

# **Rights At Work**

An Assessment of the Declaration's  
Technical Cooperation in Select Countries

Colin Fenwick  
Thomas Kring

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# Executive Summary

The ILO works with its member States and their partners in the labour market to promote respect for the basic rights of all workers, to help bring about a more even distribution of the benefits of globalization. In this context, the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work in 1998, with the support of States, employers and workers from across the globe. The Declaration is the foremost expression of the international community's acceptance that there are core labour standards that safeguard workers' rights, and that these standards are non-negotiable in the global economy. The Declaration therefore stands against the undermining of labour standards and the exploitation of workers to achieve lower production costs. The Declaration covers four areas, which are underpinned by the eight core ILO Conventions: freedom of association and the right to collective bargaining; the elimination of forced labour and trafficking; the abolition of child labour; and non-discrimination in employment and occupation. Each member State of the ILO is required to respect and to promote the principles of the Declaration as a part of their commitment to membership in the Organization. Since the ILO adopted the Declaration, the number of member States that have ratified all eight of the core Conventions has risen from 48 to 127.

The ILO created a dedicated Programme on Promoting the Declaration in 1999 to provide support and assistance to member States in their efforts to realize the fundamental principles and rights at work. Since it started operating, the Programme on Promoting the Declaration has provided technical assistance in more than 70 countries worldwide, with a total budget of more than US\$100 million – of which US\$56 million as come from the United States Department of Labor (USDOL). ILO projects to implement the Declaration have assisted member States to strengthen their labour market institutions and to reform their legal frameworks; they have also built the institutional capacity of the tripartite partners: government,

workers' and employers' organizations. The work of the Programme on the Promotion of the Declaration covers three of the Declaration's four areas: freedom of association and the right to collective bargaining; equality and non-discrimination; and human trafficking and forced labour. The fourth area, child labour, is addressed by a separate ILO programme: the International Programme on the Elimination of Child Labour (IPEC). Consequently, this review does not address issues of child labour.

With the end of the first decade of the Declaration drawing near, the ILO commissioned an independent review to examine some of the work it has done to promote the Declaration, and to assess its impact. The review was conducted from April to August 2007 and focused on four countries that have benefited from USDOL funding: Brazil, Indonesia, Morocco and Viet Nam. These four countries represent a broad sample of developing countries, covering three geographical regions, with a total of 518 million inhabitants between them. They vary in their level of economic development, and they face different obstacles and challenges in their efforts to comply with their obligation to promote and to respect the principles of the Declaration. All four, however, have received significant technical assistance from the ILO in the core areas addressed by the Programme on Promoting the Declaration.

It is a significant challenge to assess the relationship between technical cooperation projects that have been carried out in order to promote compliance with the Declaration, and key developments within a country. It is essential to consider both the legislative framework that is in place and the way that the law operates in practice. It is equally important to recall how the situation in a country has been changing over time, and to assess the contribution of technical cooperation against the broader context of key economic, social and political developments. This report therefore sets out to present an overview of key developments and trends in the three areas covered by the Pro-

gramme on Promoting the Declaration, in each of the four countries chosen. The report draws on a range of source materials, including interviews with representatives of government, employers and workers, independent observers, and academics. It is also based on desk reviews of material generated by the ILO's projects in the four countries, academic literature, and reports from international organizations - especially the ILO and its mechanisms for supervising member States' compliance with their obligations under ratified Conventions. Additional data was gathered from national government institutions and the social partners. One of the authors visited Morocco and Viet Nam to gather additional data and to conduct interviews; independent national consultants were engaged in each country to gather background data.

In Indonesia, the ILO's work to promote the Declaration has played an important role in the transition from authoritarian control to a more open and democratic society; from a country with a single, state-controlled trade union federation to one with a modern labour market, in which there are more than 90 trade union federations. ILO technical cooperation has helped to strengthen the institutional capacity of the tripartite partners during this crucial period of transformation. With a budget of some US\$4.7 million, the Declaration Programme delivered sustained technical cooperation for more than five years, to support the establishment of the essential framework for sound industrial relations and effective social dialogue.

The ILO helped the Indonesian Government to develop, enact and implement a fundamental revision of its national labour laws, and to establish key labour market institutions, especially its new machinery for the resolution of labour disputes. The ILO project provided training and information to the Government, employers and workers in the fundamentals of how to negotiate and to bargain collectively; how to function in a modernized labour market. During its life the ILO project on strengthening industrial relations in Indonesia reached over 15,000 people across seven provinces. The Programme on Promoting the Declaration carried out other projects in Indonesia, cooperating with the Government and the social partners in their efforts to ensure better protection for migrant workers against the dangers of forced labour and human trafficking. It also supported the Government in its work to enhance respect for

human rights and workers' rights among law enforcement agencies.

In Morocco, the ILO's work to promote the Declaration has coincided with - and contributed to - a wider process of democratization and economic and social reform initiated by the late King Hassan II in 1996, to which the present King Mohammed VI committed himself in 1999. The ILO has supported Morocco in its efforts to develop a solid culture of negotiation and dialogue, as a means to secure nationwide respect for the core labour standards that underpin the Declaration. With a combination of grants totalling some \$US2.9 million, the ILO has been working to help Morocco improve its labour laws and the functioning of its labour market institutions since 2001. The project played a major role in assisting Morocco to develop and implement its new Labour Code in 2004. It subsequently helped the Government to inform a wide range of key stakeholders - including its own officials and members of employers' and workers' organizations - about the content of the new law and their roles and responsibilities going forward. The ILO project provided training, including training of trainers, to over 80 per cent of Morocco's labour inspectors, and enabled the Government to create its first ever bilingual (Arabic-French) manual for labour inspectors. The ILO also provided basic equipment to the Moroccan Ministry responsible for labour matters, and successfully established a network of trained trainers from among the ranks of trade union officials and members.

In Viet Nam the ILO's work to promote the Declaration focused on promoting sound industrial relations against a backdrop of strong economic growth, and in a broader context of transition to a market economy. With a project budget of some \$US1.7 million, the ILO provided technical cooperation for three years to strengthen Viet Nam's labour market institutions, working across the seven most industrialized provinces in the country. In each province the project helped to establish tripartite task forces that developed skills and then acted as essential resources for employers and workers, particularly in the resolution of labour disputes. The project helped the Government to establish Industrial Relations Advisory Service Departments in the seven provinces where it worked, and these are now permanent elements of the Government's administrative structure. Together with the tripartite partners, the ILO project implemented a pilot programme to establish so-

cial dialogue at plant level, to avoid industrial unrest. Labour relations in all the target enterprises improved significantly. A key aspect of the project was to assist the social partners to come to terms with the different and separate roles they must play in a market economy. The project worked to achieve this in part by distributing some 23,000 copies of an information booklet about Viet Nam's labour code, in four languages. A separate focus of the ILO's work in Viet Nam has been to provide assistance to review legislation that relates to bonded labour and human trafficking, to help combat these harmful practices.

In Brazil, the ILO's work to promote the Declaration has focused on strengthening the capacity of government institutions and the social partners to combat the continuing problem of forced labour. With a project budget of \$US1.7 million, the ILO has worked in Brazil since 2002, and has directly contributed to more than 17,000 workers being freed from conditions of forced labour. The project has put a considerable effort into raising awareness about the problems of forced labour in Brazil: its various seminars, training sessions and other events have been attended by more than 11,000 people - and more than 5,000 items have appeared in print and electronic media during the life of the project. The Declaration project to combat forced labour in Brazil has significantly improved the capacity of the various government agencies that are involved in the fight against forced labour, including by donating key equipment such as laptop computers. The number of investigations and prosecutions has risen. The project worked with the social partners and NGOs to deliver its message and to build capacity, and also played a role in the development of corporate social responsibility initiatives; as a result, more than 60 corporations in Brazil have agreed not to do business with those who profit from forced labour. Brazil's commitment to the principles of the Declaration goes beyond forced labour, however, and is evident in the work that continues to combat gender and racial discrimination for its large and diverse population, and to assure freedom of association and the right to collective bargaining for all workers.

The Programme on Promoting the Declaration has clearly achieved much since it was set up in 1999. But it is equally clear that long-term commitment is required to achieve fundamental change. Creating labour market institutions

that depend upon bipartite and tripartite negotiation and bargaining in countries with little or no tradition of social dialogue is a major challenge. It requires resources and time - combined with political will. Steady economic and social development is also a prerequisite; when all is said and done, many of the problems affecting the labour markets in the four countries considered in this report are problems of development, and in particular they are the consequences of poverty. One of the key drivers of continuing economic and social progress, however, will be the sound industrial relations systems that the ILO has worked to help each country to develop.

The technical cooperation that the ILO provides through its Programme on Promoting the Declaration can play a role in facilitating the process of change. But it is another thing to institutionalize respect for the fundamental principles and rights at work, and to ensure that important progress is sustainable. This can only be attained with long term and ongoing support. Achieving greater respect for the fundamental principles and rights at work necessitates a coordinated effort by all the tripartite partners. It also requires that all three partners have the technical skills and the good will to play the roles that are demanded of them. The ILO's work to promote the Declaration has been particularly valuable in facilitating this coordinated effort: all ILO projects are themselves developed and directed within a tripartite framework.

This assessment of the ILO's technical assistance work under the auspices of the Declaration on Fundamental Principles and Rights at Work suggests that the combination of donor funding, political will, and close liaison with the tripartite partners has led to sustainable results that will continue to make valuable contributions to economic and social progress in each of these four countries.



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# Contents

## Abbreviations and Acronyms

<b>Introduction</b>	<b>1</b>
<b>Chapter 1 The ILO Declaration on the Fundamental Principles and Rights at Work</b>	<b>5</b>
Follow-up to the Declaration	6
Technical cooperation	6
Tripartite structure	7
The government	7
Working with employers' organisations	8
Supporting workers	9
Awareness raising	9
The Declaration	9
<b>Chapter 2 Indonesia</b>	<b>11</b>
The economy	12
The labour market	13
The status of the fundamental principles and rights at work	14
Freedom of association and collective bargaining	15
Technical support from the ILO and the role of the social partners	18
Equality and non-discrimination	19
Trafficking and forced labour	21
Conclusion	23
<b>Chapter 3 Morocco</b>	<b>25</b>
The economy	26
The labour market	27
The status of the fundamental principles and rights at work	28
Freedom of association and collective bargaining	29
ILO action to promote freedom of association and collective bargaining	31
Trafficking and forced labour	34
Equality and non-discrimination	35
Conclusion	37
<b>Chapter 4 Viet Nam</b>	<b>39</b>
The economy	39
The labour market	40
The status of the fundamental principles and rights at work	41
Freedom of association and collective bargaining	41
ILO action to improve industrial relations	43
Trafficking and forced labour	45

	Equality and non-discrimination .....	46
	Conclusion.....	48
<b>Chapter 5</b>	<b>Brazil .....</b>	<b>49</b>
	The economy .....	50
	The labour market .....	51
	The status of the fundamental principles and rights at work .....	52
	Freedom of association and collective bargaining.....	52
	Trafficking and forced labour .....	55
	Technical support from the ILO and the role of the social partners.....	57
	Equality and non-discrimination .....	60
	Conclusion.....	62
<b>Chapter 6</b>	<b>The Achievements of the Declaration .....</b>	<b>65</b>
	Building capacity to realise the fundamental principles and rights at work..	65
	The Way Forward.....	68
<b>Footnotes</b>	.....	<b>71</b>

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# Abbreviations and Acronyms

ABA	American Bar Association
ADB	Asian Development Bank
AfBD	African Development Bank
AMDH	Association Marocaine des Droits Humains
CDT	Democratic Confederation of Labour
CEACR	Committee of Experts Advisors on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CFA	Committee on Freedom of Association
CGEM	General Confederation of Moroccan Employers
CLT	Consolidacao das Leis Trabalhistas
CONATRAE	Comissão Nacional de Erradicação ao Trabalho Escravo –
CSIS	Centre for Strategic and International Studies
CTA	Chief Technical Advisor
CUT	Central Única dos Trabalhadores
DWI	Decent Work Index
EPZ	Export Processing Zone
ERF	Economic Research Forum
FCMCIS	Federation des Chambres Marocaines de Commerce d'Industrie et de Services
FDT	Fédération Démocratique du Travail
FNT	Forum Nacional do Trabalho
FTA	Free Trade Agreement
GEFM	Special Mobile Inspection Group
GERTRAF	Executive Group on the Elimination of Forced Labour
HDI	Human Development Index
HRW	Human Rights Watch
IADB	Inter-American Development Bank
ICFTU	International Confederation of Free Trade Unions
ICMC	International Catholic Migration Commission
ILO	International Labour Office
IPEC	International Programme on the Elimination of Child Labour
IRASD	Industrial Relations Advisory Service Departments
ITUC	International Trade Union Confederation
MENA	Middle East and North Africa
MESAS	Ministry of Employment Social Affairs and Solidarity
MOLISA	Ministry of Labor, Invalids and Social Affairs
NPM	National Program Manager
NRC	National Research Council
OHCHR	Office of the High Commissioner for Human Rights
PPTF	Provincial Project Task Forces
SOE	State Owned Enterprises
UGTM	General Union of Moroccan Workers

UNDP	United Nations Development Programme
UNTM	National Labour Union of Morocco
USDOL	US Department of Labor
UTM	Union of Moroccan Workers
VCA	Viet Nam Cooperative Alliance
VCCI	Viet Nam Chamber of Commerce and Industry
VCGL	Vietnam General Confederation of Labour
WB	World Bank

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# Introduction

1. Globalisation is increasingly affecting every nation, business and worker throughout the world. There is ample evidence that globalisation - and the greater international trade it fosters - can contribute to increased economic growth. But it is also clear that globalisation does not necessarily ensure social progress for all.<sup>1</sup>

2. The ILO has responded directly to this challenge. Acting jointly with its member States and their partners in the labour market, the ILO is promoting key measures to achieve a more even distribution of the benefits of globalisation. Central to this work is the ILO's 1998 Declaration on Fundamental Principles and Rights at Work. The Declaration represents a commitment by the international community to a set of core labour standards that constitute a "social floor" to safeguard the world's workers.<sup>2</sup> It stands out against the undermining of labour standards and the exploitation of workers - including children - to achieve lower production costs. Respect for the fundamental principles and rights at work also helps to protect countries against unfair competition in the global market, and is compatible with improved economic performance.<sup>3</sup> The ILO Declaration on Fundamental Principles and Rights at Work contributes to ensuring that globalisation means social progress for all the world's workers.

3. The ILO Declaration covers four areas: Freedom of association and the right to collective bargaining; the elimination of discrimination in the workplace; the elimination of forced labour and trafficking; and the elimination of child labour. These four areas are underpinned in turn by eight ILO Conventions.<sup>4</sup> The ILO actively encourages its member States to ratify these eight Conventions. The ILO Programme on Promoting the Declaration assists member States in realizing the principles and rights contained in the Declaration, by providing them with direct support and assistance so that they might develop and strengthen their national legislative frameworks and institutions in these areas. These outcomes, in turn, help countries to implement the core Conventions.

4. The Declaration on Fundamental Principles and Rights at Work is now entering its tenth year. One measure of its impact is that 127 ILO member States have now ratified all eight core Conventions - up from 41 at the end of 1998.<sup>5</sup>

5. The Programme on Promoting the Declaration has been in operation for eight years. During that time, it has provided technical support for 90 or so projects in more than 60 countries, amounting to more than US\$100 million - the major donor of which has been the United States Department of Labor (USDOL). These projects have been designed to help ILO member States to strengthen their labour market institutions; reform their legal frameworks; and build the institutional capacity of each of the tripartite partners. The vast majority of the projects have been independently evaluated. Until now, however, there has been no attempt to assess the greater impact of the Declaration and its technical support programme. As the first decade of the Declaration is drawing to a close, it is relevant to take stock of its accomplishments and to analyse the impact of the approach pursued by the Programme on Promoting the Declaration.

6. The Programme on Promoting the Declaration carries out its work in three of the four key areas covered by the Declaration:

- Freedom of association and the right to collective bargaining;
- Equality and non-discrimination; and
- Elimination of forced labour and trafficking<sup>6</sup>

The fourth category of fundamental principles and rights - the elimination of child labour - is covered by a large-scale ILO technical assistance programme, the International Programme on the Elimination of Child Labour (IPEC), launched in 1992. For this reason, child labour and the ILO's work on promoting this aspect of the Declaration are not addressed in this report.

7. This report examines each of the three areas supported by the Programme on Promoting the Declaration in four countries: Brazil, Indonesia, Morocco and Viet Nam. One of its major objec-

tives is to gauge the influence of the Declaration on any positive developments, particularly in situations in which the ILO has managed a technical assistance project.

8. The four countries chosen as case studies represent a broad sample of developing countries. Covering three geographical regions, and with a total of 518 million inhabitants between them, they vary in terms of economic development and poverty levels. A factor influencing the choice of these countries was the broad range of technical cooperation they have received from the ILO covering all three core areas addressed by the Declaration Programme; the differences in the impact that technical cooperation had in these countries was also a consideration. As far as development is concerned, the countries range from number 69 on the UNDP Human Development Index (Brazil) to number 123 (Morocco); Indonesia and Viet Nam come in between at numbers 108 and 109, respectively.<sup>7</sup> Indonesia has ratified all eight of the core ILO Conventions that underpin the Declaration, while Morocco and Brazil have each ratified seven (neither has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)). Viet Nam has ratified five Conventions, including the Forced Labour Convention, 1930 (No. 29) which it ratified in March 2007.

9. It is a significant challenge to assess the relationship between the ILO's core Conventions and the Declaration Programme's technical assistance projects, as well as developments within countries. Both legal frameworks and outcomes must be considered. For example, governments' obligations in respect of the right to organize go well beyond merely refraining from interfering with the exercise of this right; they must also take steps to respect, protect and fulfil the right to organize. Governments must develop effective institutional structures to protect workers and employers from efforts that might prevent them from organizing.<sup>8</sup> The right to bargain collectively may also be influenced by government policy: it can dictate the conditions under which bargaining occurs and - in so doing - effectively limit workers' ability to defend their interests. Thus, it is essential to consider the implementation of laws in practice, and not merely to analyse the legislative framework.<sup>9</sup>

10. There is an increasing focus on developing substantive indicators to assess impact in these

areas.<sup>10</sup> However, it is frequently difficult to obtain the necessary data to assess how developments have affected the labour market partners. This is certainly true of the four countries covered in this report. Some indicators may be readily available, such as trade union membership figures, or the numbers of prosecutions brought against violators of particular labour laws. But others, such as the number of workers covered by collective bargaining agreements, may be harder to come by. Furthermore, it may not be feasible to use numeric indicators to assess important outcomes, such as the effectiveness of workers' organizations in representing their members.

11. For these reasons, this report is based on data and information collected from a wide range of sources. It refers to published material, including reports of United Nations agencies, development banks, national governments, workers' and employers' organizations, national and international non-governmental organizations (NGOs) and ILO databases - as well as to reports from the ILO bodies that supervise member States' compliance with obligations under ratified Conventions. It also draws on interviews conducted with representatives of workers' and employers' organizations, government institutions, NGOs and observers (both institutional and private). All this information has contributed towards gaining an overall understanding of the developments and trends that have occurred in each of the four countries over the past nine years.<sup>11</sup> While relevant legislative frameworks have been reviewed to assess compliance with the ILO's core labour standards, the report does not purport to provide a comprehensive or in-depth analysis of the labour legislation and the status of the core labour standards in the four case study countries. Rather, it strives to present a picture of the key developments and trends in the three areas covered by the Declaration Programme, and to evaluate the role that the Declaration has played, in cases where the ILO has carried out a technical assistance project related to the Declaration.

