceful and a law-abiding manner. For workers’ organizations, this principle is reflected in the right to express concerns over the particular impact such options may have on workers. If the forces of order apply the law in such a way as to unduly restrict this right and effectively obstruct any free and democratic expression, then it is not surprising that those oppressed will protest that freedom of association has lost its meaning.

\textsuperscript{22} See 329th Report of the Freedom of Association Committee, Case No. 2184, para. 831 and 332nd Report of the Freedom of Association Committee, Case No. 2238, para. 970.
3. Trade union unity without free choice

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has been commenting upon the application of Convention No. 87 in Cuba since its early ratification in 1952. In particular, the CEACR has maintained that the references to the Central Organization of Cuban Workers (CTC) in the Cuban legislation results in a legislatively imposed monopoly in violation of the right of workers freely to form and join organizations of their own choosing. It further considered that a system in which a single party and a single central trade union organization existed and where the statutes of such an organization established the objective of following the policy of the Party was likely to lead to excessive interference in trade union independence and the election of trade union leaders.24 Noting the Government’s indications since the mid-1990s that it was reviewing its Labour Code and would keep these comments in mind, the CEACR emphasised the need to guarantee the right of all workers to establish independent occupational organizations in full freedom, at both the first and the central levels, including organizations that are outside any existing trade union structure, if they so wish.25

Despite the Government’s repeated assurances that workers could indeed freely join the organization of their own choosing, regardless of the reference in the Labour Code to the CTC, the ILO supervisory bodies were obliged to note at the end of the 1990s that a number of attempts to establish workers’ organizations outside the CTC structure were denied recognition by the Government.26 Such was the case for the Union of Cuban Workers (USTC), 27 the Confederation of Democratic Workers of Cuba (CTDC)28 and the Single Council of Cuban Workers (CUTC)29. Subsequently, those associated with the CUTC were sentenced for subversion in summary hearings to from 10 to 26 years imprisonment.30

In a context where every single attempt to form an organization outside the unified structure remains unrecognized and, in certain cases, is even punished, it is not surprising that doubts arise as to whether the trade union unity is imposed or chosen. The view that such alternative voices must be quashed to ensure a better protection of workers’ rights cannot be supported by the principles of freedom of association.

4. Freedom of association and democracy: corollaries to a market economy?

The clustering of independent voices in the defence of workers’ interests is becoming ever more common, even in countries where traditionally the link between the prescribed guardians of workers’ rights and the single-party in power had generally been accepted by the masses. The legislation in China prevents workers from organizing outside of the All-China Federation of Trade Unions, which itself is strictly controlled by the Chinese Communist Party, with ideological links explicit in the law. In 1989, the CFA was called upon to examine serious violations of freedom of association committed against the Workers’ Autonomous Federation (WAF), including the banning of the organization, the death of a number of its leaders following an attack by the armed forces, the sentencing to death and execution of workers, arrests, etc. While the Government maintained that the WAF was illegal and its aim merely to overthrow the socialist system, the CFA recalled that the meaning given to the term “organization” by the ILO covered all organizations of workers or employers created to promote and defend their respective interests. The main thrust of the statutes of the WAF was that the organization should be autonomous, independent and democratic with the purpose of defending workers’ interests. Their grievances concerned the lack of workplace democracy, the lack of genuine workers’ representation, the poor working conditions and the deterioration of the workers’ living standards.31

The timing of the WAF’s creation and the events in Tiananmen were no coincidence. This independent trade union movement played a significant role in the democracy movement launched in April 1989 by Beijing students. Many of WAF’s founders and members literally gave their lives to the democracy movement, others their freedom. Some WAF leaders were killed in the course of the assault on Tiananmen. Of those arrested, some were executed, while others are still in prison today, many of them having been sentenced to re-education through labour.32

Since then, similar complaints have been made about the repression of any attempt to establish a free and independent trade union movement in China, including extremely serious sanctions for the leaders of organizations such as the WAF, the Free Labour Union of China, the Beijing Workers’ Autonomous Federation and the Workers’ Forum in Shenzhen. The right of workers to establish organizations of their own choosing implies a genuine possibility of forming organizations independent both of those that already exist and of any political party, in a climate of full security. The CFA strongly condemned the

31 See 270th Report of the Freedom of Association Committee, Case No. 1500, para. 322.
arrest and detention of the leaders of these groups immediately following their attempts to formally establish workers’ organizations as a serious violation of the principles of freedom of association.\footnote{See 310th Report of the Freedom of Association Committee, Case No. 1930, para. 366.}

More recently, the complaints of trade union rights’ violations in China have evolved from the total obstruction of any attempt to form workers’ organizations independent from the monopolistic structure to the punishment of individuals who have become part of a spontaneous representation of disillusioned workers. A feeling by some workers that there is an increasingly unequal distribution of the wealth brought by globalisation can result in the setting aside of previously accepted self-constraint within the framework of the established order. Examples of this can be seen in the complaint lodged against the Government in 2002, which concerned violent police oppression, arrests and detention in response to mass demonstrations in various provinces in reaction to large-scale retrenchments and unsatisfactory compensation packages. When examining this case, the CFA concluded:

On a more general note, and giving full consideration to the context of transition described by the Government and its determination to achieve simultaneous development in economic and social fields, the Committee considers that it is precisely within this context that the only durable solution to the apparently increasing social conflict experienced in the country is through full respect for the right of workers to establish organizations of their own choosing by ensuring, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party […] The Committee strongly believes that the development of free and independent organizations and negotiation with all those involved in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation. Indeed, a balanced economic and social development requires the existence of strong and independent organizations which can participate in the process of development.\footnote{See 330th Report of the Freedom of Association Committee, Case No. 2189, paras. 465-466.}
5. Incomplete transition

An unprecedented joint complaint from both the traditional union structure and the more recently formed free trade unions was brought against the Government of Belarus in 2000. The problems concerned, on the one hand, obstacles to registration of the new independent trade unions and impediments to their functioning and, on the other hand, some new attempts of Government intervention and control of the traditionally established trade union structures. The transition that began in the early 1990s away from the state-controlled, monopolistic trade union structures, appeared not to have been completed. Government interference is now considered by the complainants to have escalated to a point of overall domination of the trade union movement and little respite for the few remaining independent and autonomous voices. In light of the grave, persistent and all-encompassing nature of the allegations, the ILO Governing Body decided to appoint a Commission of Inquiry to examine the trade union rights situation.

Social partners need guarantees for their independence in order to ensure a balanced representation of interests essential to economic and social development. An independent judiciary is also crucial to ensuring effective protection of this independence. Those independent trade unions in Belarus who have not yet been purged represent an alternative voice for workers who wish to choose their positions, their beliefs and their actions, rather than have ideology imposed upon them from above. The action of these unions in defence of their rights is crucial to recognition of freedom of association on a broader scale. Their resilience in the face of systematic attacks is paramount.

6. Moves in the Middle East

Until quite recently, no bona fide trade unions were permitted in Bahrain. Workers were represented uniquely by joint consultative committees, supervised by the General Committee of Bahraini Workers, which had for many years been under government control. Attempts for independent trade union action were repressed by means of imprisonment, banishment and the loss of Bahraini nationality. In 2002, the General Committee of Bahraini Workers proceeded to a historical and democratic vote to establish a free trade union in the Gulf. Initially, the Government authorities opposed the vote, but with the persistent determination of the president of the new union to obtain the government’s

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35 See the 324th, 325th, 326th, 329th, 330th, 331st and 332nd Reports of the Freedom of Association Committee, Case No. 2090.
recognition, international pressure and ILO assistance, the General Federation of Workers Trade Unions of Bahrain was finally recognized and a new law on trade unions was adopted that introduced steps towards freedom of association in a number of economic sectors and lifted the ban on strikes. These changes followed on the heels of certain steps towards political democracy in the country including a vote in 2001 for a National Charter of Action, which provided for the establishment of a bicameral parliament and the full separation of the legislative, judicial and executive branches of the State.

While the new law still restricts the total freedom of association necessary for the full respect of democratic principles, in particular as regards the legislative imposition of a trade union monopoly at the enterprise and national levels, it is an important first step that cannot be ignored and may open the way to further progress in this respect both in Bahrain and in the region.

Following the Islamic revolution in Iran, workers were generally represented by the Workers’ House, historically known for housing the strike committees instrumental to the revolution, and workers’ councils. A 1985 law regulated the establishment of Islamic Labour Councils, while the 1991 Labour Code set out three types of workers’ representation: Islamic Labour Councils or workers’ councils, trade unions and elected workers’ representatives. The Code was applied in such a way as to permit only one type of representation at any given workplace. Thus, Islamic Labour Councils, which were ever expanding their workplace presence since the law of 1985, were in a situation of quasi de facto monopoly.

In 2002, the Government requested ILO technical assistance to review the national labour legislation in terms of its conformity with Conventions Nos. 87 and 98. After two advisory missions, amendments to the Labour Code were drafted with the Government in the spring of 2003 with the aim of ensuring the basic principles of freedom of association, in particular the right of all workers to form and join freely the organization of their own choosing. While workers’ councils and workers’ representatives would still be allowed to exist in the proposed scheme, the focus was placed on enabling trade union pluralism and designating trade unions as the bodies with primary rights for collective bargaining. Workers’ councils would have clearly defined functions that would complement rather than replace the role of trade unions.