12. The report demonstrates the influence that the Declaration on Fundamental Principles and Rights at Work has had on raising the profile of core labour standards. It shows that in the four case study countries, the commitment of the government and the labour market partners, when combined with technical assistance from the ILO, has clearly brought about marked im-

provements in the implementation of core labour standards at the national level. The report also highlights the fact that implementing the institutional changes required to ensure support for the core labour standards at all levels of society is a process that takes time and resources - and that setbacks are often encour-

tered. These key findings illustrate the Declaration's potential to help bring about improvements to major labour market institutions, and to contribute towards ensuring respect for the fundamental principles and rights at work for every worker in the world.



# The ILO Declaration on Fundamental Principles and Rights at Work

13. The ILO adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up at the 86th Session of the International Labour Conference in 1998. The Declaration gives specific form to the international community's consensus that the observance of core labour standards is non-negotiable in the global economy - because economic growth alone cannot ensure equity, social progress or the eradication of poverty. It establishes a minimum social dimension for economic globalization, and sets an important standard for promoting social justice throughout the world.<sup>12</sup> In seeking to maintain the link between social progress and economic growth, it acknowledges that fundamental principles provide an equal opportunity to all workers to claim their fair share of the wealth that they help to generate, and to achieve fully their human potential.

14. The Declaration sets out four categories of fundamental principles and rights at work. They are: freedom of association and the effective recognition of the right to bargain collectively; equality and non-discrimination in the world of work; elimination of all forms of forced or compulsory labour; and the abolition of harmful child labour. These four principles are underpinned in turn by eight ILO Conventions, which provide the normative foundation for the Declaration itself. The Declaration's significance is underlined by the fact that it was adopted with the support of ILO member States across the whole spectrum of wealth, development and political orientation. They were joined by employers' and workers' organizations from around the world in their agreement on the fundamental nature of its principles.

15. The Declaration has a unique nature and function. It expresses the obligation of each ILO member State to respect, promote and realize the principles concerning the fundamental rights that are the subject of the core Conventions - and this obligation arises irrespective of whether or not a Member has ratified any of these Conventions. Indeed, the principles in the Declaration, derived from the core Conven-

tions, are an expression of the ILO's core values. It may therefore be seen that the legal foundation for the Declaration is the ILO Constitution itself: each ILO Member is bound by the Declaration, merely by virtue of its membership to the Organization.

16. The Declaration, together with ILO technical assistance to assist member States in their efforts to promote and to realize the fundamental principles, serves as a key mechanism in helping ILO members ratify the core Conventions themselves. (See box 1.1) The increase in the total number of ratifications of the eight core Conventions bears witness to this. When the Declaration was adopted in 1998, a total of 37 countries had ratified all seven of the core Conventions that had been adopted up until that time (the International Labour Conference adopted the Worst Forms of Child Labour Convention (No.

**Box 1.1**

## ILO core Conventions

### **Collective Bargaining and Freedom of Association**

- C87 Freedom of Association and Protection of the Right to Organise Convention, 1948
- C98 Right to Organise and Collective Bargaining Convention, 1949

### **Elimination of Forced Labour and Human Trafficking**

- C29 Forced Labour Convention, 1930
- C105 Abolition of Forced Labour Convention, 1957

### **Equality and Non-discrimination**

- C100 Equal Remuneration Convention, 1951
- C111 Discrimination (Employment and Occupation) Convention, 1958

### **Abolition of Child Labour**

- C138 Minimum Age Convention, 1973
- C182 Worst Forms of Child Labour Convention, 1999

182) the following year). By August 2007, the number had risen to 126, meaning that 70 per cent of the ILO's 181 member States had by then ratified all eight of the core Conventions. This figure includes Convention No. 182, which has been the fastest ratified Convention in the history of the ILO. The adoption of the Declaration has directly contributed to a greater number of countries agreeing to the requirements spelled out in the core Conventions.<sup>13</sup>

### **Follow-up to the Declaration**

17. The Declaration has a specific Follow-up. Member States that have not ratified one or more of the core Conventions are asked each year to report – under the Annual Review – on the status of the relevant rights and principles in their country, noting impediments to ratification and areas where assistance may be required. A panel of independent Expert-Advisers reviews these reports, and submits its observations to the ILO's Governing Body in the form of a synthesis introduction to these Annual Reports – which is then published along with comments from employers' and workers' organizations.<sup>14</sup> In addition, the ILO publishes a Global Report every year on the situation throughout the world with respect to one of the four core fundamental principles and rights at work on a rotating basis.<sup>15</sup> Each year, this report is submitted to and discussed at the International Labour Conference. Both these reports provide a dynamic global picture relating to each of the fundamental principles in turn, and serve as a basis to identify areas where improvement is needed – including in the technical assistance that the ILO provides to its Members.<sup>16</sup>

18. The aim of the Follow-up is to encourage the efforts of ILO Members to promote the fundamental principles and rights at work. It is not based on enforcement, or on threats of sanctions. The Follow-up allows the ILO to identify areas where technical cooperation may prove useful to its Members in order to help them implement these principles and rights. In short, the Declaration is the basis upon which the ILO assists its member States in seeing how they might benefit from observing fundamental principles and rights at work, and the Follow-up is a means of identifying the steps needed to realize those benefits.<sup>17</sup> As a consequence, the commitment of individual governments is critical to the success of the Declaration.

19. The approach that underpins the Declaration and its Follow-up is one that acknowledges that ratification of a core ILO Convention is only a Government's first step towards compliance with its obligations under that instrument. Ratification is also only a first step towards implementing the principles enshrined in the Declaration. Fulfilling the obligation to promote and to respect fundamental principles and rights at work requires action on the ground; often it requires changes to both national law and practice. Bringing national legislation into line with ILO Conventions, creating and strengthening the national labour market institutions needed to enforce legislation and to ensure that the core labour standards are respected at all levels of society – all this can be as important as the formal step of ratification. Moreover, as this report demonstrates, these actions frequently require significant resources and expert assistance.

### **Technical cooperation**

20. The Declaration and its Follow-up provide a framework to ways in which member States might benefit from the ILO's technical assistance. In most cases, one or more of the tripartite social partners – government, employers and workers – suffer from capacity deficits that limit their ability to play a full role in implementing the fundamental principles and rights at work. Lack of expertise and weak institutional structures among the social partners may also constitute an additional stumbling block, regardless of the relative government's commitment. And government itself must have the requisite capacity to play its role in developing and implementing appropriate laws and policies.

21. The Declaration and its Follow-up commit the ILO to helping its Members overcome the obstacles they face. This commitment prompted the ILO, in 1999, to establish its Programme on Promoting the Declaration that specifically sets out to assist countries achieve compliance with fundamental principles and rights at work. This Programme provides support with respect to three of the four core principles under the Declaration. The fourth – child labour – is addressed by the ILO through its International Programme on the Elimination of Child Labour (IPEC). Under the auspices of its Declaration Programme, the ILO has provided techni-

cal support to more than 70 countries. Given the considerable resources involved, it has been unable to all meet all the requests for assistance. Hence, a great part of what the Declaration Programme has achieved has been made possible by generous support from donors including several EU countries and, in particular, the United States Department of Labor.

### **Tripartite structure**

22. In all its structures - and in all its activities - the ILO ensures a place for employers and workers and their organizations alongside governments. They are all constituents of the ILO, so naturally the ILO works with each of them to promote fundamental principles and rights at work. The ILO also encourages each of its Members to work to fulfil its obligations under the Declaration through tripartite cooperation. Each country has different needs, and the ILO seeks to tailor its technical assistance to address a country's specific needs. But broadly speaking, the Declaration Programme focuses on providing expert assistance on labour legislation, strengthening labour market institutions and giving direct assistance to the tripartite social partners. In some cases the ILO works with other civil society organizations to reach certain target groups, such as bonded labourers or victims of trafficking.

23. National legislation provides the framework for implementing fundamental principles and rights at work. The Declaration Programme therefore frequently seeks to facilitate the development and reform of national legislation through tripartite dialogue. The Declaration Programme's work on the adoption of new labour laws in East Africa is a case in point (box 1.2). While legislation provides an indispensable basis, labour laws alone cannot ensure respect for core labour standards. Key labour market institutions are also needed to enforce the laws where necessary, as well as to facilitate dialogue between the social partners. Strengthening labour market institutions enables the social partners to prevent labour disputes from occurring, or to resolve them rapidly when they do arise. In market economies, this is achieved through building relationships between workers and employers, and by promoting institutions and mechanisms through which the parties themselves can reach compromises and agreement.

### **Government**

24. The Programme on Promoting the Declaration provides direct support to strengthen the institutional capacity of key institutions within national and local government. Technical assistance is offered to train and raise awareness among staff, as well as to foster the development of an effective labour administration liable to promote both sound employment policies and respect for the core labour standards.

25. A government seeking ILO assistance under the Declaration is often in a situation in which its policy and legal framework for industrial relations, as well as its labour market institutions, have failed to keep pace with the way in which economic reform and development have affected its labour market. Inadequate industrial relations systems and weak institutions and actors at the level of the workplace are serious obstacles to the implementation of core labour standards. Technical support from the Declara-

#### **Box 1.2**

### **Collective bargaining in East Africa**

Following economic reforms, three East African countries (Kenya, United Republic of Tanzania and Uganda) found their labour laws and labour market institutions ineffective in a liberalized market with private sector-led economies. Although the three countries were in the process of democratization, the principles of freedom of association were not generally accepted either in theory or in practice. Supporting the governments' commitment to change, the Declaration Programme assisted them in drafting new labour laws. The legislation (adopted in the United Republic of Tanzania and Uganda and under consideration by the Parliament in Kenya) now incorporates the fundamental principles and rights at work and extends such rights as freedom of association to groups previously denied or restricted in this right, such as public sector employees (in Kenya). Furthermore, tripartite consultations and social dialogue have been promoted - and the institutional capacity of government agencies strengthened to implement the principles of freedom of association and collective bargaining. This support also included strengthening the institutional capacity of trade unions and employers' organizations so that they might incorporate the principles of freedom of association and collective bargaining into their organizational policy and programmes. The harmonization of these principles and rights, and their incorporation into the labour legislation of all three countries, marks an important step towards the goal of promoting free trade through the implementation of the East African Community (EAC).

Source: ILO, 2007.

tion Programme therefore aims to assist recipient governments upgrade their labour market institutions and legislation to cope better with these changes.

26. Ministries of Labour, particularly in weaker economies, are often relatively marginalized; they frequently receive inadequate budgetary allocations, and do not often benefit from significant levels of external aid. More often than not, these institutions do not have enough staff - or enough staff with appropriate and adequate training - and they usually lack the equipment and material required to carry out their tasks effectively. Labour inspectors, for example, often have no means of transport to inspect enterprises and are therefore rarely able to conduct enough inspections. As a result, they are unable to detect issues that might erupt into industrial or labour disputes and thus address these potential disputes before they escalate. Poor inspection also implies that the state does too little to enforce its laws relating

to the core labour standards and cannot, for example, deal adequately with serious problems such as bonded labour and systemic discrimination. The Programme on Promoting the Declaration has therefore focused on upgrading staff skills, raising awareness within government and beyond, and providing key equipment where governments are willing and able to devote resources to ensure that equipment - whether a computer or means of transportation - will serve its intended purpose.

27. A well-functioning labour market requires social partners with sound basic institutional capacity. There can be no system of free collective bargaining if one of the parties is unable to participate fully in the process. Consequently, a key element of the support provided by the Declaration Programme is capacity building for workers' and employers' organizations to enable them to represent their members effectively.

### Box 1.3

## Human trafficking in Eastern Europe

Ukraine and the Russian Federation are at opposite ends of a human trafficking network. In Ukraine, high unemployment levels and limited economic opportunities contribute towards creating a supply of labour - whereas in the Russian Federation there is a demand for cheap immigrant labour and poor enforcement of labour legislation. In response to the request by these two countries for assistance in addressing the problem, the Programme on Promoting the Declaration designed interventions targeting both ends of the trafficking network. Interventions sought to address the supply factors in Ukraine that caused people to migrate and become potential victims of trafficking and forced labour. These interventions included the promotion of employment and vocational training, as well as awareness raising. The support for worker protection also resulted in the establishment of an agreement of mutual recognition of trade union membership in both countries, thereby ensuring that migrant workers could receive assistance from the trade union in their host country.

In the Russian Federation, the Programme on Promoting the Declaration has promoted legislative changes to ensure protection for migrants and is working with employers to help them address more easily the use of trafficked and forced labour in the worst affected sectors. The Declaration is also working with the trade unions to ensure the payment of back wages and to support migrant members obtain legal employment. Government officials are also being targeted through awareness raising to change their perceptions that victims of trafficking are illegal immigrants who are breaking the law. Instead law enforcement and judicial officers are trained in understanding how to protect the victims of trafficking from further traumas.

ILO Action Against Human Trafficking 2006

## Working with employers' organizations

28. Large employers that operate in the formal sector of the economy, especially multinationals, are usually in step with modern human resources development techniques. Furthermore, they are usually adept at conflict resolution and collective bargaining procedures. But this certainly does not apply to all employers. In small- and medium-sized enterprises, these key skills and practices are less well-accepted and practised. Employers' organizations therefore face the challenge of promoting to all of their members the best practices they observe in only a few of them. Employers' organizations may have relatively well-qualified staff, but they can still frequently benefit from both capacity building and awareness raising. This is particularly true for issues such as forced labour and discrimination.

29. Experience shows that employers' organizations can often play a crucial role in reaching violators of core labour standards, and in bringing about change. In Pakistan, the Declaration Programme worked with employers' organizations to influence owners and operators of brick kilns, a sector that has traditionally used bonded labour. In this case, it led to a number of bonded labourers being freed.<sup>18</sup> This positive result demonstrates the capacity of employers' organizations to facilitate change,

both among their own members as well as in their sector, by gradually raising national standards. Furthermore, employers' organizations have the capacity to play a crucial role in the formation of government policy through their participation in broader processes of social dialogue.

## **Supporting workers**

30. If core labour standards are to be implemented, it is paramount that workers are able to organize effectively. Workers' organizations support their members to improve their wages and working conditions. They can also play a key role in addressing issues at plant or sectoral level, and can do so much more efficiently than individual workers. Trade unions, through their membership, can also act as channels for information campaigns. Workers' organizations face a significant challenge to ensure that their skills and structures keep pace with economic developments, including in some cases national economic restructuring. Falling formal sector employment rates can threaten to erode a union's bargaining power, and limit its relevance for its members. Against this background, there is a widely-felt need to strengthen the capacity of workers to organize, and to increase union membership.<sup>19</sup> There is also widespread recognition that an increase in the proportion of women trade unionists, especially at leadership level, is a prerequisite for improved gender equity.

31. There is a particularly urgent need to increase the capacities of trade unions for productive collective bargaining. Trade unions frequently need more information about - and training on - national labour legislation; ILO Conventions; dispute settlement procedures; and basic socio-economic and labour market data to support their negotiation efforts and upgrade their skills. Trade unions often face serious constraints in their efforts to organize and to bargain collectively. In some cases the problems are a product of legal and administrative structures, while in others, employers may simply refuse to observe the law. Another major difficulty that can contribute to a trade union movement with limited capacity is that their own training institutions are also weak. They frequently need strengthening, both in terms of curricular reform and training of instructors.

32. The Declaration Programme has sought to assist trade unions in upgrading their capacity, skills and effectiveness so that they might better represent their members. Its goal has been not only to help trade unions remain relevant to the ordinary worker, but also to enable them to participate fully in negotiations with employers - as well as to promote their interests in dialogue with government.

## **Awareness raising**

33. Awareness raising can be a powerful tool in promoting core labour standards. Low levels of knowledge about basic workers' rights commonly pose a significant obstacle to making these rights effective in practice. Informing workers of their rights - and employers of their obligations - under the law are therefore essential first steps, and the Declaration has been using radio, TV, newspapers and interactive training sessions for key audiences to achieve this. Whether on the subject of forced labour and similar exploitative practices, or discrimination at work on the grounds of gender, race or HIV/AIDS, the Declaration Programme has consistently used awareness raising as part of an integrated approach to preventing discrimination, and promoting knowledge of and respect for core labour standards. Technical assistance has helped the Declaration Programme engage the social partners and influence general public opinion. The media plays an important role in influencing public opinion and changing attitudes; they may, for example, enhance the public's understanding of the situation of bonded labourers and victims of trafficking. Keeping issues hidden only contributes to their continued existence and prevents the public from mobilizing to address an issue and calling upon governments to adopt proper legislation and to ensure that it is enforced. For these reasons, awareness raising is often a key component of any technical cooperation support by the Programme on the Promotion of the Declaration.

## **The Declaration**

34. So what is the influence of the Declaration? A few countries have clearly carried on with their previous practices regardless of the Declaration; but equally clearly, a significant propor-

tion of ILO member States support the Declaration - and a substantial number have requested technical cooperation from the ILO to achieve compliance with its principles and rights. Assessing the impact of the Declaration is at best a complex exercise. It requires consideration of a country's ratification record, examination of national legislation, and analysis of labour market

institutions that are necessary to enforce the law. This impact assessment therefore seeks to provide an overview of the effects that are related to the Declaration, and in particular to the technical support provided by the Programme on Promoting the Declaration in Brazil, Indonesia, Morocco and Viet Nam.

# Indonesia

Independent in 1947 (from the Netherlands), Democratic Republic  
 222 million inhabitants, Third largest democracy in the world  
 Has ratified all 8 core Conventions under the Declaration

GDP (2005)	US\$ 287 billion
Exports (2005)	US\$ 86 billion
Imports (2005)	US\$ 64 billion

35. Indonesia has made a dramatic shift in the last decade - from being a country under authoritarian rule to a thriving democracy. At the same time, it has made significant efforts to improve its record on labour and human rights. With a population of 222 million, Indonesia is the world's third largest democracy. Indonesia has had a signal commitment to the principles of the Declaration, which have acted as an important guide in its efforts to improve nationwide respect for the fundamental principles and rights at work. The importance that Indonesia has attached to these principles is made clear by its record of ratifying ILO Conventions: it has ratified all eight of the ILO's core Conventions that are related to the Declaration, and was the first country in Asia to achieve this.

36. Indonesia is located in South-East Asia, and consists of more than 17,500 islands, of which 6,000 are inhabited. It is the most populous Muslim nation in the world. Since it gained independence from the Netherlands in 1945, power has traditionally been concentrated in the hands of the presidency. This was particularly apparent during the long period of authoritarian rule by General Soeharto: he assumed power in 1967, and with support from the military imposed a repressive regime with little freedom of the press or of expression. Opposition to the regime grew during the mid-1990s, and was given significant momentum by the severe economic situation that affected Indonesia in late 1997, following the Asian financial crisis. In early 1998, protests by the reform movement added to the pressure on the Soeharto government, forcing him to resign in May 1998. Among other things, this led in time to constitutional amendments that have weakened the power of the presidency, giving a greater role to the legislature.

37. The economic and social consequences of the Asian economic crisis in 1997 prompted the new Government to introduce wide-ranging political reforms. Recognizing the importance of providing a minimum social floor to underpin the stability of the labour market, the Indone-

sian Government looked to the ILO, and to its expression of the fundamental principles and rights at work. As part of the reform process the Government initiated social dialogue, and negotiations with the social partners in a manner not previously seen in Indonesia. In particular, it moved to ensure respect for workers' rights - and it has been taking clear steps towards addressing the difficult issues of forced labour and trafficking of persons. Although Indonesia has been a member of the ILO since 1950, the strongest evidence of its commitment to social and economic change is in the package of labour law reforms that it enacted from 2000 to 2004. It is here that the spirit of the Declaration is most clearly present, not only in the texts of the laws, but in the process by which they were developed and in the way that they have been implemented in practice. The social partners have embraced social dialogue, and they are gradually working to establish a culture of negotiation and collective bargaining - subject to the limits that are imposed by the rapid growth in the number of trade unions following the abolition of Soeharto's policy of allowing only a single trade union federation. The Declaration has therefore contributed to promoting respect for core labour standards in Indonesia while it has been recovering from the devastating social and economic consequences of the Asian economic crisis.

38. One consequence of the oppressive nature of the Soeharto regime, however, was that the institutional and legal framework required to secure respect for fundamental principles and rights at work was not well established. Likewise, the authoritarian nature of the previous regime had prevented the development of a tradition of dialogue between the social partners to resolve disputes and disagreements. It had also significantly weakened public confidence in government, and key institutions, including courts and the rule of law. As a result, when the Government changed, all the tripartite partners found themselves ill prepared for the structural changes that followed. But a combination of political will and ILO assistance has enabled In-

Indonesia to make important progress toward compliance with its obligations to promote and to respect the fundamental principles and rights of all workers.

### **The economy**

39. During the decade up to 1997, Indonesia's economy grew on average by nearly seven per cent. Following the 1997 Asian economic crisis, Indonesia's economy shrank by 13.1 per cent in 1998 alone.<sup>20</sup> The Indonesian economy has since experienced a steady recovery, following the recapitalization of its banking sector,<sup>21</sup> improved oversight of capital markets and government action to stimulate growth and investment.<sup>22</sup> Recent annual growth rates have been climbing steadily, from 4.5 per cent in 2003,<sup>23</sup> to 5.7 per cent in 2005, up to six per cent (year on year) in the first quarter of 2007.<sup>24</sup> Economic growth has been forecast to reach an average of 6.3 per cent in 2007-8.<sup>25</sup> Indonesia paid back its debts to the IMF by the end of 2003 and has now engaged in a post-IMF economic framework. The strength of its economic growth is illustrated by the ability of its economy to withstand the significant impact of natural disasters and other economic 'shocks' over the last four years.<sup>26</sup>

40. Indonesia enjoys a diversified trading economy, with an abundance of natural resources including natural gas, petroleum, metals, timber and fish. The services sector makes the largest contribution to the Indonesian economy, accounting for 41 per cent of GDP.<sup>27</sup> Services are followed by the manufacturing sector at 28 per cent, reflecting the increasingly important role the sector has played in Indonesia's economy over the past 25 years.<sup>28</sup> Manufacturing exports, however, have not returned to pre-crisis levels, which may reflect increased competition from countries such as China and Viet Nam competing in the same market for low-skill labour-intensive products.<sup>29</sup> Agriculture's contribution to GDP fell from 15.5 per cent in 2002 to 12.9 per cent in 2006, while the share from mining and quarrying grew from 8.8 per cent to 10.6 per cent over the same period. Indonesian exports rose to an estimated US\$100.7 billion in 2006, representing an increase of 17.6 per cent from 2005.<sup>30</sup> Its largest exports were oil and gas (21 per cent), minerals (15.7 per cent), electrical appliances (14.7 per cent), rubber products (6.9 per cent) and textiles (3.4 per cent).<sup>31</sup> The

biggest markets for Indonesian exports in 2005 were Japan (21.1 per cent), the European Union (12 per cent), the United States (11.5 per cent) and Singapore (9.1 per cent). China (7.8 per cent) is an increasingly important market.<sup>32</sup>

41. Indonesia joined the WTO in 1995 and is an active participant in the Doha Development Agenda. Bilateral free trade agreements (FTAs) are not a major element of Indonesian trade diplomacy and policy and Indonesia has historically promoted bilateral trade relations through other means. Recently, however, Indonesia has begun to pursue bilateral FTAs. It has been negotiating with Japan since 2005 to establish a bilateral Economic Partnership Agreement. This would cover goods, rules of origin, customs procedures, investment, services, movement of persons, competition policy, energy and mineral resources and cooperation. It is also negotiating a Preferential Trade Agreement with Pakistan and is considering a PTA/FTA with India and the Islamic Republic of Iran.<sup>33</sup>

42. The Indonesian Government is committed to the goal of promoting economic growth and job creation as a means of addressing the continuing problem of poverty. Even in 1996, when the Indonesian economy was performing strongly, 15 per cent of the population were living in poverty. Following the economic crisis, poverty grew to 23 per cent in 1999. The poverty rate fell back to 18 per cent by 2002,<sup>34</sup> and later to 16 per cent – but it rose to 17.75 per cent between 2005 and 2006, despite increased government spending on poverty programmes. The number of poor in Indonesia remains very high, with over 110 million people, or 53 per cent of the population, living on less than two US dollars a day,<sup>35</sup> and 16 million people or 7.5 per cent of the population living on less than one US dollar a day. Poverty is not evenly distributed, and is most common in rural areas, where 21 per cent of the population were classified as poor<sup>36</sup> in 2002.<sup>37</sup> Nonetheless, despite these levels of poverty, Indonesia has shown continuous improvement in its HDI value,<sup>38</sup> that rose from 0.67 in 1998 to 0.71 in 2004 (figure 2.1). Although the situation is steadily improving, Indonesia's HDI ranking of 108 is well below that of its near neighbours, with Thailand ranked 74, Malaysia 61 and the Republic of Korea 26.<sup>39</sup>

43. Indonesia has a large and persistent informal economy that accounted for at least 63 per cent of its workforce in 2002.<sup>40</sup> As a result of

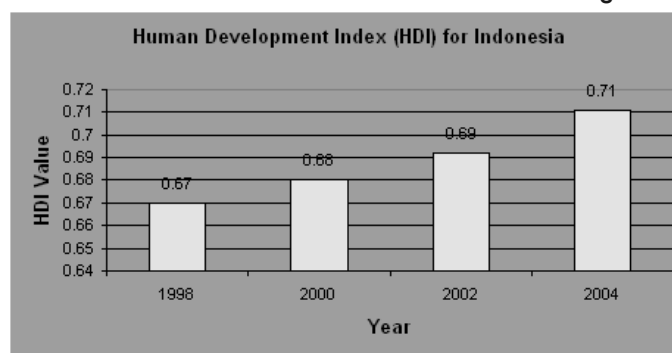
the Asian economic crisis, the informal economy grew from 1997 to 2003; at the same time, formal economy employment fell, with workers being displaced mostly to the informal agricultural sector and the urban informal economy.<sup>41</sup> The informal economy absorbed over a million workers from the wage sector during the crisis period, and one estimate suggests that the informal economy grew by 12 per cent from 2001 to 2002 alone. Indonesia's large informal economy predates the economic crisis; indeed the period of growth leading up to the crisis contributed to its growth, as a result of increased economic opportunities in an environment that lacked important legal and institutional constraints.<sup>42</sup>

### The labour market

44. Indonesia had an estimated labour force of 106 million in 2005.<sup>43</sup> The labour force participation rate has been calculated at 68 per cent,<sup>44</sup> although more recent World Bank figures show that labour force participation fell from around 68 per cent in 2005 to 66.7 per cent in February 2006.<sup>45</sup> The agricultural sector remains the primary source of employment in Indonesia, although it has experienced only minor employment growth over the past 25 years.<sup>46</sup> Agricultural employment fell from approximately 55.1 per cent in 1990 to 41 per cent in 1997, but rose again to 45 per cent from 1998-2000 as a result of the economic crisis; this prompted many workers to shift into agricultural activities as well as into the informal economy.<sup>47</sup> Employment in agriculture fell again to 44.47 per cent in 2006. Trade is the second largest source of employment after agriculture, accounting for 21 per cent of the labour market in 2004 and 19 per cent in 2006.<sup>48</sup> This compares with labour market figures before the economic crisis, in 1996, when trade accounted for 18.9 per cent of the labour force.<sup>49</sup> Manufacturing is the third-highest source of employment in Indonesia. During the years of growth before the economic crisis, employment in manufacturing increased, rising from 10.2 per cent in 1990 to 12.6 per cent in 1996. It fell back to 11.3 per cent in 1998 before recovering to 13 per cent by 2000;<sup>50</sup> it decreased again slightly to 12.16 per cent in 2006.<sup>51</sup> Social and personal services are just behind manufacturing services, accounting for 11 per cent of the labour market in 2006.<sup>52</sup>

45. It is estimated that the Indonesian economy needs to grow at around six to seven per cent annually to absorb new entrants into the labour market.<sup>53</sup> The WTO has reported that it considers a growth rate of six per cent to be achievable, provided that the investment climate continues to improve.<sup>54</sup> Indonesia's unemployment and under-employment rates increased dramatically in the wake of the 1997 crisis and have not yet fully recovered. After climbing almost every year since the financial crisis,<sup>55</sup> overall unemployment rates reached 10.4 per cent in February 2006.<sup>56</sup> Unemployment is significantly higher in rural areas, at around 19 per cent in 2004, and is as high as 30 per cent for youth.<sup>57</sup>

Figure 2.1



Source: UNDP: Human Development Reports 2000, 2002, 2004, 2006.

46. Informal employment is also more prevalent in rural areas. Indonesia's national socio-economic survey showed that the informal economy accounted for 92 per cent of all agricultural employment and 52 per cent of non-agricultural employment in 2002.<sup>58</sup> In urban areas, informal employment accounted for just over half of all jobs, compared with close to 75 per cent in rural areas.<sup>59</sup> The informal economy and the labour market have a disproportionate effect on women, who are more heavily concentrated in informal jobs.<sup>60</sup> The over-representation of woman in the informal economy is greater in the agricultural labour market than in other economic sectors. Figures for 2002 showed that 90 per cent of men working in the agricultural sector were working informally, whereas 95.2 per cent of women were working informally.<sup>61</sup> The disproportion of male and female participation elsewhere in the informal economy was much greater: 48.2 per cent of men were working informally, compared with 58.6 per cent of women.

## **The status of the fundamental principles and rights at work**

47. Indonesia has been a member of the ILO since 1950, and has ratified all eight of the ILO's core Conventions related to the Declaration. The change of government in 1998 brought with it a very significant change in attitude towards the fundamental principles and rights at work in Indonesia. At the time, Indonesia had already ratified the Forced Labour Convention, 1930 (No. 29) in 1950; the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in 1957 and the Equal Remuneration Convention, 1951 (No. 100) in 1958. The new Government made an official commitment in 1998 that it would ratify the remaining four of what were then the seven core Conventions.<sup>62</sup> In a matter of two years, Indonesia ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in 1998; the Abolition of Forced Labour Convention, 1957 (No. 105) in 1999; the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1999; and the Minimum Age Convention, 1973 (No. 138) in 1999. The Government reiterated its commitment when, in the year 2000, it ratified the eighth core Convention, the Worst Forms of Child Labour Convention, 1999 (No. 182). After ratifying the core Conventions, Indonesia embarked on a comprehensive labour law reform programme to fulfil its international obligations and promote the fundamental principles and rights at work.

48. In order to reform the legal regulation of its labour market, Indonesia adopted three main pieces of legislation during the 2000-04 period: The Trade Union Act (No. 21) of 2000; the Manpower Act (No. 13) of 2003; and the Industrial Relations Dispute Settlement Act (No.2) of 2004. The Indonesian commitment to change is apparent from an examination of data drawn from the ILO's system for supervising compliance with obligations under its Conventions. These data show that Indonesia has made considerable progress, and that it has taken a number of important steps towards compliance with its obligations under ratified Conventions. The changes to its labour laws have contributed considerably to this progress - and this is an area in which the ILO has played an important role in providing technical assistance over a period of several years. The ILO was closely involved in assisting all the tripartite partners in the process of developing a new labour legisla-

tion policy; in helping the Government to draft proposed legislation and secure its passage through the National Assembly; and then in assisting all parties to develop the necessary knowledge and skills to work in the new legal environment.

49. While Indonesia has achieved much through the reform of its laws, it continues to experience difficulties in practice. Trade union leaders, workers' rights activists and ordinary workers continue to be exposed to acts of anti-union discrimination. This ranges from harassment and dismissal from employment, to intimidation and violence at the hands of employers, police and the military - and in some cases to harassment from third parties to disputes. There continues to be widespread discrimination in access to employment and in working conditions that predominantly takes the form of discrimination on grounds of gender. Women have less access to work, and in particular to work in the formal economy; in general they are subject to a significant gender wage-gap. There are still reports of discrimination on cultural and racial grounds, and on the basis of HIV/AIDS status. Forced labour and human trafficking are also ongoing, significant problems for Indonesia. These practices are associated with extensive formal and informal labour migration, both within Indonesia and to other countries. The widespread poverty in Indonesia makes workers especially vulnerable to these practices, and at the same time poses a significant challenge to the Indonesian Government in its efforts to combat the problem successfully.

50. Over the past seven years, however, the Indonesian Government has taken a number of positive steps to improve the situation, with the benefit of ILO technical assistance. In addition to reforming its labour laws, Indonesia has established important labour market institutions including a new Industrial Relations Court. With ILO assistance it has set out to facilitate and develop key skills in the social partners, so that they may engage in bipartite and tripartite negotiations and bargaining. It has also sought and received assistance to improve its own skills, with respect to the drafting and implementation of legislation and to its capacity to administer and operate an effective system for resolution of labour disputes, among other things. These efforts have helped to recognize the right to freedom of association, reduce acts of anti-union discrimination and promote effi-

cient collective bargaining. Indonesia has also made great strides in its efforts to curb workplace discrimination. It has carried out important law reforms and - in consultation with the social partners - it has adopted and promoted practical guidelines to promote gender equality and non-discrimination in the workplace. The Government of Indonesia has also embarked on a reform process to address the practice of forced labour, and to combat the phenomenon of human trafficking. For instance, it has revised the legal framework for regulation of labour recruitment agencies, developed practical programmes to address the issues of trafficking both before and after they arise and, in consultation with the ILO, it has set up governmental agencies to monitor progress. The Government has also sought and received assistance to bolster its capacity to enforce its laws relating to forced labour and trafficking.

### **Freedom of association and collective bargaining**

51. Indonesia has made significant progress toward implementing the fundamental rights of freedom of association and collective bargaining over the last ten years. Indeed, its commitment is reflected in the fact that it ratified Conventions Nos. 98 and 87 in 1957 and 1998, respectively. As mentioned above, Indonesia has carried out major reforms to its labour laws since the late 1990s. It has completely revised its laws on working conditions, the establishment of trade unions and the settlement of labour disputes, including the right to strike. The ILO has provided technical assistance to Indonesia to help it develop and implement these changes. Although the situation has improved dramatically in both law and practice, trade unions and workers' rights advocates in Indonesia continue to face a range of difficulties, especially acts of anti-union discrimination that include acts of violence against people participating in legal activities.

52. Perhaps the key development in recent years has been the abolition of the single trade union monopoly that was maintained by the Golkar party under the regime of the former President Soeharto. As a result, there are now about 90 registered trade union federations, and several thousand unions at the local level, with a total membership of more than three mil-

lion.<sup>63</sup> One consequence of the former trade union monopoly and the subsequent proliferation of trade unions is that many of Indonesia's unions are relatively ineffective and weak as representatives of workers, and as participants in social dialogue. Employers' organizations also face challenges: they must now deal with multiple unions both nationally and at the plant levels, together with increased demands for collective bargaining - and in some instances, increased industrial disputes and work stoppages. The Government lacks capacity to operate in the new environment, especially in being able to provide guidance and direction for the orderly and smooth functioning of the industrial relations system. Moreover the Government has had to contend with the devolution of power from central to regional governments pursuant to the Law on Regional Administrations,<sup>64</sup> and with bureaucratic restructuring of the agencies responsible for labour matters.<sup>65</sup>

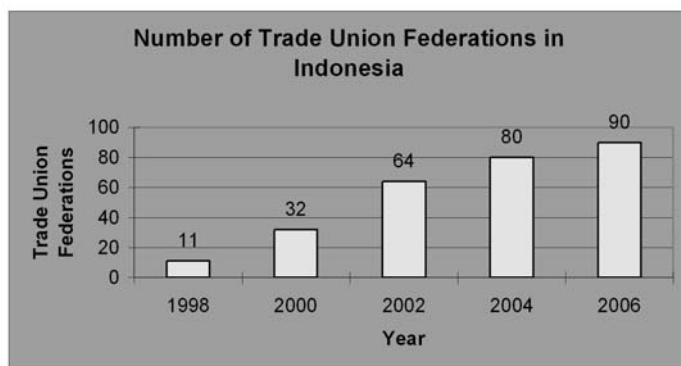
53. Although the Government of Indonesia adopted some new labour legislation in the late 1990s,<sup>66</sup> this was inadequate to protect the rights guaranteed by ILO Conventions Nos. 87 and 98. The ILO supervisory system and technical assistance have contributed towards the adoption by Indonesia of the Trade Union Act (No. 21 of 2000), which has been instrumental in moving the country towards a greater respect for freedom of association and collective bargaining rights. Indonesian law protects all union members and leaders against acts of discrimination involving their dismissal, suspension and demotion from employment on the grounds of participating in trade union activities.<sup>67</sup> It is a criminal offence to violate this provision, subject to a possible prison sentence.<sup>68</sup> The Act also prohibits employers from preventing workers from establishing or becoming involved in a union or from carrying out trade union activities.<sup>69</sup> These provisions go a long way towards ensuring effective protection of freedom of association and collective bargaining rights for Indonesian workers.

54. The Manpower Act (No. 13 of 2003) marked another positive step by the Government. Apart from setting clear standards for basic working conditions, it also helps to ensure that workers' and employers' organizations are protected against acts of interference from each other. The Industrial Relations Dispute Settlement Act (No. 2 of 2004) makes a significant contribution to establishing a functioning system of free and effective collective bargaining. The Act was a product

of intensive discussions between the Government and members of the legislature, and was based on inputs from both employers' and workers' organizations. The Act expressly promotes bipartite deliberations to resolve labour disputes, by making bipartite negotiation the default method of dispute resolution.

55. Despite the progress that has been made, data from the ILO's supervisory system show that Indonesia continues to face challenges to make the rights to freedom of association and collective bargaining effective in practice. There have been reports of anti-union discrimination by employers, both at the time of recruitment and during the employment relationship - including dismissals, transfers and demotions.<sup>70</sup> In some cases there have been violent attacks, including by third parties who appear to have been engaged by the employer for this purpose.<sup>71</sup> These practices have occurred particularly in Indonesia's Export Processing Zones (EPZs), where employers reportedly also frustrate union officials in their efforts to communicate with their members<sup>74</sup>.

Figure 2.2



Source: ILO Jakarta, 2007.

56. The police and the military continue to intervene in labour disputes from time to time. Police have detained trade union organizers of strikes, and there have been acts of violence against unionists while being arrested in the course of lawful strike activity. These practices are, however, less frequent than under the Soeharto regime.<sup>75</sup> With ILO technical assistance,<sup>76</sup> the Indonesian Government has developed guidelines for the National Police, which aim to provide instructions on the role and conduct of police officers in relation to strikes, lockouts and labour disputes.<sup>77</sup> This is a significant step towards promoting a culture of lawful, peaceful strike action in which the police act as facilita-

tors, rather than as antagonists. The Indonesian Government is at present considering a number of suggestions by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) as to how the guidelines might be refined.