The proposed amendments were approved by the Council of Ministers for submission to Parliament, but as yet have not been brought forward for public debate. Some of the draft provisions have thus far not obtained the full backing of the social partners represented within the current context. While change often brings about doubt and uncertainty for one’s future place and role within a new system of relations, the aims and objectives of the freedom of association principles and standards are clearly the strengthening of the representative voice of workers in an environment conducive to ensuring freedom of choice in that representation. It can only be hoped that the strong desire on
the part of the Government to bring its legislation into conformity with the freedom of association Conventions so as to be in a position to ratify them will assist in reaching a solution amenable to all concerned parties and in harmony with international principles.

7. Trade unions as the only representative voice of the people

In countries where political parties are banned whereas trade unions are permitted, bona fide trade unions are found to be the only outlet for pluralistic thought. The ILO supervisory bodies have been commenting for years on the impact of the Swaziland 1973 Decree on the rights of organizations which, having the force of the country’s constitution, bans all political parties and restricts constitutional freedoms. While the current labour relations legislation provides for most basic trade union rights, the Decree imposes substantial restrictions on the right of organizations to hold meetings and demonstrations and is still often used to suppress trade union rights.³⁶

Swaziland is now making key strides to adopt a new Constitution. It is hoped that the occasion will be appropriately seized to introduce full respect for freedom of association and to ensure that the repressive 1973 Decree will effectively be repealed, along with its important restrictions on basic civil liberties.

IV. Triumph at the end of the century

Is there a success story for today’s times? With sufficient and constant encouragement and support, Indonesia should be able to anchor its advances in the areas of freedom of association and democracy so as to ensure continued respect for civil liberties and fundamental freedoms. The independent trade union movement in Indonesia suffered numerous attacks on basic rights during the full swing of the Suharto regime in the 1990s. The Indonesian police and military were often called in to suppress workers protest actions with force. These workers however did not turn from their objective of being able to unite in the organization of their own choosing, despite arrests and detentions.

The CFA proceeded with a regular examination of complaints made by the Serikat Buruh Sejahtera independent trade union (SBSI) in 1994 concerning

³⁶ See the CEACR reports 1990-2003 concerning the application of Convention No. 87 by Swaziland.
assassinations, mass detentions, arrests and dismissals of its trade union leaders and members, and the Government’s continuing refusal to recognize its union. After numerous considerations of this case, the CFA was finally in a position to note the positive developments that had evolved in the trade union situation. In particular, the Government ratified Convention No. 87 in June 1998 and shortly thereafter received an ILO direct contacts mission with the mandate of assisting the Government in ensuring conformity with the freedom of association Conventions in law and in practice. In line with the recommendations contained in the report of the direct contacts mission, the Government embarked on the redrafting of its labour legislation in consultation with the social partners and with ILO technical assistance. On a practical level, all SBSI leaders and activists were released from prison and instructions were issued to all levels of the military to refrain from intervening in labour disputes.

In June 1998, following the collapse of the regime, the leader of the SBSI, Muchtar Pakpahan, freshly released from prison, addressed the International Labour Conference. The intertwining of workers’ objectives and general democratic aims was evident:

The SBSI tried to exercise its right to organize within the difficult context of dictatorial rule and a single official union. We tried to organize so that we could really defend the workers. Because of this we were put into prison, some of us were even tortured, our meetings were disrupted, our members were dismissed from their jobs, our offices were ransacked, our documents were seized. At the end of the dictatorial rule changes are occurring at a breathtaking pace. Despite these rapid changes, the reformation movement in Indonesia is demanding deeper changes in society: the reform of the political bill, a speedy transition towards democracy through free and fair elections, and clean government.37

One year later, the remaining trade union leader in prison, Dita Sari, was unconditionally released following the granting of a presidential amnesty. She continues to actively exercise trade union activities as chairperson of the Indonesian Labour Federation (FNPBI). Speaking at the roundtable set up in celebration of the fiftieth anniversary of the ILO Committee on Freedom of Association in 2002, she observed that trade unionists still went to jail in her country and that more practical and direct action, such as the action taken three years before to call for her release, was needed to assist her country to move forward.38 Perhaps one example of such action is the assistance provided by

the ILO in the training of police and military officers about human rights and international labour standards. In addition to a number of workshops, efforts are now being made to develop a course on labour rights for inclusion in the National Police Academy curriculum and the police training schools. In this way, police officers will be informed about the rights of workers to establish unions and the legal mechanisms for resolving industrial disputes while looking towards international experience of police forces in dealing with legitimate law and order issues that may arise.39

V. Conclusion

The general message should by now be clear: gains in freedom of association represent, unequivocally, advances for democracy. For democracy to be complete, it must reign not only in the political sphere, but also in the social and economic spheres. In a political democracy, citizens have a voice. Workers in turn must have a voice in the social and economic spheres. As an elected party represents the citizens’ voice, the unions represent the democratic voice of the workers. Organized representation is essential to avert a nation ruled only by the law of the jungle or anarchy. The ILO’s unending support for a true voice at work and free and independent unions can only reinforce and accelerate advances towards democracy in the greatest sense of the term.