57. Before the adoption of the Industrial Relations Dispute Settlement Act (No. 2) in 2004, the ILO supervisory system had expressed concern about impediments to free and effective collective bargaining. It noted a lack of effective dispute settlement measures, the capacity for one party to a dispute to lodge a petition in court to have a dispute settled unilaterally, and unduly long legal procedures: in some cases it had taken as long as six years to resolve a collective bargaining dispute before the new legislation was passed.<sup>78</sup> Some of these issues are addressed by the new Act No. 2, which the tripartite partners have welcomed as creating new, effective institutions for collective bargaining. Among other things, it has created a specialist Industrial Relations Court to replace the tripartite committee system established in 1957 that was widely seen as ineffective - particularly because it was liable to corruption.<sup>79</sup> The CEACR has nevertheless observed that since the passage of the Industrial Relations Dispute Settlement Act, it continues to provide for unilateral arbitration of disputes, and has urged the Government of Indonesia to give the matter further consideration.<sup>80</sup>

58. By the end of 2005 the Government had established labour courts in all 33 provinces.<sup>81</sup> A number of questions remain, however, about the capacity of Indonesia's labour court to be a credible and effective dispute resolution institution. One potential problem is the integration of the labour court into the general system of civil courts. Judges already appointed to the civil courts will exercise the jurisdiction of the labour court as labour cases arise. As there is a widespread problem of corruption in the Indonesian judiciary,<sup>82</sup> the integration of the two courts may weaken the Industrial Relations Court. The judges in the Industrial Relations Court are to be accompanied by ad hoc judges with experience in industrial relations,<sup>83</sup> who are to be appointed in equal numbers from worker and employer backgrounds.<sup>84</sup> Many of those appointed to these positions lack the necessary skills to carry out their role. While the ILO delivered technical assistance to provide training for the ad hoc labour court judges to ensure an adequate level of skill,

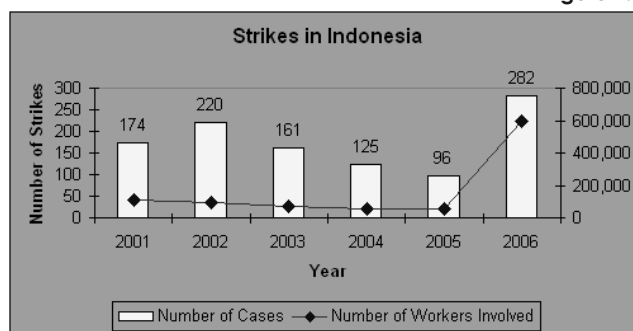
many of those who have been appointed to date are inclined to act in a partisan way, rather than as independent members of a Court.

59. Following the abolition of the single union system, the number of trade unions in Indonesia expanded rapidly (figure 2.2); but this has brought challenges for the industrial relations system in its wake. Many of the unions have difficulty attracting and maintaining members - thus reflecting their lack of capacity to organize workers. It has also led to further weaknesses; the unions are often not representative, and with few members they are not effective or reliable partners in collective bargaining. From an employers' point of view, there is the challenge of bargaining in a multi-union environment.<sup>85</sup> In order to address some of these issues, the ILO's technical assistance project in Indonesia worked to strengthen the institutional capacity of trade unions, providing training in advocacy skills and in bargaining and negotiation.<sup>87</sup>

60. The large increase in the number of trade unions after 1998 was initially followed by an upsurge in strikes (figure 2.3). As the social partners have become more familiar with collective bargaining and negotiation, the frequency of strikes has gradually fallen - with the exception of the year 2006. The large rise in the number of strikes that year reflects worker opposition to an unpopular government proposal to amend the Manpower Act of 2003. Workers and unions were concerned that the Act facilitated the use of contract and agency workers, posing a threat to income levels, as well as to the availability and security of work, especially in labour-intensive industries.<sup>88</sup> Public pressure in 2006 from trade unions contributed to the Government deciding not to revise the Manpower Act to ease the rules relating to dismissal from employment.<sup>89</sup> Trade unions have also become increasingly active in taking protest action, including strikes, on social and economic policies - including government proposals for privatization and for reductions in fuel and power subsidies.<sup>90</sup>

61. Indonesia has made significant progress in adopting legislation that largely incorporates the principles and values of the Declaration, but much remains to be done to make those laws effective in practice. More work is also needed to ensure effective social dialogue, especially given that the vast majority of Indonesia's workforce is not organized; in 2003 the

Figure 2.3



Source: ILO Jakarta and Ministry of Manpower and Transmigration, 2007

ICFTU estimated that only ten per cent of the work force was unionized.<sup>91</sup> Thus many millions of workers in Indonesia, in both the informal and the formal economies, lack representation or a voice at work. This poses a particular challenge for trade unions, which need to develop ways in which to extend their activities so that they are relevant for workers in both the formal and the informal economy.<sup>92</sup> While unions presently lack capacity in this respect, an ILO study in 2003 found that trade unions were enthusiastic about supporting initiatives to improve the conditions of workers in the informal economy. Moreover, unions may be useful partners in the strengthening of local self-help groups as a means of extending social protection to informal economy workers.<sup>93</sup>

62. While there is a low level of awareness of collective bargaining in Indonesia, the outcomes of collective bargaining have improved significantly in recent years. In 2000 it was reported that collective bargaining was perfunctory at best, and usually only occurred with workers directly selected by management.<sup>94</sup> The terms of collective bargaining agreements rarely went beyond the legal minimum established by the Government, and agreements were frequently just presented to workers for signature, rather than negotiated.<sup>95</sup> The new labour laws have improved the outcomes of bargaining; however, there are still only an estimated 9,000 Collective Labour Agreements (CLA) in the entire country. Moreover, trade unions have reported that there is a significant need for training on economics and issues relating to determination of wages so as to facilitate negotiations with regional government on wage setting.<sup>96</sup>

63. The combination of action by the Government of Indonesia and ILO technical assistance

has significantly improved respect for freedom of association and the right to collective bargaining. Thus, the essential framework for effective social dialogue and the promotion of democracy is now in place. Nonetheless, there remain significant obstacles to the establishment of an ongoing culture of collective bargaining and social dialogue. A key challenge is that many unions and employer groups are not representative, which lessens their ability to operate effectively. The tripartite partners all lack key capacity, as well as respect and cooperation between them.<sup>97</sup> Notwithstanding the success of the targeted action of the ILO technical assistance project in Indonesia, all parties agree that additional support is required, particularly in light of Indonesia's large population and its geographical diversity.<sup>98</sup>

### **Technical support from the ILO and the role of the social partners**

64. Soon after Indonesia embarked on political and economic change, the Government sought technical assistance from ILO to enhance its ability to carry out reforms to its labour market. With financial support from the Governments of the United Kingdom and the United States (through the Department of Labor), the Programme on Promoting the Declaration provided assistance in two areas: facilitating the development and institutionalization of collective bargaining and social dialogue; and supporting the struggle against forced labour and trafficking, particularly as it affects domestic workers.

65. The ILO's project on collective bargaining and social dialogue – Promoting and realizing freedom of association and collective bargaining by building trust and capacity in industrial relations systems – began work in February 2001, and was officially launched in May 2001, with an intended completion date of 31 January 2003. Following the Mid-Term Evaluation in February 2002 and a subsequent Follow-up Assessment in August 2002, the project shifted the focus of its key activities.<sup>99</sup> The project's success in re-orienting its work, as well as careful financial management, led to a number of project extensions and allocations of further funding, so that it was able to continue with its activities until 31 December 2006. The project carried out its work in the seven Indonesian provinces with

the highest concentration of industrial activity: Jakarta, West Java, Banten, East Java, North Sumatra, Riau, and East Kalimantan.<sup>100</sup>

66. The overall development objective of the industrial relations project was the creation of a sound, harmonious and fully functioning industrial relations system aimed at promoting economic growth while guaranteeing workers' rights. The project's specific goals included strengthening the capacity of each of the tripartite constituents to fulfil their roles, and to provide continuous training services for their members; helping to establish a new industrial dispute settlement system, including a sustainable training system for all persons involved in dispute resolution processes; and setting up bipartite institutions promoting efficiency and equity in selected pilot enterprises with operational enterprises cooperation plans.

67. The Declaration project on industrial relations in Indonesia received an initial grant of US\$2,500,000 from the United States Department of Labor (USDOL). This was later supplemented with a further grant of US\$1,290,000, and another US\$231,747 that was reallocated from other projects. Furthermore, half a million US dollars were provided for training of law enforcement from the U.S. Department of State, bringing the total to US\$4.7 million. The Final Evaluation of the industrial relations project found that it had made a major impact: over the course of its life, the project had directly benefited more than 15,000 people. It also had a particularly marked impact by helping Indonesia to publish key information about Indonesia's labour laws and the settlement of industrial disputes through negotiation and bargaining.

68. The industrial relations project was designed to help Indonesia address the challenge of implementing wide-ranging labour market reform, including the development and implementation of new labour legislation, and the establishment of new institutions including the Industrial Relations Court. A key focus was to assist Indonesia in its efforts to develop a culture of social dialogue and negotiation in an environment in which the number of trade unions had risen dramatically, but where there was little or no tradition of bargaining. The project was designed and established at a time when the Government of Indonesia was working intensively to reform its national labour law framework. The project therefore concentrated

on developing the capacity of the Indonesian Government to develop labour law policy and to give effect to that policy through effective legislation. In particular it sought to provide government officials with the technical skills required for policy development, law reform and legal drafting, as well as to assist with consolidating and institutionalizing tripartite mechanisms for pursuing labour law reform.<sup>101</sup>

69. Much of the project's work was directed toward upgrading the skills of each of the tripartite partners to enable them to participate in a modernized industrial relations system. This included providing support to both bipartite and tripartite institutions for the resolution of labour disputes, and for social dialogue in Indonesia. The project contributed to the implementation of labour law reforms by coordinating and carrying out training for ad-hoc labour court judges.<sup>102</sup> It also facilitated and delivered training on a wide range of topics including collective bargaining and negotiation skills, bipartisan labour management cooperation, and implementation of new legislation including the Trade Union Act and the Manpower Act. The project endeavoured to make its achievement sustainable, including by carrying out training of trainers, and through selection of key individuals and organizations to participate in project activities.

70. The Final Evaluation of the industrial relations project recorded a number of key findings about the project's work. First, government, employer and union groups reported that their skills had been significantly improved through their involvement with the project. Government officials reported that they had benefited in the development of their skills in relation to law reform, and in the Government's ability to monitor industrial relations and to assist in resolving labour disputes. Union officials reported what they saw as being key shifts in government policy and skills – and, for its part, the Government reported that unions were much more able to resolve labour disputes through negotiation and bargaining rather than through demonstrations and/or litigation. Employers that participated in the project's pilot programme to establish bipartite cooperation forums reported significant benefits, including more effective representation of workers by union officials at their workplaces, and improvements to their Collective Labour Agreements.

71. Second, the quality and amount of publica-

tions that the project had sponsored and helped to produce had a very significant impact. These included compilations of Indonesia's labour laws and regulations in both Bahasa Indonesia and in English, and information about international labour standards and collective bargaining and labour dispute resolution. The project's publications were a key basic information resource about labour law and labour relations in Indonesia, which helped to raise general knowledge and awareness. In addition, the process of producing these publications developed key skills in government.

72. Third, there was important evidence that the project's achievements could be sustainable once it had ended. The project assisted many stakeholders in the development and delivery of their own programmes of activities. The social partners themselves predominantly supported a very significant number of activities carried out in the last two years of the project's life, with little or no financial input from the project. Among other things, much of the training that was delivered in project activities during its later years was provided by people who had received their initial training from the project itself. This suggested a high degree of sustainability, as did other examples of project achievements, including the establishment of the first-ever graduate programme in the discipline of industrial relations in Indonesia, at Parahyangan University in Bandung.

## **Equality and non-discrimination**

73. Inequality and discrimination in the world of work have been persistent problems in Indonesia. Women in particular suffer discrimination in access to employment, and there is a distinct gender wage-gap. Discrimination on grounds of race or cultural background is also common. Indonesia has made a clear commitment to addressing these issues: it ratified the Equal Remuneration Convention, 1951 (No. 100) in 1958, and the Convention concerning Discrimination in Respect of Employment, 1958 (No. 111) in 1999. The national legal framework provides an important basis to address discrimination in practice – and the Constitution enshrines the right to be free of discriminatory treatment.<sup>103</sup> Indonesia has also made substantial headway in recent years in adopting legislation that specifically addresses the issue of employment discrimination, although the laws could be im-

proved, and there continue to difficulties in practice.

74. Both the Manpower Act of 2003 and the Human Rights Act (No. 39 of 1999) contain important provisions concerning protection against unlawful discrimination. The Manpower Act of 2003 provides in general terms that workers should have equal opportunity in access to employment and conditions of work.<sup>104</sup> The Government has reported to the ILO that accompanying 'Explanatory Notes' to the Act set out many specific grounds on which discrimination is prohibited, consistently with most of the grounds identified in Convention No. 111.<sup>105</sup> The Manpower Act prohibits the dismissal of workers on a wide variety of grounds including religion, gender, race, colour, and political orientation.<sup>106</sup> The Human Rights Act (No. 39 of 1999) also prohibits direct or indirect discrimination, on grounds including race, gender, religion, political opinion, national extraction and social origin. The CEACR has noted that this Act provides a broad framework for the application of the principles and rights laid down in Convention No. 111.<sup>107</sup>

75. Data from the ILO's supervisory system suggest that, despite the legal framework, discrimination persists in practice.<sup>108</sup> Women are over-represented in low paying and low status jobs. There has been widespread discrimination in the event of pregnancy, and cases of discrimination in employment on grounds of political activity or opinion.<sup>109</sup> There have also been reports of discrimination associated with the policy and practice of transmigration within Indonesia of certain ethnic groups.

76. The Government has, however, taken positive steps to promote equality between men and women at work. In consultation with employers and workers, and with ILO technical assistance, Indonesia launched its Equal Employment Opportunity Guidelines in 2005.<sup>110</sup> These guidelines provide direction and guidance to private sector enterprises regarding the implementation of the principle of equal opportunity and treatment of men and woman in employment and occupation – and they constitute an important practical step towards promotion of equal opportunity and non-discrimination. The Manpower Act of 2003 includes a number of measures to protect women workers against discrimination on grounds of pregnancy.<sup>111</sup> The Government has reported to the CEACR that these provisions are being enforced at the workplace level, sup-

porting higher levels of protection to pregnant woman in the workforce.<sup>112</sup>

77. Women are far less likely to participate in the labour force than men: in 2003, there was an overall participation rate of 65.72 per cent – with men accounting for 85.33 per cent and women for 46.28 per cent.<sup>113</sup> There is also a significant earnings gap: it is estimated that women on average are paid 45 per cent less than men.<sup>114</sup> There is significant sectoral variation in the gender pay gap: women in the agricultural sector receive 56 per cent of the amount paid to men, whereas in the financial sector the ratio is 86 per cent.<sup>115</sup> An ILO report in 2002 noted that it had been suggested that some economic sectors hired only women precisely in order to suppress wage levels.<sup>116</sup> The Government's ability to address these issues is hampered by its failure to collect data that is disaggregated by gender.<sup>117</sup>

78. Other forms of gender-based discrimination are common. The State Ministry of Women's Empowerment reported in 2004 that 90 per cent of women faced sexual harassment in the workplace. Women are also poorly represented in trade union leadership structures, including at the workplace level, even though they represent a large share of union membership – particularly in the manufacturing sector.<sup>118</sup>

79. The CEACR has noted reports by the International Trade Union Confederation (ITUC) of discrimination in employment on grounds of ethnicity, in association with the movement of certain groups as part of Indonesia's transmigration programme.<sup>119</sup> According to the ITUC there have been particular problems in the provinces of Papua and Kalimantan, where indigenous populations have suffered in their economic prospects as a result of transmigration, in particular in access to public sector employment opportunities.<sup>120</sup> The United States Department of State has reported that there is tension between ethnic groups in these provinces associated with transmigration, but that no new families have been transmigrated there since 2004.<sup>121</sup> The Indonesian government has reported to the ILO that its policies are intended to benefit both the migrating population as well as those already living in an area to which people are moved.<sup>122</sup>

80. Indonesia is increasingly affected by HIV/AIDS, and discrimination on the grounds of HIV/AIDS status is common. The Indonesian gov-

ernment has taken steps to tackle this matter directly. A special meeting of the Indonesian Cabinet in April 2002 addressed the issues presented by HIV/AIDS, and specifically noted the need for workplace-based programmes, particularly in industries that are predominantly male and where the risk of transmission of the virus is greatest. In February 2003, the social partners concluded a Tripartite Declaration to Combat HIV/AIDS in the World of Work. It emphasized the importance of workplace-based programmes, and the need for efforts to deal with stigma and discrimination against workers living with HIV. Indonesia issued a Ministerial Decree in 2004, putting in place anti-discrimination measures and requirements for HIV/AIDS prevention programmes and policies.<sup>123</sup> Nevertheless, relatively few companies have HIV/AIDS workplace policies, or have participated in AIDS education programs.

81. Indonesia has sought and obtained technical assistance from the ILO to address the specific issues of HIV/AIDS in the workplace. Since 2005 the ILO has carried out a Workplace Education Project, with funding from the United States Department of Labor. The project has worked in four provinces with high rates of HIV prevalence, and where there are high proportions of mobile workers. It has helped the tripartite partners establish action programmes to reduce risky behaviour among workers, and to reduce discrimination against people living with HIV, particularly in the workplace. The project has also delivered training for trainers attended by labour inspectors, trade union members and employers' association members; through their combined efforts the project has reached an estimated half a million employees directly with education.<sup>124</sup>

### **Trafficking and forced labour**

82. Indonesia has experienced difficulty in combating both the trafficking of persons and forced labour, but has demonstrated its commitment to address the problems that it faces. Indonesia has accepted international obligations, revised aspects of its national legal framework, and sought and received ILO technical assistance under the auspices of the Programme on Promoting the Declaration. Indonesia ratified the Forced Labour Convention, 1930 (No. 29) in 1950, and the Abolition of Forced Labour Convention, 1957 (No. 105) in 1999. It further signed the ASEAN Declaration against human traffick-

ing in 2004.<sup>125</sup> Among other things, Indonesia established a National Plan of Action for the Elimination of Trafficking in Women and Children by Presidential Decree in December 2002.<sup>126</sup> Indonesia has also sought and obtained ILO technical assistance to expand its ability to document the phenomenon of trafficking, as well as its capacity to address the problem and to enforce applicable laws.<sup>127</sup>

83. Indonesia is a source, destination and transit country for trafficking of men, women and children, for the purposes of forced labour and prostitution.<sup>128</sup> While there are no reliable estimates on the number of persons trafficked, the problem is reported to be widespread across the country. Indonesian victims are trafficked to Malaysia, Saudi Arabia, Kuwait, the United Arab Emirates, Hong Kong (China), Taiwan (China), Japan, the Republic of Korea and Singapore.<sup>128</sup> Migrant workers and domestic service workers are particularly vulnerable to trafficking and forced labour, and it has been reported that as many as 20 per cent of the five million Indonesian migrant workers have fallen victim to trafficking.<sup>129</sup> Currently, 70 per cent of documented Indonesian migrant workers are women, of whom 90 per cent work in domestic service in the Middle East and in countries across South-East Asia.<sup>130</sup> A significant number of them are subjected to exploitation and conditions of involuntary servitude. Some Indonesian women who travel legally to Japan as "cultural performers" are trafficked for commercial sexual exploitation, although this number fell in 2007.<sup>133</sup> Other women are trafficked as prostitutes to Malaysia and Singapore on short trips.<sup>134</sup> There is also extensive trafficking within Indonesia from rural to urban metropolitan areas, particularly for sexual exploitation and involuntary domestic servitude.<sup>135</sup>

84. Indonesian migrant workers are particularly vulnerable, especially in the course of their involvement with recruitment agencies: migrant workers must sign contracts with these recruiting agencies, but they have little or no power to negotiate the terms of those agreements, making them extremely at risk to forced labour.<sup>136</sup> The United States Department of State reported in 2006 that many women were confined unlawfully by recruiting agencies before they left Indonesia to work overseas.<sup>137</sup> Some employers and labour agencies even confiscate workers' passports to deny freedom of movement. The ILO has noted the occurrence of forced labour, in particular in the form of debt bondage.<sup>138</sup>

85. The United Nations Special Rapporteur on the Human Rights of Migrants found in 2006 that Indonesians wishing to work abroad must engage with agencies that charge extortionate fees for processing and training.<sup>139</sup> Human Rights Watch reported in 2006 that some agencies charged up to US\$1,500 per person to migrate, and that some even charged additional fees.<sup>140</sup> This often leads to debt bondage.<sup>141</sup> In Singapore and Hong Kong (China), for example, deductions of 8-10 months' salary on a two-year contract are common.<sup>142</sup> The Special Rapporteur noted that NGOs and Indonesian diplomatic stations abroad have reported that unpaid wages, long working hours without rest days and forced confinement at the workplace are among the most common complaints made by female migrant workers.

86. Although Indonesia ratified Convention No. 105 in 1999, it has taken some time for it to translate this into national legislation. Until recently, for example, the legislative framework lacked a definition of trafficking. However, this was recently addressed with the enactment of Law 21 of 2007 concerning the Elimination of Trafficking. This law prohibits all forms of trafficking in persons and prescribes penalties of up to 15 years' imprisonment.<sup>143</sup> It incorporates a comprehensive definition of human trafficking, based on the United Nations Palermo Protocol.<sup>144</sup>

87. Indonesia slipped to the Tier 2 Watch list in the United States Department of State's Trafficking in Persons Report in 2006, on the grounds that the Government had not demonstrated an increased effort to combat trafficking.<sup>145</sup> In this year's report, however, Indonesia was removed from the Watch list and classified as Tier 2, in recognition of the Government's strengthened efforts to address issues of human trafficking.<sup>146</sup> This reclassification recognized recent actions such as Indonesia's new anti-trafficking law, its improvement in law enforcement and continued efforts to raise public awareness of trafficking issues.<sup>147</sup>

88. Domestic workers are also particularly vulnerable to forced labour in Indonesia. Although there are different laws that apply to their work, there is no specific law whose purpose is only to regulate domestic work. This reflects a traditional reluctance to regulate domestic work. The situation is made more difficult because even where regulations do exist, there is a reluctance among workers to resort to the law to settle disputes.<sup>148</sup>

89. With ILO technical assistance, the Indonesian Government has taken important steps, adopting new legislation and implementing a range of new policies and programmes directed at combating both the exploitation of migrant workers and the phenomenon of trafficking in persons. Since 2002 the recruitment of Indonesian migrant workers has been regulated by Government Decree, which requires that both private and public recruitment agencies must be officially licensed, and only after satisfaction of identified criteria.<sup>149</sup> While the ILO's supervisory system has recommended that Indonesia consult with its social partners to review the laws regulating recruitment agencies, the Indonesian Government has reported that the rules it established to regulate recruitment agencies were based on the ILO's Private Employment Agencies Convention, 1997 (No. 181).<sup>150</sup>

90. The Government has acknowledged that there have been abuses of migrant workers. It has made efforts to police recruitment agencies, and to impose sanctions on those that do not comply with regulations controlling the recruitment of migrant workers. The Government reported to the ILO that during the period 2002–03, it sanctioned some 61 recruitment agencies, withdrew the licenses of 53, and initiated legal proceedings against a further eight.<sup>151</sup> The head of the Indonesian Labour Exporters Association has, however, suggested that the Government's commitment is insufficient.<sup>152</sup>

91. Indonesia has adopted Law No. 39/2004 on the placement and protection of Indonesian migrant workers, which increases the minimum age for working abroad and imposes stricter requirements for permit applications for recruitment agencies.<sup>153</sup> In support of this, Indonesia has established more than 200 special centres to combat trafficking of persons. Indonesia's National Plan of Action for Human Rights, which is to run from 2004 to 2009, also includes a programme to improve integrated efforts for the protection of children against the risk of trafficking and sexual exploitation.

92. The ILO provided technical assistance to Indonesia to enhance the capacity of both the social partners and the Government to protect migrant domestic workers against trafficking and forced labour.<sup>154</sup> Among other things, the project assisted several trade unions, NGOs and domestic workers' associations to establish dedicated help desks in their local branch offices.<sup>155</sup> The ILO project also fostered the establishment

of a regional network for outreach and assistance to domestic workers; this was the first time that trade unions and NGOs had cooperated across borders to protect migrant domestic workers.<sup>156</sup> A key objective of the work was to build the capacity of government officials to increase their effectiveness in combating forced labour practices and trafficking in migrant domestic workers.<sup>157</sup> The project carried out activities and produced material to raise awareness of the problems that migrant domestic workers face, among both policy makers and the general public.<sup>158</sup> It supported the Ministry of Foreign Affairs and the Ministry of Manpower and Transmigration to develop training modules.<sup>159</sup> The project also helped Indonesia to develop services to provide protection, outreach, livelihoods and reintegration services to migrant domestic workers who are vulnerable to or victims of trafficking and forced labour practices.<sup>160</sup>

94. Indonesia has participated in international cooperative efforts to address the problem of trafficking in persons. The Government of Indonesia has concluded agreements with a number of countries that receive Indonesian migrant workers, including three Memoranda of Understanding (MOU) with Malaysia.<sup>161</sup> However, Indonesia's Memoranda of Understanding with Malaysia signed in 1998 and 2004 each excluded domestic workers. Furthermore, Human Rights Watch also criticized the MoUs because they allowed employers to hold migrant workers' passports; prohibited migrants from organizing through labour associations or unions; failed to cover conditions of work and did not provide for sanctions against exploitative employers or recruitment agencies.<sup>162</sup>

95. Indonesia and Malaysia signed a further Memorandum of Understanding in May 2006 specifically concerning the rights of domestic migrant workers. Although this included measures to introduce a standard contract and salary protections, it did not prevent employers from keeping migrant workers' passports. Furthermore, it failed to introduce clear standards on a minimum wage, a weekly day off, or monitoring mechanisms for labour agencies.<sup>162</sup>

96. With international assistance, Indonesia has made efforts to reinforce its national police so that they are better able to deal with the criminal aspects of trafficking, although much more work needs to be done. Most police, for example, are not equipped to counter trafficking, which

is not covered in their three months' basic training. But the Government has been able to train 40 police officers as trainers to deliver training to fellow-police across the country. This may serve also to improve the extent to which Indonesia is able to focus on and to carry out enforcement of the relevant laws. While the number of cases submitted to prosecutors rose from 12 in 2005 to 23 in 2006,<sup>164</sup> the level of enforcement is generally very weak, and few persons are ever prosecuted and convicted for human trafficking violations.<sup>165</sup> Furthermore, the Ministry of Manpower and Transmigration has worked to increase its capacity to enforce labour legislation so that labour inspectors can address trafficking related matters at the workplace.<sup>166</sup> National and local level efforts to support victims of trafficking in Indonesia increased during the year 2006, but there remained room for improvement - particularly as concerns services provided to victims of trafficking, which expanded but remained piecemeal.<sup>167</sup>

97. The ILO carried out a survey in 2007 to assess the effectiveness of its work to raise awareness of the principles of the Declaration. Among other things, it found that 85 per cent of those surveyed considered the treatment of domestic workers to be a serious problem, and that 73 per cent agreed that the problem needed to be addressed. It also found that 80 per cent of respondents were aware of the issue of forced labour and felt the matter should be tackled. The survey also showed that more work needed to be done. More than a quarter of those surveyed reported that domestic workers were of low social status, and almost one third believed this to be the reason they were treated badly.<sup>168</sup> Moreover a majority of those who believed that domestic workers were of low social status had a university degree, and were therefore far more likely to be among those who actually employed domestic workers. The survey also found that there were only insignificant relationships between union membership and knowledge of forced labour, bonded labour and trafficking.<sup>169</sup> Taken together with the extent of the problems of trafficking and forced labour in Indonesia, it is clear that much work remains to be done.

## **Conclusion**

98. When Indonesia took the critical step of embracing democratic values as part of its process of recovery from social and economic crisis, the

Declaration proved to be of great value in helping the country move forward along its new path. Responding to public and international pressure, the Indonesian Government soon adopted a new, comprehensive labour law framework that provided the legal basis for ensuring fundamental principles and rights at work. In carrying out this major law reform project, the Government of Indonesia received extensive, critical support from the ILO, under the auspices of its Programme on Promoting of the Declaration. This encompassed both the substance and the (tripartite) process of policy development, as well as providing support in drafting legislation and assistance in shepherding the new laws through the legislature. Nevertheless, the transition from an authoritarian regime with a single legal trade union federation to a democratic state that allows and supports freedom of association with a multiplicity of trade unions was never going to be an easy task. The assistance provided by the ILO within the framework of the Declaration helped to smooth that transition to a significant degree. The value of that support is clear in the extent to which the social partners have accepted the new legal framework and are now working more than ever within its terms; there is more, and better collective bargaining, and less industrial action as a way of resolving labour disputes.

99. Enforcement of the new legal framework is essential to ensure compliance with the fundamental principles and rights at work. Here again, the transition from an authoritarian regime to a democracy has posed significant challenges. The Government has had to work to change the approach of the police and the military where industrial action is concerned; thus, Indonesian police officers have received training on the rights of trade union activists and workers engaging in lawful strikes, with the help of the ILO as part of its work to implement the Declaration. The Government has also had to develop the capacity to deal with employers

that continue to use violence or threats of violence to oppress workers and trade union activists. The Ministry of Manpower and Transmigration has had to enter into a constructive dialogue with the social partners to encourage employers and their organizations to engage with the new range of trade unions with a view to respecting the fundamental rights of all workers, while also encouraging the trade unions to discuss with the employers. In all of these areas the ILO has provided essential support and assistance, under the auspices of its Programme on Promoting the Declaration, and with the support of key donors including the United States.

100. Indonesia's achievements are significant, but it must continue along its path to democratization if it is to make real progress toward compliance with the principles of the Declaration. The work that remains to be done, however, in no way overshadows its considerable accomplishments to date in promoting freedom of association and the right to collective bargaining in a country with 220 million people, distributed throughout 6000 islands. The project, however, could only achieve a limited amount; it was unable, for example, to carry out any activities in almost three-quarters of Indonesia's 33 provinces. Moreover, the success of any project can be hampered by a lack of support from the host government. Indonesia now faces the challenge of providing sufficient resources to ensure that the new institutions it has created to help it develop a modern labour market operate as they are intended. Achieving nationwide respect for the fundamental principles and rights at work will take much more time and ongoing political will, together with continued technical assistance from the ILO. This, in turn, will depend to a significant extent upon whether the international donor community is willing to continue providing support for essential labour market reform as part of Indonesia's broader political and economic development.

# Morocco

Independent in 1956 (from France), Constitutional Monarchy	31 million inhabitants
Has ratified 7 of the 8 core Conventions under the Declaration	
Signed Free Trade Agreement with the United States in 2004	
GDP (2005)	US\$ 55.6 billion
Exports (2005)	US\$ 10.7 billion
Imports (2005)	US\$ 18.9 billion

101. The potential that the Declaration has to make a major, positive contribution to social and economic development may be seen in the case of Morocco. Those principles have played an important part in wide-ranging national reforms that have fostered greater rights and freedoms, and contributed to economic growth and poverty reduction. In the past decade, Morocco has made important progress towards establishing a strong system of social dialogue and negotiation; it has initiated social change and made efforts to eliminate discrimination; and it has taken significant steps towards addressing human trafficking issues. Major challenges remain, however, including the need to: develop the economy further by, *inter alia*, reducing its continuing heavy dependence on agriculture; make efforts to formalize the pervasive informal economy; bridge the significant gaps between urban and rural communities with respect to access to work, poverty and other key social indicators; and enhance the labour market with a view to overcoming continuing high levels of formal unemployment and absorbing the annual entry of very large numbers of young workers into the labour market. In moving forward, Morocco will therefore need to build on the formal commitments it has made by developing the means - and by deploying the resources required - to make these means effective for more than a small proportion of the country's population.

102. Morocco has been a member of the ILO since 1956, and has ratified seven of the eight core Conventions related to the Declaration.<sup>170</sup> It took a key step toward better compliance with its obligations under these instruments when it adopted its new Labour Code in 2004. This new Labour Code is part of Morocco's broader commitment to social and economic change, which has brought about progress in the institutionalization of social dialogue and improved freedoms and rights for workers - and indeed for all citizens. There is clear evidence of Morocco's improved economic performance: annual FDI increased from US\$ 27 million in 1999 to US\$ 1.5 billion in 2005,<sup>171</sup> while the poverty rate dropped from 42 per cent to 19 per cent

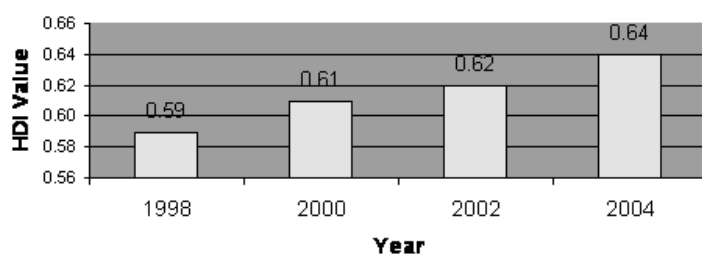
between the late 1970s and 2005. The positive developments stem in part from key economic reforms. Morocco has concluded a number of Free Trade Agreements (FTAs), including one with the United States in 2004. Under this agreement, Morocco is committed to strive to ensure that the principles of the Declaration are recognized and protected by its law,<sup>172</sup> and has acknowledged that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in its labour laws.<sup>173</sup> Thus, Morocco's ability to pursue both social and economic reform is further evidence that respect for core labour standards can contribute positively to increased trade and export growth.<sup>174</sup>

103. Morocco is located in North Africa, bordering Algeria to the east and Mauritania to the south-east. It has an estimated 31 million inhabitants. The western border is defined by the Atlantic Ocean and the northern by the Mediterranean. Spain and the European Union (EU) are less than nine miles from the country's northern shores. It gained independence from France in 1956 and is now a constitutional monarchy. In 1996 the late King Hassan II initiated an amendment to the Constitution, which transferred more power to Parliament.<sup>175</sup> His successor King Mohammed VI expressed his own commitment to change in his first speech after ascending the throne in 1999.<sup>176</sup> This has helped to bring about the political climate needed to increase the transparency of government and public institutions, and created opportunities to promote human rights and social dialogue. Social pressure and the perceived threat of terrorism, following the Casablanca bombings in 2003, have also prompted the King to take a lead role in pushing social and economic reforms. Nevertheless, the King retains significant control over the government. However, although Morocco has developed a more democratic political regime, including opening up significantly towards the main opposition parties, the political environment continues to affect the government's ability to effectively pursue reform agendas, including fighting poverty and unemployment.<sup>177</sup>

104. There are important signs of Morocco's embrace of the need for change. It has reformed its electoral system, introducing a quota system that has produced a significant increase in the number of women elected to Parliament.<sup>178</sup> Morocco has engaged in an open dialogue with the EU and other partners on democratization, human rights and workers' rights.<sup>179</sup> Having strengthened its efforts to combat human trafficking, Morocco is now classified by the United States Government as a country in compliance with the minimum standards for the elimination of trafficking.<sup>180</sup>

Figure 3.1

### Human Development Index (HDI) for Morocco



Source: UNDP: HDR 2000, 2002, 2004, 200

### The Economy

105. Morocco has liberalized its economy in recent years by gradually reducing tariffs on imports and facilitating investments by foreign companies. This has helped contribute to the economic recovery that followed the political reforms begun in 1996. Morocco still depends significantly on agriculture, and this accounts for the variation in its annual economic growth. The growing diversification of Morocco's economy, however, has been reflected in an average annual growth of over 4 per cent from 2002-06, including 7.3 per cent growth in 2006 alone.<sup>181</sup> Although growth has been spread across several sectors (tourism, agriculture, textiles and mining), the primary sector has been the main contributor to higher growth rates.<sup>182</sup> The largest contributor to Morocco's Gross Domestic Product (GDP) is the services sector, which accounted for 57.2 per cent of GDP in 2005. In the same year, manufacturing and agriculture accounted for 17.6 and 12.4 per cent of GDP,<sup>183</sup> respectively. Mining contributed only 2.7 per cent of GDP, but represented a significant proportion of Morocco's exports. Mo-

rocco is the world's leading exporter of phosphates, accounting for 27 per cent of the global market in 2001. The other principal export sectors are textiles and electronic components.<sup>184</sup> The Government has introduced wide-ranging policy reforms in recent years to diversify the economy and to raise productivity. Morocco introduced its "Plan Emergence" in 2005 which is intended to increase economic growth by a further 1.6 per cent per annum over a ten-year period and to limit the impact of the dismantling of the Agreement on Textiles and Clothing on the textile sector. The plan is expected to contribute to the creation of the half a million new jobs, in part through the establishment of industrial zones in a number of cities and the development of offshore services.<sup>185</sup>

106. Morocco has taken several key steps to attract foreign investment and to gain access to export markets. The country signed the GATT agreement in 1994 and joined the WTO in 1995. It signed FTAs with both the United States and Turkey in 2004, and is currently seeking to conclude one with the EU.<sup>186</sup> However, economic cooperation with the Middle East and North Africa (MENA) region and Africa remains weak.<sup>187</sup> The proposed Morocco-EU FTA would further develop important economic links forged through the EU-Morocco Association Agreement, which entered into force in 2000. Under this agreement the parties will gradually establish free trade in industrial products, with Morocco dismantling tariffs over a ten-year period starting March 2003.<sup>188</sup> This economic cooperation reflects the fact that Morocco's main export markets are in Europe: France accounts for 37.5 per cent of all Moroccan exports; Spain for 16.4 per cent; the United Kingdom for 5.1 per cent; and Italy for 4.0 per cent.<sup>189</sup> Only 2.6 per cent of Moroccan exports are destined for the United States.

107. Morocco has achieved a substantial and steady reduction of national poverty levels. In the late 1970s an estimated 42 per cent of the population lived in poverty. This fell to 19 per cent across the country by 2005,<sup>190</sup> although poverty levels are far greater in rural areas (25 per cent) than in urban areas (12 per cent).<sup>191</sup> Significant progress is also clearly visible from the positive change in Morocco's ranking on the Human Development Index (HDI), which rose from 0.59 in 1998 to 0.64 in 2004.<sup>192</sup> (See figure 3.1). At present, however, the Government is not pursuing a comprehensive anti-poverty strategy, which raises questions about Morocco's ability to reach

the United Nations Millennium Development Goal of halving poverty by 2015.<sup>193</sup>

108. The informal economy represents a major obstacle to the realization of the fundamental principles and rights at work. In the past, Morocco was unable to act to address the issue,<sup>194</sup> and current indications suggest that the Government continues to be forced to accept the informal economy because of its importance in securing peoples' livelihoods.<sup>195</sup> This is perhaps not surprising: it was estimated in 2002 that 81 per cent of all workers in Morocco were engaged in the informal economy.<sup>196</sup> Many informal enterprises, however, including medium and large enterprises, gain a significant comparative advantage over registered enterprises by avoiding obligations to pay taxes and to make social insurance contributions.<sup>197</sup> The Government's efforts to improve the situation are hampered, among other things, by a weak labour inspection system, although the ILO's work in Morocco under the Programme on Promoting the Declaration has focused in particular on strengthening the labour inspectorate.

109. The Government of Morocco has adopted a variety of approaches to address these difficulties. Under its "Plan Emergence" it has taken steps to encourage enterprises operating in the informal economy to become legal and registered entities, by making it more attractive to do so.<sup>198</sup> Morocco also launched a National Initiative for Human Development (NIDH) in 2005. NIDH seeks to address social problems in the country, including unemployment and social exclusion, and promotes the involvement of civil society at the local level. Specific programmes will include support for income-generating and capacity-building activities, improved access to services and basic infrastructure, as well as support for marginalized groups in the population.<sup>199</sup> But there are indications that NIDH is not fully integrated into the national development strategy or the national employment strategy.<sup>200</sup> Furthermore, the efforts of the Government and the social partners to promote the Declaration have focused primarily on the formal economy - thereby overlooking the much larger proportion of workers who are engaged in the informal economy.

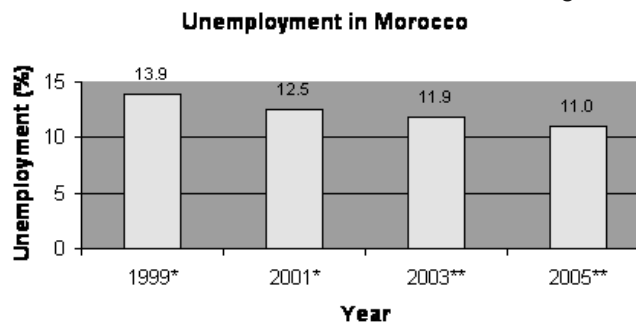
### **The labour market**

110. Morocco has a workforce of 11.4 million people, which represents a labour force participation

rate of 52 per cent among those over the age of 15 years.<sup>201</sup> Total employment is estimated to be approximately 10 million, of whom 90 per cent are working in the private sector, across both the formal and informal economies. Agriculture and fishing account for 44 per cent of all employment, with a further 42 per cent of workers employed in the service sector, and 13 per cent in industry.<sup>202</sup> Female labour force participation is, however, still low - accounting for only 28 per cent of the total workforce.<sup>203</sup> The vast majority of businesses in Morocco are micro or small enterprises. Of the 134,000 registered enterprises in 2004, 92 per cent (123,000) had fewer than 20 employees. The Government has also estimated that 73 per cent of enterprises have five employees or fewer.<sup>204</sup> Significant numbers of Moroccan workers leave each year for higher-paid opportunities in Europe - whether legally or otherwise. Nevertheless, many of them continue to maintain important economic links with Morocco, in particular through remittances from their incomes.<sup>205</sup>

111. A key difficulty for the labour market is that Morocco's rate of economic growth and employment creation are not sufficient to fully ab-

Figure 3.2



Source: \*KILM database 2007; \*\* EIU: Country Report Morocco, 2007.

sorb the unemployed and new entrants into the labour market;<sup>206</sup> over half of the country's population are younger than 20 years old. Following the liberalization of the economy and social reforms, official unemployment has fallen from almost 14 per cent in 1999 - but it remained relatively high at an estimated 11 per cent in 2005 (See figure 3.2). Urban unemployment has continued to be especially high, rising from 50 per cent of all unemployment in 1986 to an estimated 90 per cent in 2004.<sup>207</sup> Notwithstanding efforts by the Government to promote equality in the workplace, there remains a gender imbalance among the unemployed, with

unemployment amongst women being 13 per cent (2003).<sup>208</sup> A particular difficulty in the Moroccan labour market is the lack of opportunity for those with higher educational qualifications: 85 per cent of the unemployed have completed high school or a higher degree. Unemployment among university graduates grew from 21 per cent in 1991 to 27 per cent in 2006.<sup>209</sup> Here again there is an important gender dimension: although university-educated women represent fewer than 10 per cent of the total workforce, they make up almost 20 per cent of all unemployed persons.<sup>210</sup> Unemployment rates for women may also hide substantial numbers of discouraged female workers, as well as those who are taking career breaks for child rearing and the large numbers of women in the informal economy.<sup>211</sup> Youth unemployment in Morocco is also higher than the general average: 33.7 per cent of young people in the 15-24 year age group, were unemployed in 2002.<sup>212</sup> The structure of employment and work in the informal economy are no doubt affected by the low level of education among the majority of the workforce. Less than two-thirds of workers have completed primary school, including 89 per cent of workers in rural areas, and 49 per cent in urban areas. Only 23 per cent of workers have a medium level diploma, and 10 per cent a post-graduate degree.<sup>213</sup>

### **The status of the fundamental principles and rights at work**

112. Respect for core labour standards in Morocco has increased significantly over the past ten years. Political reform and social change in all spheres were initiated in 1996, with the adoption of a new Constitution. In the world of work, all three labour market partners signed a declaration affirming their commitment to social dialogue.<sup>214</sup> Morocco took a further significant step in 2004 when it adopted two important and far reaching laws: the Family Code and the Labour Code. These two laws signal the Government's formal commitment to promoting democracy, and to modernizing society. There are still, however, significant gaps between many of these commitments and what happens in practice.

113. The Government of Morocco has taken some key steps in the field of human rights. It has established several institutions to promote fundamental human rights, and its political and social

reforms have contributed to the growth of important non-state action in this field. The government established a human rights advisory committee in 1990 that includes representation from all political parties, as well as from some NGOs. It has also reformed the Civil Liberties Code, and abolished the state broadcasting monopoly.<sup>215</sup> The state-created Commission on Equity and Reconciliation started its work of documenting serious human rights abuses in 2004. Human Rights Watch has described the Commission as a significant advance over past efforts in Morocco.<sup>216</sup> Morocco has also started to build up a body of human rights law; however, this has not been implemented evenly.<sup>217</sup>

114. The new Family Code reflects a major change in Moroccan society and eliminates several discriminatory practices. In particular, it significantly improves women's status under the law. The legal age for marriage has been raised from 15 to 18 years; family responsibilities are now shared between women and men; and it is much easier for women to seek divorce, which is now regulated by the courts.<sup>218</sup> Women need no longer renounce their rights to property and to children in order to obtain a divorce. Men may no longer divorce by renunciation, and they may also be required to pay benefits to their former wife. A number of other laws have also been amended to promote equality, including the Trade Code which now grants women the same right to operate a business as men.<sup>219</sup> Implementation of the Family Code is nonetheless a major issue and has been slow, especially in rural areas.<sup>220</sup> The Government has made efforts to train judges on the new Family Code and the legislative intent behind it - but the implementation of these training programmes has been hampered by the limited public resources available for such activities.<sup>221</sup>

115. Morocco's Labour Code of 2004 marked a major reform of the labour market. It is a comprehensive Code that makes a significant contribution toward implementing the fundamental principles and rights at work through national legislation. Moreover, the social partners signed a tripartite accord in 2003 that committed Morocco to adoption and ratification of the Freedom of Association and Protection of the Right to Organise Convention (No. 87), among other things, although this has not yet occurred.<sup>222</sup>

116. A key feature of the Labour Code is the recognition that it affords the social partners. This is especially important as a way of support-

ing the emergence of stronger and more effective trade unions. Morocco has 19 labour federations. Of these, the four main trade unions – those that are considered to be the most representative – have the right to negotiate with the Government.<sup>223</sup> In general, however, unions in Morocco have been relatively ineffective at influencing Government policies: many have weak administration, as well as a limited ability to carry out their own research and develop counterproposals to those of the Government or of employers. Many unions were for a long time associated with political parties that also suffered from significant institutional weaknesses. Unions and their functions are relatively little-known or understood by the general population; this is reflected in the fact that only six to eight per cent of workers belong to trade unions. The situation is exacerbated by the scale of the informal economy,<sup>224</sup> and competition between unions for members.<sup>225</sup> The result is that there is only limited effective pressure from trade unions to promote social and economic change. This may, however, be overcome in part by the recent establishment of tripartite institutions, including a Council on Social Dialogue.<sup>226</sup>

117. Despite the increased commitment to social dialogue, there have still only been limited efforts to promote and create a culture of negotiation.<sup>227</sup> There are continuing reports of police using excessive force to break up demonstrations.<sup>228</sup> It has also been reported that the authorities occasionally target opponents, using repressive legislation. Furthermore, although forced labour is prohibited by law there have been some accusations that the Government has not adequately enforced the prohibition, and that bonded domestic labour continues to occur.<sup>229</sup>

118. Although the new Labour Code marks a significant step in the right direction, there are inherent difficulties in the institutional weakness of the Ministry of Employment, Social Affairs, and Solidarity, which has only limited capacity to ensure compliance. Currently, there is not a sufficient budget allocation to facilitate effective labour inspection: the inspectorate lacks resources, staff, training and transport. In rural areas, in particular, the lack of transport creates problems, as inspectors have to use public transport or their own transport to carry out their work. Taken together, these problems could also have adverse effects on transparency in the work of the labour inspectorate.<sup>230</sup> In addi-

tion to these difficulties, several aspects of the Labour Code have not yet been implemented, and it remains unlikely that this will happen.<sup>231</sup>

## **Freedom of association and collective bargaining**

119. Morocco is anticipating increasing globalization, and is trying to develop its economy and labour market to be able to take advantage of the opportunities – as well as address the challenges – that this will bring.<sup>232</sup> Foreign companies and investors increasingly see a dysfunctional labour market and lack of respect for the core labour standards as an area of concern.<sup>233</sup> Morocco is therefore working to develop a culture of social dialogue, in keeping with the Declaration, and with assistance from the ILO. The new Labour Code and the push for modernization and openness in the country have brought about significant changes in the field of social dialogue and collective bargaining in Morocco. The new legislation constitutes a significant step forward,<sup>234</sup> and it is of note that the initial draft was developed through tripartite consultations. The 2004 Labour Code makes Morocco a regional leader in working towards achieving respect for the core labour standards.<sup>235</sup> Among the tripartite partners, there appears to be a real commitment to implement the new Labour Code, and a genuine effort to promote respect for the Declaration. The ILO's project in Morocco has been working to help the tripartite partners develop the necessary capacity to help ensure that this level of commitment bears fruit.

120. Data from the ILO's supervisory system supports the views of key stakeholders that Morocco continues to face challenges in complying with its obligations to respect and promote freedom of association and the right to bargain collectively.<sup>236</sup> Despite legislative amendments to ensure respect for trade unions, and to improve the machinery for labour dispute resolution, acts of anti-union discrimination still occur. Union members and workers have been arrested and detained, and dismissed from their employment for participating in strike action, leading in some cases to the lodging of complaints to the Committee on Freedom of Association (CFA).<sup>237</sup> In some cases, excessive criminal sanctions have been imposed on workers' rights activists who have participated in legitimate activities, although in

2003 Morocco agreed with the social partners to revise the laws in question.<sup>238</sup> Morocco is also taking steps to address concerns that some civil servants may not be able to exercise their right to collective bargaining, which has been part of Moroccan law since 1958.<sup>239</sup>

121. The new, comprehensive Labor Code includes many measures that will help to overcome these challenges. But implementing the Code poses a major challenge: the new provisions substantially alter the responsibilities of the employers, afford new rights to workers, and enlarge the role of labour inspectors. The Ministry of Employment, Social Affairs, and Solidarity has made significant efforts to bring the Labour Code into effect, and to promote the Declaration, but it lacks the capacity to have a significant impact in the short-term.<sup>240</sup> In view of these restrictions, the Ministry has drawn on the assistance of the ILO project in Morocco to focus its resources on specific areas, leading to the development of its phased plan for achieving compliance with the new Labour Code, starting with all enterprises with 50 employees or more.<sup>241</sup> This approach, however, is necessarily going to be limited in its effects: in addition to a large informal economy, the vast majority of registered enterprises have fewer than 50 employees.<sup>242</sup>

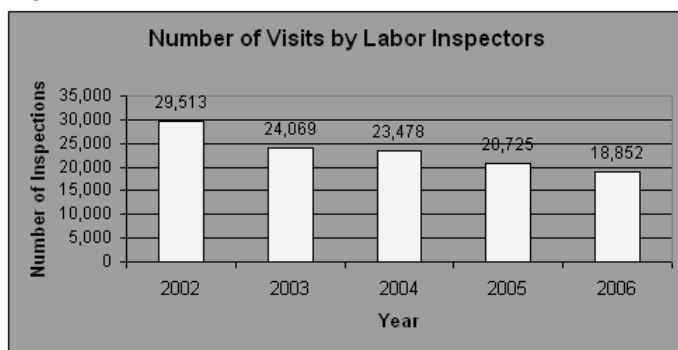
122. The 2004 Labour Code has significantly changed the role of labour inspectors. In partic-

ular, inspectors have few measures at their disposal to force them to do so.<sup>243</sup> This is exacerbated by the fact that violators generally only receive lenient penalties, which then fail to act as an effective deterrent. These problems have been compounded by the traditional approach of the labour inspectorate: inspectors have tended to react to formal complaints from trade unions or individual workers, but have only seldom initiated inspections on their own.<sup>244</sup> The inspectorate also suffers from a lack of adequate resources. This affects its ability to carry out its role in rural areas, and in particular inhibits labour inspectors' capacity to reach enterprises operating in the informal economy.<sup>245</sup> The combination of a lack of resources and the significant scale of the informal economy presents a serious obstacle to achieving full compliance with the 2004 Labour Code, and with fundamental principles and rights at work.

123. Morocco has responded strongly to the need to increase its support for labour inspection, as a means to implement the 2004 Labour Code 2004 and as a tool to achieve compliance with the Declaration. The Government has shown its commitment to addressing this issue by increasing the number of inspectors by 33 per cent from the 2004 level.<sup>246</sup> In addition, the ILO has assisted the Ministry in overhauling its methodology for labour inspection. Inspectors now approach their work in a more structured manner leading to much higher quality inspections, which are of greater benefit to the social partners, and to the Ministry in its efforts to implement the Labour Code.<sup>247</sup> One result of this, however, is that each inspection takes significantly longer to conduct. This explains the fall in the number of labour inspections conducted each year from nearly 30,000 in 2002 to fewer than 20,000 in 2006: inspectors are working smarter, as well as harder (Figure 3.3). In addition, the Government is making efforts gradually to formalize parts of the informal economy by, among other things, offering tax breaks to newly registered businesses and incentives to companies in the export sector.<sup>248</sup>

124. It appears that the attitude and actions of some employers may be slowing down progress. Many employers are not yet familiar with the concept and techniques of collective bargaining, though the ILO continues to provide support and training.<sup>249</sup> Some employers continue to resist the new Labour Code, and refuse to engage in dialogue and negotiations with trade unions,

Figure 3.3



Source: Labour Inspection Department, Ministry of Labour.  
 Note: the decreasing number of inspections is a result of the introduction of a more structured and thorough inspection regime.

ular, inspectors are now increasingly responsible for promoting social dialogue, including by ensuring that those enterprises with more than 50 employees fulfil their obligation to establish an enterprise committee. There are, however, several obstacles. Some employers are reluctant to

including the establishment of enterprise committees where required.<sup>250</sup> There is a feeling among trade union representatives that some employers are reluctant to share information, and that there is not enough transparency and communication in the employer-union relationship.<sup>251</sup>

125. The Declaration's greatest impact has been at the level of the enterprise – at least with respect to employers belonging to the largest employer organization, the General Confederation of Moroccan Employers (CGEM). While the members of CGEM are those employers most likely to respect the law, they only account for seven to eight per cent of all enterprises.<sup>252</sup> Overall, the CGEM estimates that only 15 to 18 per cent of employers obliged to establish an enterprise committee have done so, and the majority of these are large multinationals.<sup>253</sup> Thus, there has been little if any impact on the many medium and small enterprises (MSEs) with fewer than five employees, and on workers in the informal economy.<sup>254</sup>

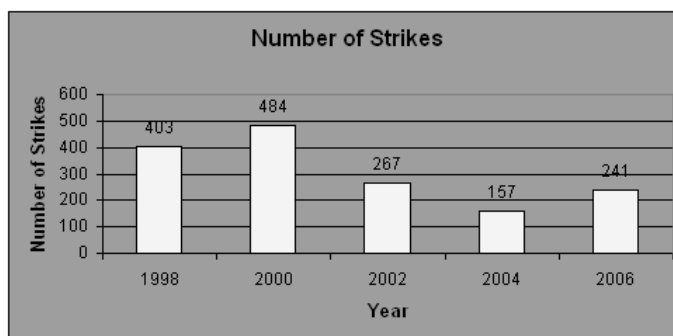
126. There is also room for improvement on the trade union side. Because, in the past, there was no culture of negotiation in the workplace, unions tended to rely on the authorities to address issues, rather than seek to deal with them by plant level dialogue. As a result, unions often resorted to litigation to resolve labour disputes.<sup>255</sup> Furthermore, many employers have considered unions to be unreliable partners as they have broken agreements – and this has made it difficult to establish effective processes for collective bargaining. Against this background, it is not surprising that some trade unions would still like to see more power given to the labour inspectors to implement and uphold the Labour Code.<sup>256</sup> While some unions report that they are now increasingly looking for participation rather than confrontation,<sup>257</sup> the absence of dialogue contributes to the frequency of strikes, as does the relative weakness of Morocco's systems of labour dispute resolution.<sup>258</sup> Despite these problems, the number of strikes fell dramatically between the year 2000, when there were 484 reported strikes, and 2004, when there only 157. There was a small rise in the number of incidents in 2006 – and this may be attributed to the fact that some workers used strike action to ensure that employers provided them with the benefits outlined in the new Labour Code (figure 3.4).<sup>259</sup>

127. A key issue that affects the role of trade unions in collective bargaining and social dialogue is the low level of unionization across the

workforce: as noted, only six to eight per cent of workers belong to trade unions. This affects the trade unions' ability to represent the workforce, as does the competition between unions for members. Together, these constraints severely limit the unions' bargaining power.

128. The conclusion of a tripartite accord in 2003 and the adoption of a new Labour Code in 2004 were major steps toward the establishment of a culture of negotiation and social dialogue, in keeping with the spirit of the Declaration. While there are many issues that need to be resolved, the climate between the tripartite partners is reportedly better than ever before.<sup>260</sup> Unions acknowledge that employers are prepared to engage in collective bargaining,<sup>261</sup> and accept the need to adopt new approaches themselves.<sup>262</sup> Although most of the trade unions remain affiliated to political parties, they are

Figure 3.4



Source: Labour Inspection Department, Ministry of Labour

gradually becoming more independent and increasingly trying to distance themselves from party politics.<sup>263</sup> For its part, the CGEM acknowledges its important role and responsibility to assist its members in respecting and complying with the 2004 Labour Code.<sup>264</sup> Moreover, the social partners now have a greater voice in the political process. Both the workers' and employers' organizations are, in principle, supposed to be consulted before laws and financial budgets are adopted – although this is still on an ad hoc basis and is not completely institutionalized.<sup>265</sup>

### **ILO action to promote freedom of association and collective bargaining**

129. In order to help Morocco address some of the difficulties it experiences in implementing

these principles of the Declaration, the ILO has been delivering technical cooperation under a project entitled Strengthening industrial relations and labour law compliance in Morocco, which began in 2002, and is due to be completed in December 2007. The project is a combination of two similar projects that were each separately supported by funding from the United States Department of Labor (USDOL), which provided a total of three million USD, in two allocations, 1.5 million USD in 2001, followed by another 1.45 million USD in 2003 awarded through a process of competitive bidding. The project's overall development objective is to improve industrial relations in Morocco. It seeks to do this by improving the ability of the labour inspectorate to ensure compliance with the Labour Code, and by strengthening the capacity of the tripartite partners to engage in labour-management cooperation, to bargain collectively, and to prevent and resolve their disputes. The project has a particular goal of building knowledge about the Labour Code among labour inspectors, employers and workers. The independent mid-term evaluation of the project reported in early 2006 that it appeared that the project's work would be sustainable in both the short-term and the long-term, given sufficient ongoing support from the tripartite partners.

130. This project was formally launched in October 2003. Some 12 training activities were carried out between the project launch and April 2004, focusing on the new Labour Code and on safety in the construction sector. A total of 749 people attended these seminars, with 200 or more attending each of the two seminars on the new Labour Code.<sup>266</sup> Since early 2005, the project has made steady progress towards attaining its objectives. During 2005, it carried out a total of 37 activities, reaching a combined 3,071 participants.<sup>267</sup> A key focus of the project has been to build networks of trainers among workers, employers and the labour inspectorate – and the members of these networks have subsequently delivered training to literally hundreds of participants across the country. The project has also facilitated specific training for key participants. In the same year, a selected twelve-member group went on a study tour to visit dispute resolution bodies in both Canada and the United States. From late 2006 to early 2007, a group of 40 emerging trade union leaders received intensive training in worker representation and collective bargaining techniques. In addition, the project has provided essential

basic equipment, including a supply of computers, printers, photocopiers and office equipment (desks, chairs, tables and files) to elements of the Ministry in key locations, where the Government also intends modernizing the facilities with its own resources.

131. One of the project's key strategies has been to develop and provide resources to networks of employers, workers and labour inspectors to equip them so that they might subsequently deliver training directly to their respective constituents. During 2005, 21 workers' trainers and 22 employers' trainers were trained on the new Labour Code under the project – and each group participated in a seminar on the training of trainers. The workers also participated in training to help them design their training modules for union members on the new Labour Code. Some 13 labour inspectors formed the initial inspector training network – and they participated in training of trainers and subject-specific training including labour inspection methodology, use of computers and inspection procedures. The project also reached out beyond the tripartite partners, conducting training on the new Labour Code for members of the Alliance for Working Women's Rights.<sup>268</sup>

132. The project's work to improve Morocco's labour administration has delivered significant results. By September 2006, the labour inspector training network had conducted 18 regional workshops on labour inspection methodology, which had been attended by a total of 278 labour inspectors, representing more than 80 per cent of the labour inspectors in the country.<sup>269</sup> Labour inspectors have also been trained on ways to carry out their new functions under the Labour Code, including the resolution of labour disputes and the establishment of enterprise committees at plant level.<sup>270</sup> The independent mid-term evaluation of the project reported in early 2006 that government representatives firmly believed that the training network of labour inspectors would be sustainable once the project had been concluded.<sup>271</sup> The project has also helped the labour inspectorate develop a bilingual (Arabic and French) Procedures Manual for labour inspection. The manual emphasizes a systematic approach to the preparation and conduct of inspection visits, as well as follow-up inspections, and promotes best practice in the application of the provisions of the 2004 Labour Code. The project assisted with the publication and distribution of some 550 copies of the Proce-

dures Manual to all labour inspectors, and to representatives of the social partners. It appears to be the first exhaustive tool-kit of its kind to be published in both Arabic and French.<sup>272</sup>

133. The ILO's support for the labour inspectorate has enabled the agency to develop strategies for the efficient use of its limited resources. Among other things, it has resulted in the development of a phased plan as a first step towards ensuring nationwide compliance with the Labour Code. In January 2007, the Ministry launched a three-year national action plan that, in the first instance, emphasizes implementation of the key provisions of the Labor Code in the 3,800 Moroccan enterprises that employ more than 50 employees. The ultimate success of this plan will, of course, depend on sustained government cooperation and the allocation of adequate budgetary resources. There have been some positive indications of the necessary commitment from the Government of Morocco: in 2005 alone it hired 40 additional labour inspectors.<sup>273</sup>

134. The ILO has supported Morocco in its efforts to develop a solid culture of negotiation and dialogue, as a means to secure nationwide respect for the core labor standards that underpin the Declaration. The ILO project has provided training to government, employers' and workers' representatives in collective bargaining and social dialogue, including extensive training on the role of workers' representatives at the workplace.<sup>274</sup> Given the absence of any tradition of tripartite cooperation, all parties regard the programme's efforts as merely the start of a process that will lead to the gradual establishment of a practice and tradition of social dialogue in Morocco.<sup>275</sup>

135. The project in Morocco has been especially significant for the country's trade unions. Given the overall weakness of the trade union movement, the ILO's direct support was essential for the establishment of a training programme for its members, and to help trade unions towards being able to play an active and positive role in developing plant level dialogue.<sup>276</sup> The establishment of the workers' training network appears to have been a distinct success. After the members of the network – representing three different unions – completed their training, they delivered a total of 23 workshops by the end of 2006, training a total of 536 worker delegates and shop stewards on the key provisions of the 2004 Labour Code.

136. The project encountered difficulties in achieving its goals to develop and facilitate the employers' training network.<sup>277</sup> During late 2005 and early 2006 the CTA reported a distinct drop-off in participation by members of the CGEM, which threatened to delay the delivery of training on the new Labour Code as planned to employers. The project CTA initially responded by developing experimental sessions to train small enterprises with members of the Federation of Moroccan Chamber of Commerce (FCMCIS), who had been more enthusiastic about participating in the training of members of the employers' training network. The project provided support to the Federation and its members by trying to organize training for small businesses in four locations; however, it was eventually forced to abandon even this fall-back approach, due to the lack of interest from the Federation - and from the trainers themselves.<sup>278</sup>

137. The Government and the trade unions in particular have worked to raise awareness about collective bargaining, the new Labour Code, and the Declaration, in particular through training sessions and general information campaigns.<sup>279</sup> These efforts to increase individual workers' knowledge of their rights are essential to achieving greater compliance with the Declaration. Although literacy levels in Morocco have risen in recent years - to 52 per cent in 2006 -,<sup>280</sup> the extent of illiteracy among the working population remains an obstacle to the effective implementation of the law, and has detracted from awareness-raising efforts around the Labour Code, the Family Code and other legislation.<sup>281</sup> Nevertheless, anecdotal evidence suggests that those workers who are trade union members have a greater understanding of the Declaration and of their rights than do workers in the informal economy. It would appear that this is a result of the training and awareness-raising efforts of unions.<sup>282</sup> However, there are also indications that the majority of people in Morocco are unfamiliar with their rights under the Declaration.<sup>283</sup> Likewise, and despite the efforts of government and the trade unions, there appears to be only a limited knowledge among the population of the new Labour Code. The Government is planning information campaigns - and the trade unions continue to conduct information sessions for their members.<sup>284</sup>

## **Trafficking and forced labour**

138. Morocco has for many years been committed to respecting the principles of the Declaration concerning trafficking and forced labour. It ratified the Forced Labour Convention (No. 29) in 1957, and the Abolition of Forced Labour Convention (No. 105) in 1966. Nevertheless, Morocco has experienced some difficulty in fulfilling its obligations under these instruments. Some laws still permit forms of forced labor that are incompatible with Conventions Nos. 29 and 105. In 2000, the United Nations reported that the prostitution of boys of rural origin was a problem in Morocco's cities.<sup>285</sup> There are still reports of bonded labour, especially in the areas of domestic servitude and prostitution.<sup>286</sup> Given that it is so close to Spain, Morocco is, in practice, both a transit and destination country for the illegal movement of people, including human trafficking. It has, however, strengthened its commitment to fulfill its obligations in these areas over the past ten years.<sup>287</sup> Among other things, it has amended some of its laws concerning the punishment of convicted prisoners, and committed to a review of other laws that still permit certain forms of forced labour. Morocco has also adopted new laws to address the illegal movement of people and human trafficking, and since 2003 the United States has classified the country as fully compliant with minimum standards to combat trafficking.

139. Morocco has experienced some difficulty in implementing its obligations under both Conventions Nos. 29 and 105. Certain laws provide for forms of forced or compulsory labour that are incompatible with Convention No. 29. In addition, it seems that workers and others may be imprisoned and compelled to perform labour in ways that could amount to punishment for their involvement in strikes and other political activities - which is contrary to Convention No. 105. In respect of Convention No. 29, the CEACR has expressed concern over three issues in particular: first, the practice of prisoners being made available to work for private individuals; second, legislation that continues to provide for the requisitioning of persons for labour; and finally, legal provisions that restrain some public servants from being able to freely resign from their employment. The Government repealed the Dahir of June 26, 1930, under which prisoners could be made to work for private enterprises. But it appears that the law still provides greater scope than is desirable for administrative arrangements

to determine the working conditions of prisoners who work for the private sector.<sup>288</sup> The Government has also actively discussed the repeal of old laws providing for persons to be requisitioned for labour other than in cases of national emergency.<sup>289</sup> In addition, the Government had agreed to look into the possibility of repealing section 77 of the Decree that limits officials' ability to resign from their employment in certain circumstances,<sup>290</sup> so as to bring it into conformity with Convention No. 29.

140. The new Labour Code provides sanctions for the illegal exaction of forced or compulsory labour. The Government has also amended the Penal Code to increase the punishment for people responsible for the exploitation of children under the age of 15 years. The CEACR has nevertheless encouraged Morocco to take even greater steps toward providing really adequate and effective sanctions for those responsible for the illegal exaction of forced labour from any person, as is required under article 25 of Convention No. 29.<sup>291</sup> The most common forms of forced labour in practice appear to be domestic servitude and forced prostitution.<sup>292</sup> Morocco is making efforts to address these problems. With assistance from the ILO's International Programme on the Elimination of Child Labour (IPEC),<sup>293</sup> Morocco is targeting child domestic servitude.<sup>294</sup>

141. As mentioned above, the illegal movement of people continues to be a serious issue for Morocco, which is a transit and destination country - both for illegal migrants and for people who have been trafficked from sub-Saharan Africa and Asia.<sup>295</sup> It is also a source country for people trafficked to Europe, especially southern Europe.<sup>296</sup> Until 2002, the United States Department of State categorized Morocco as a country that did not take sufficient steps to combat trafficking. The Government's efforts have however improved the situation, so that since 2003 Morocco has been classified as a country that complies fully with the minimum standards for combating trafficking. Its efforts have been a response to pressure from the EU and from Spain - which receive people who have been trafficked through Morocco - and to the realization that Morocco is a destination country for migrants from within Africa. The terrorist attacks in 2003 also increased the Government's awareness of the need to control the entry and exit of people to and from its territory.

142. The key development was the adoption of Morocco's first explicit law - in 2003 - aimed at

controlling the illegal movement of people into or out of the country.<sup>297</sup> It prescribes penalties for illegal entry and exit from Moroccan territory, and penalties for both private citizens and state officials who facilitate illegal movement of people.<sup>298</sup> This law was accompanied by further administrative action, and a new range of targeted policy measures. The Government has also conducted awareness campaigns<sup>299</sup> and built strong relationships with NGOs in this field. In 2001, very few NGOs were involved in providing support to victims of trafficking, and none of these were supported by the Government. By 2005 the United States Department of State reported that the government relied heavily on NGOs to assist domestic victims of trafficking.<sup>300</sup> Morocco's policy is based on a two-tier approach: repression of trafficking and promotion of legal migration.

143. Despite Morocco's efforts, much work remains to be done. In particular, there is evidence to suggest that the number of Moroccan nationals being trafficked to Europe is increasing.<sup>301</sup> Courts continue to hand down lenient penalties to convicted traffickers.<sup>302</sup> After an initial surge in raids and crackdown on illegal migrants - an effort for which the Government was criticized by a number of human rights organizations - it appears that the state lacks the ability to apply and uphold its new legislation consistently. This is a reflection of weak institutional capacity in this area.

### **Equality and non-discrimination**

144. Morocco's commitment to promoting equality and overcoming discrimination is evident from the international obligations it has accepted in this field. Morocco ratified the Equal Remuneration Convention, 1951 (No. 100) in 1979, and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1963. Morocco also ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2000.<sup>303</sup> The Government has clearly demonstrated its commitment to implement the provisions of Conventions Nos. 100 and 111. It has reformed key legislation - including implementing the 2004 Labour Code - and it continues to work cooperatively with civil society, in particular with women's organizations.<sup>304</sup> In 2006 the Government adopted a national strategy for gender equality, intended to integrate gender into all development policies and programmes. The drive towards ensuring equality

and the elimination of discrimination at the ministerial and managerial level is not, however, replicated at the level of the enterprise and the household, and many obstacles remain.<sup>305</sup> An example of this is the disparity between legislative protection against discrimination, and the entrenched nature of discrimination in practice: in Moroccan society, women are particularly at risk of social exclusion.<sup>306</sup> Thus in 2005 the CEACR emphasized the need for 'a whole set of practical measures', in addition to legislation.<sup>307</sup> While the CEACR has focused in particular on discrimination on the basis of gender, it has more recently also considered discrimination on the basis of ethnicity, particularly against those of Berber (Amazigh) origin.<sup>308</sup>

145. Discrimination on the basis of gender in the workplace occurs in both the private and public sector. Women employed in the textile and clothing industry have suffered discrimination at work in the form of non-payment of minimum wages, job precariousness, long hours of work, and poor working conditions.<sup>309</sup> As many of the workers in this sector are young and illiterate, they face a higher risk of discrimination because of their relative inability to assert their rights. In the public sector, women workers have been concentrated in certain types of jobs, and very few women have been engaged in positions of responsibility.<sup>310</sup> This has contributed to discrimination against women in terms both wages and leave benefits.<sup>311</sup> There is still a significant salary differential between male and female workers.<sup>312</sup> Discrimination against women in the labour market usually has more significant effects in rural areas than in urban areas.

146. The ILO has encouraged Morocco to take steps to address the social mindset in which certain types of jobs are seen to be appropriate - or reserved - for women, so as to minimize the risk of these jobs being undervalued for the purposes of wage rate determination.<sup>313</sup> It also noted that these issues had been further complicated by the limited coverage of laws providing for equal pay, which were confined to cases in which men and women had equal working conditions, occupational qualifications, and output.<sup>314</sup> However, there has been progress in promoting gender equality among some groups of professionals. In 2004 the CEACR pointed out that women's access to public sector employment had improved, due in part to the revision of the Election Code of 2002 and a quota system.<sup>315</sup> Moreover, in 2007 the CEACR reported a trend showing an increasing number of women

working in the public sector, although it considered that Morocco might be able to make even more progress.<sup>316</sup> But elsewhere the situation for many women has not improved: women working in the informal economy are working beyond the scope of protective legislation. The CEACR has encouraged Morocco to tackle illiteracy among women, seeing it as a major obstacle to equality in practice.<sup>317</sup>

147. Morocco has also made changes to legislation that previously discriminated against women, including in commercial and criminal law. The new Family Code ensures equal rights and responsibilities for men and women within the family, and removes several restrictions in the Moudawana (personal status code) that had previously placed women at a disadvantage.<sup>318</sup> The Government has also amended the Commercial Code, as well as the Decree on obligations and contract, so that women may now hire out their services and trade without the need for their husbands' consent.<sup>319</sup> The 2004 Labour Code provides expressly for a right to equal pay for work of equal value,<sup>320</sup> and assures women the right to conclude a contract and the right, whether married or not, to join an occupational organization – as well as to participate in its administration and management.<sup>321</sup> The Labour Code also specifically provides that sexual harassment by an employer is serious misconduct within the employment relationship.<sup>322</sup> The Government amended the Penal Code in 2003 to include penalties for all forms of discrimination, and to ensure better protection for women against sexual harassment. Nevertheless, anecdotal evidence suggests that various forms of harassment (sexual and otherwise) remain common, and that few violators are prosecuted.<sup>323</sup>

148. The Government took an important step in October 2004 when it opened a Centre for Information, Documentation and Studies on Women. Its purpose is to collect demographical and statistical information on the status of women in Morocco. In addition, the Government embarked on a national strategy for equity and equality between the sexes in 2006, which envisages progress through the gender mainstreaming of development policies and programmes. This national strategy identifies key issues that need to be addressed in order to overcome discrimination in employment. Its objectives include equal access for men and women to the labour market and it conducts activities to combat stereotypes and ensure the enforcement of non-discrimination provisions.<sup>324</sup> Furthermore,

Morocco has taken steps to promote practical policies to achieve gender equality, including by increasing women's access to microfinance, and by building more schools. However, all this is still considered inadequate to address the unfavorable institutional framework which affects women negatively.<sup>325</sup> Despite improvements made, significant differences remain. In 2004, female illiteracy was 60 per cent compared to 35 per cent for men, with large differences between rural and urban areas – although gradually more and more girls are enrolling in school.<sup>326</sup>

149. Although it has some guidelines on the issue, Morocco has no laws to assist people with disabilities. While the Ministry of Employment, Social Affairs, and Solidarity attempts to integrate the disabled into society, in practice this is left largely to private charities.<sup>327</sup> There also seems to be a low awareness of discrimination against people with HIV/AIDS.

150. Morocco has implemented several important programmes designed to address existing inequalities. The ILO Programme on Promoting the Declaration, with funding from the USDOL, has recently initiated a pilot project to map gender-based discrimination in medium-sized formal sector enterprises. Focusing on the promotion of women's rights in the workplace, the project's goal is to develop special training and awareness tools to effectively target discrimination in the workplace. The ILO has also assisted Morocco in initiating a programme to promote decent work in the textile and clothing industries, which includes an action plan aiming to eliminate all forms of discrimination between men and women. In addition, labour inspectors trained as part of the ILO's project on freedom of association and collective bargaining have begun to work with employers to eliminate discrimination in payment of wages.

151. While the direction of the reforms is encouraging, the pace at which they are being implemented is a cause for concern.<sup>328</sup> The reforms are hampered by an absence of resources; for example, magistrates are not receiving adequate training on the meaning and intention of the new Family Code.<sup>329</sup> The social partners could also do more to support the Government's efforts to achieve equality and to end discrimination at the workplace, in particular by reforming their own practices. It is calculated that women make up 30 per cent of trade union members overall,<sup>330</sup> although in sectors where there are more women working, such as textiles,

more women join trade unions. Neither are women equally represented at the senior management level of trade unions,<sup>331</sup> or employers' organizations. The CGEM has had 16 per cent females among its senior managers for a decade.<sup>332</sup> The FCMCIS has an estimated 40 per cent of senior management positions occupied by women,<sup>333</sup> but it is making no efforts to further promote equality. The ILO's project in Morocco has made specific efforts to ensure adequate female participation in its training programmes. Despite these efforts, and the target rate being set relatively low, at 30 per cent, the participation rate of females has still fallen short.<sup>334</sup>

## **Conclusion**

152. Morocco shows that political will and commitment, when directed by an internationally accepted framework like the Declaration, can help achieve progress in promoting fundamental principles and rights at work. The legislative reforms in Morocco have introduced laws that give the country the potential to be a regional leader in the field of labour standards - and they are also bringing the country significantly closer to compliance with the core labour standards that underpin the Declaration. The combination of political will and legislative reforms has created the possibility for social change - in part supported by the King's development programmes - which have led to greater legal rights for the individual citizen, the social partners, and the press alike.<sup>335</sup>

153. The Declaration has provided an opportunity to secure the formal commitment of the tripartite partners to achieve necessary change. It has also played a role in shaping the Moroccan Government's response to internal social pressures, and to the increased international focus on labour standards and the possibility of them being directly linked with international trade. Government, business and trade unions have all been motivated to promote respect for the core labour standards, although clearly in some cases the tripartite partners have not carried through fully with their commitments.<sup>336</sup> ILO technical cooperation has helped the tripartite partners develop the capacity to engage in sustainable social dialogue, and played an important role in improving the Moroccan Government's capacity for labour administration and inspection under the new Labour Code. If the short-term gains are

matched by medium to long-term commitment of resources by the Government, many of these gains are likely to be sustainable in the future.<sup>337</sup> The ILO's work in Morocco has also helped generate greater awareness of fundamental principles and rights at work, thereby contributing to nationwide compliance with the core labour standards; indeed, raising each individual worker's awareness of his or her rights helps ensure that change is sustainable, and that these freedoms cannot easily be taken away.

154. Although Morocco has made important progress, including with ILO assistance, it continues to face major challenges. The implementation of far-reaching and comprehensive labour law reform calls for significant resources, but more importantly, it takes time, commitment and capacity. Technical cooperation from the ILO and other specialist institutions can facilitate - and perhaps accelerate - the process. It can help to ensure, but it cannot guarantee, that the results are sustainable. The process will inevitably be a long one. The unions and employers in Morocco each have an important part to play going forward, to build on the opportunities and responsibilities inherent in the 2004 Labour Code, and to consolidate the achievements brought about with ILO assistance. The Government of Morocco must also overcome major hurdles. Consolidating and enhancing its capacity in labour administration will require continuing political commitment - and, of course, resources. Generally, Morocco's major continuing challenge is to make its political and structural commitments effective in practice and effective for the majority of its population. It has already shown its potential to reap the benefits of greater individual and collective rights and freedoms, in the form of higher economic growth and increased development. With further efforts and cooperation with the international donor community, Morocco has significant potential to make even greater progress in the implementation of the fundamental principles and rights at work.



## Viet Nam

Independent in 1946 (from France), One-party Communist State  
84 million inhabitants  
Has ratified 5 of the 8 core Conventions under the Declaration  
Joined the WTO in 2007  
GDP (2005) US\$ 52.8 billion  
Export (2006) US\$ 32.4 billion

155. The key role that the fundamental principles and rights promoted by the Declaration may play is particularly evident in the case of Viet Nam. With its economy in transition, the Government and social partners are striving to reform their institutions to adapt to rapid economic change, and to achieve global competitiveness. Over the past 20 years, Viet Nam's economy has undergone a massive transformation from being state-controlled and planned to increasingly liberalized and market-driven. This shift has brought with it the need to develop a new labour and industrial relations framework to protect workers and to manage emerging industrial conflict. The ILO has provided technical assistance to help guide Vietnamese efforts to establish a legal and industrial relations system that is consonant with the principles of the Declaration. It has also contributed considerably towards strengthening social dialogue and the capacity of the social partners. Viet Nam, however, continues to face a variety of socio-economic challenges, including high levels of poverty, a growing rural-urban divide, a large informal economy and a rising number of industrial disputes. The labour and industrial relations systems in Viet Nam remain very much a work in progress.

156. Viet Nam joined the ILO in 1950 but resigned from the organization for two extended periods of time.<sup>338</sup> Since rejoining in 1992, Viet Nam has ratified five of the eight core Conventions related to the Declaration: of the four countries covered by this report, it is the one that has signed the fewest of the core Conventions. Over recent years, however, the Vietnamese Government has attempted to move towards compliance with the Declaration. Moreover it has indicated a commitment to work towards the ratification of the two Conventions related to the principles of freedom of association and the right to collective bargaining (Conventions Nos. 87 and 98).

157. Viet Nam achieved independence from France in 1946. The early years of independence were characterized by almost constant

warfare: first with the French and then, with a growing Communist influence in the north of the country, with the United States and its allies, including Australia. In 1975, the country was united under the control of the Vietnamese Communist Party. Since the introduction of the policy of Doi Moi ('Renovation') in 1986, the Vietnamese leadership has sought to gradually liberalize the economy. The policy of 'Renovation' has resulted in the abolition of central economic planning, the restructuring of state-owned enterprises and the development of the domestic private sector – whilst also encouraging foreign investment and seeking to integrate the Vietnamese economy into world markets.

158. The Vietnamese leadership has set out to regulate the increasingly liberalized labour market and to manage the tensions arising out of the transition process by promulgating new labour laws and regulations – as well as by encouraging the social partners to reform themselves. But economic liberalization has not been accompanied by political liberalization. Consequently, Viet Nam still has much to do in order to guarantee its people their freedom of association and the right to collective bargaining.

### The economy

159. Viet Nam has achieved rapid economic growth since the mid-1980s. GDP has grown at a rate of seven to eight per cent per year since 2002. GDP per capita almost doubled in the seven-year period 1999 – 2006, from US\$372 to US\$726.<sup>339</sup> The economy has undergone significant restructuring: the proportion of agricultural input to GDP has declined and there has been a corresponding increase in the industrial sector's contribution to GDP. The primary sector's contribution to GDP fell from 26 per cent in 1997 to 20 per cent in 2005. Actual output in the agricultural sector is still on the rise, with agricultural production doubling between 1995 and 2005 and Viet Nam now being the world's second largest ex-

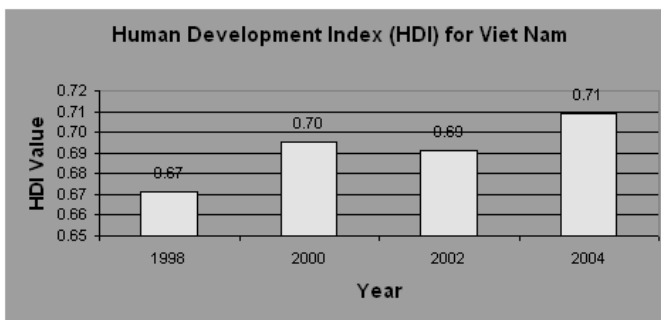
porter of rice.<sup>340</sup> The industrial sector's contribution to GDP increased from 28.8 percent in 1997 to 40.1 percent in 2005.<sup>341</sup> In the same period, the contribution of the service sector to GDP declined from 43 per cent to 38 per cent.

160. Over the past two decades, Viet Nam has sought to encourage foreign direct investment (FDI) and to gain access to regional and world markets. It joined the Association of Southeast Asian Nations (ASEAN) in 1995 and the World Trade Organization (WTO) in 2007. In 2001, Viet Nam and the United States signed a bilateral

Vietnamese exports, followed by China and Australia with nine and eight per cent, respectively. China is also the largest provider of imports to Viet Nam, at 16 per cent of the US\$33 billion worth of imports in 2005, followed by Singapore and the Republic of Korea with 13 and 11 per cent, respectively.<sup>345</sup>

161. Robust economic growth and targeted efforts by the Government have helped alleviate poverty. While recent estimates are difficult to obtain, ADB data suggest that poverty levels decreased from 38 per cent of the population in 1998 to 29 per cent in 2002 and to 20 per cent in 2004.<sup>346</sup> Poverty remains concentrated in rural areas, however, with an estimated 36 per cent of the rural population living below the national poverty line in 2002.<sup>347</sup> The Government has made concerted efforts to address poverty, in particular through its 2002 Comprehensive Poverty Reduction and Growth Strategy (CPRGS). The CPRGS includes efforts to develop agriculture, increase rural income and reduce the development gap between regions, paying particular attention to the living conditions of ethnic minority peoples.<sup>348</sup> Progress in addressing poverty in Viet Nam is evident in the country's increased Human Development Index (HDI) value: it rose from 0.67 in 1998 to 0.71 in 2006 (see figure 4.1).

Figure 4.1



Source: UNDP: Human Development Reports, 2000, 2002, 2004, 2006

trade agreement, under which the United States accorded normal trade relations status to Viet Nam on a conditional basis in return for Viet Nam agreeing to implement a range of market liberalization measures. Viet Nam has since expressed interest in reaching a free trade agreement (FTA) with the United States. To this end, regular talks are being held between the two governments, although formal negotiations have not yet commenced.<sup>342</sup> Viet Nam will commence its first round of FTA negotiations with Japan and the Republic of Korea in 2008, and is also preparing for trade negotiations with Australia and New Zealand in the near future. The liberalization of Viet Nam's economy has attracted significant numbers of foreign investors, with FDI commitments rising from US\$4.1 billion in 1998 to US\$10.2 billion in 2006.<sup>343</sup> Viet Nam's main exports are crude oil (accounting for 21 per cent of total exports), followed by textiles and garments (15 per cent) and footwear and fisheries products (nine per cent each).<sup>344</sup> The United States is the biggest market for Vietnamese exports, holding an 18 per cent share of total Vietnamese exports (US\$32 billion per year in 2005). Japan is the second largest market, accounting for 14 per cent of

### The labour market

162. Viet Nam has an estimated workforce of 44 million people;<sup>349</sup> in 2005, the labour force participation rate was estimated to be 75.2 per cent.<sup>350</sup> Economic liberalization has transformed the structure and dynamics of the Vietnamese labour market. The reform of state-owned enterprises, combined with the rapid growth in both private and foreign domestic investment, has led to a significant shift in employment from the state sector to the private domestic and foreign-invested sectors. Strong growth in the private sector has also contributed to a large increase in industrial employment - from nine per cent in 1999 to 17 per cent in 2004. During the same period, agricultural employment declined from 65 per cent of total employment to 58 per cent. The service sector has experienced a slight increase and now accounts for 25 per cent of formal employment.<sup>351</sup>

163. Labour productivity in Viet Nam is low compared with neighbouring countries. This is exac-

erbated by a shortage of skilled labour.<sup>352</sup> While the country enjoys a very high literacy rate, at more than 90 per cent, large numbers of students leave school prematurely.<sup>353</sup> The entry of school leavers into the labour market, together with high levels of rural to urban migration, contributes to an oversupply of low-skilled labour. Despite strong economic growth, labour market demand has not increased at the same rate as supply.<sup>354</sup> This has led to a significant expansion of informal employment. The informal economy is now estimated to include approximately ten million farm households, 1.7 million non-farm micro-enterprises and an unknown percentage of small- and medium-sized enterprises.<sup>355</sup>

164. There is a widespread perception in Viet Nam that the number of industrial disputes has increased considerably during the transition era. Between 1995 and 2005, there were over 900 officially reported strikes, not one of which was conducted in accordance with the procedure outlined in the Labour Code.<sup>356</sup> There has also been a sharp increase in the number of industrial disputes since early 2006. Two-thirds of these strikes have occurred in foreign-invested enterprises, even though these represent only three per cent of all enterprises and 15 per cent of all enterprise employees.<sup>357</sup> These disputes present a considerable challenge to the Vietnamese industrial relation system and to the social partners. They also constitute a major concern for the Government, as they have the capacity to endanger Vietnam's social and economic stability.

### **The status of the fundamental principles and rights at work**

165. Economic reforms have been accompanied by a strong commitment on the part of both the Government and social partners to modernize and improve the labour law framework, as well as to secure greater compliance with the law. In 1994, Vietnam introduced its first comprehensive Labour Code covering: employment contracts, collective agreements, trade unions, minimum wages, overtime payments, and minimum standards of occupational safety and health. The Code was amended in 2003 and now also contains dispute resolution procedures based on mediation and the establishment of independent labour arbitration courts.<sup>358</sup> It has made an important contribution towards implementing fundamental principles and rights at work. Viet Nam has recently implemented a

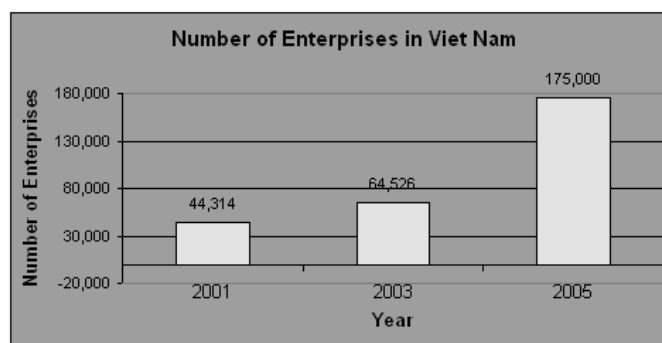
new law on gender equality, and reinforced its laws prohibiting forced labour and the trafficking of women. It has also provided extra police support and information campaigns to enforce these laws. Viet Nam's ongoing process of revising the Labour Code led it in 2007 to ratify the ILO Forced Labour Convention 1930 (No. 29).

166. Viet Nam has now ratified five of the eight core Conventions related to the Declaration. The Government has indicated its intention to work, in consultation with the social partners, towards ratification of both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98).<sup>359</sup>

### **Freedom of association and collective bargaining**

167. As mentioned above, Viet Nam has not yet ratified Conventions Nos. 87 and 98 - but there were no complaints to the Committee on Freedom of Association during the period covered

**Figure 4.2**



Source: General Statistics Office, Viet Nam.

by this report. Consequently, ILO data on Viet Nam's compliance with the principles of freedom of association and the right to collective bargaining are limited. An analysis of Viet Nam's Labour Code and its Law on Trade Unions shows that the new legal framework goes some way toward implementing these principles. Nonetheless, Vietnamese law and practice both continue to pose major obstacles to effective implementation of the freedom of association and the right to collective bargaining. One major difficulty with the legal frame-

work is that it requires all trade unions to affiliate to the Vietnam General Confederation of Labour (VGCL); another is that it places excessive restrictions on the right to strike. These difficulties are compounded, in practice, by the institutional weakness of the social partners and the associated lack of institutionalised social dialogue, as well as by an inadequate enforcement of the labour laws.

168. Viet Nam's Labour Code contains key provisions that have the potential to facilitate recognition of freedom of association and the right to collective bargaining. Workers have the right to form and join trade unions,<sup>360</sup> and enjoy a right to strike in accordance with the law.<sup>361</sup> Management is obliged to cooperate with unions within an enterprise,<sup>362</sup> and to negotiate with a union that wishes to bargain collectively.<sup>363</sup> The Code also prohibits acts that might obstruct the establishment or activities of a trade union.<sup>364</sup> In respect of collective bargaining, the Labour Code obliges both employers and workers to negotiate with each other to try and reach an agreement - once either party indicates a desire to commence bargaining.<sup>365</sup>

169. Workers in Viet Nam, however, are not entitled to form or join a trade union that is not affiliated to the officially sanctioned trade union confederation, the VGCL. The VGCL in turn remains subject to the leadership of the Communist Party.<sup>366</sup> The Government has taken some - albeit limited - steps in recent years towards greater freedom of association, including by amending the Labour Code so as to lift restrictions on the ability of smaller unions affiliated to the VGCL to affiliate internationally.<sup>367</sup> Despite such measures, significant restrictions remain.

170. A second area of concern is the right to strike. The 1994 Labour Code introduced mechanisms for the resolution of collective disputes through conciliation and arbitration, including the right to strike as a last resort. But it is difficult to exercise that right. Strikes are banned in enterprises that serve the public - or in enterprises the Government considers to be important to the national economy and defence.<sup>368</sup> This affects 54 occupational sectors, including electricity production, post and telecommunications, railway, maritime and air transportation, banking, public works, and the oil and gas industry. The Prime Minister may suspend a strike if it is considered detrimental to the national economy, or to public safety.<sup>369</sup> Strikes are also prohibited when they do not arise from a collective labour dis-

pute, or when they go beyond the ambit of labour relations or the domain of the business.<sup>370</sup>

171. The pattern of strike action in Viet Nam suggests the need for improvements to its system of labour disputes settlement. The law at present mandates a lengthy and bureaucratic procedure for initiating strike action,<sup>371</sup> which may involve more than one arbitration body as well as the courts.<sup>372</sup> These procedures are routinely ignored in practice. To date, the Government has dealt with the many illegal strikes peacefully, and there is no evidence that it has arrested or persecuted those who have instigated or participated in strikes.<sup>373</sup> The strikes illustrate the extent to which the Government has been unable to ensure compliance with the labour laws: according to the VGCL, the vast majority of the strikes are a response to labour law violations.<sup>374</sup> Frequent illegal strikes also suggest a weakness of social dialogue and dispute resolution at the enterprise level.<sup>375</sup>

172. The Government revised the Labour Code in 2006 to make it easier for workers to engage in legally-protected industrial action. The amendments clarified the procedures for holding strikes lawfully, removed the requirement that VGCL-affiliated trade unions represent workers in negotiations to resolve disputes, and shortened the time for resolving disputes.<sup>376</sup> The ILO Declaration Project supported this amendment process by sponsoring consultation meetings with stakeholders and providing expert advisers. Although the final version of the revisions as passed by the National Assembly only included some of the ILO recommendations, a number of important outcomes were achieved - including the relinquishment of the requirement that only workers in unionised enterprises might strike legally.

173. Collective bargaining in Viet Nam remains rare, despite a supportive legal framework. When collective agreements are reached, they tend to be ineffective. Employers and workers often sign 'standard' collective agreements that simply set out the rights already stipulated in the Labour Code. These contracts are not reached through a process of negotiation, and they usually exclude other key issues such as wages, hours and working conditions.

174. Both workers and employers in Vietnam have their work cut out to adapt to the new roles required of them in a market-based economy. The only legal trade union confederation,

the VGCL, was originally established to operate within the context of a centrally-planned socialist economy. The Government has encouraged the VGCL to adopt greater organizational autonomy and a greater representational role, and it has taken significant steps in this regard, in particular by placing more emphasis on its role as representative of workers' rights. The Confederation, however, continues, to face enormous challenges. With the decline in the number of state-owned enterprises (SOEs) and the rapid increase in the number of private enterprises, the VGCL has struggled to maintain its membership base and to promote union membership among private sector workers. Increased levels of industrial action have placed further pressure on the VGCL to adjust to the new environment and effectively fulfil its role as the workers' representative in social dialogue.

175. A key weakness of the VGCL is the lack of trained union leaders in the private sector. As the number of private enterprises grows, so does the need for training and support to enable workers to become enterprise-level trade union leaders. Their absence has contributed both to ineffective union representation and, on occasion, to union leaders being appointed from management – leading, in some cases, to distrust among workers. Indeed, the workers have tended to view the union as part of management, rather than as their representative, and have resorted to industrial action.<sup>377</sup> The senior levels of the VGCL openly acknowledge both its institutional shortcomings and the need to strengthen its capacity.<sup>378</sup>

176. The two officially recognized employers' associations, the Viet Nam Chamber of Commerce and Industry (VCCI) and the Viet Nam Cooperative Alliance (VCA), also face considerable challenges in adapting to the new roles required of them in a market economy.<sup>379</sup> Both have been accustomed to acting as trade and business promotion organizations, traditionally having little to do with industrial relations. Both the VCCI and the VCA are, however, aware of the challenges they face and determined to overcome them. This commitment is demonstrated, for example, by the fact that the VCCI is currently in the process of establishing a department devoted to industrial relations, as a service to its members.<sup>380</sup>

177. Widespread failure to comply with labour laws creates another major obstacle to the realization of freedom of association and the right

to collective bargaining in Viet Nam. It also illustrates the institutional weakness of the Ministry of Labour, Invalids and Social Affairs (MOLISA). Particular problems arise in Export Processing Zones (EPZs): although the Labour Code applies in these areas, it is reported that employers deliberately engage workers on short-term contracts so as to avoid the legal requirement to have a unionised workforce.<sup>381</sup> The Government conceded in 2006 that the penalties imposed for infringements of labour laws were often not harsh enough to deter further violations.<sup>382</sup> The impact of the problem of inadequate law enforcement is more pronounced because of the relative weakness of trade unions in Viet Nam. Even where there are unions, they represent a relatively small proportion of workers. While union membership is reported to be widespread in SOEs and the public sector,<sup>383</sup> it is much lower in foreign and domestic-owned private companies.<sup>384</sup>

178. A recent important step towards the realization of the Declaration's principles has been the Government's formal recognition of the importance of tripartite negotiations.<sup>385</sup> In 2006, the Prime Minister issued a Decree on Tripartite Consultation, which specified, among other things, that there should be national tripartite consultations before the drafting of any law that might have an impact on workers and workplaces. At the national level the Government has established a tripartite commission responsible for advising the Prime Minister on approaches to take in developing industrial relations, as well as on the appropriate mechanisms, measures and policies in this area. The commission is also responsible for coordinating the actions of the tripartite partners towards effective industrial relations and developing provincial tripartite mechanisms. The Government has also recommended that tripartite consultation be carried out in all provinces.

### **ILO action to improve industrial relations**

179. The ILO provided technical assistance to Viet Nam to improve its capacity to implement the principles of the Declaration, under a three-year project entitled: Promoting sound industrial relations in the workplace and strengthening the capacity of industrial relations actors in Viet Nam. The project received an initial grant of US\$1,667,494 from the US Department of Labor (USDOL), as part of an umbrella cooperation agreement between USDOL and the ILO. This

was later supplemented with a further US\$106,878, bringing the total support from USDOL to US\$1,774,372. After initial work in 2002, the project was officially launched in January 2003 and concluded in June 2006. The overall development objective was to improve workplace cooperation between management and labour in a group of target enterprises. It sought to achieve this by: increasing government capacity to resolve labour disputes; developing the capacity of employers' and workers' organizations to represent their members' interests; and helping Viet Nam to develop the essential elements of an industrial relations policy framework. The project also worked to increase public awareness of the role and the means of achieving good industrial relations, including through better understanding and implementation of the Labour Code.

180 A key goal of the ILO's project in Viet Nam was to assist the social partners in improving their understanding of the separate roles that government, employers and workers play in a market economy, and in building their capacity to fulfil those roles. In close consultation with the Vietnamese Ministry of Labour, Invalids and Social Affairs (MOLISA), the VCCI, the VCA and the VGCL, the project focused on preventing and resolving disputes, effective collective bargaining, and workplace cooperation. The project also carried out a range of activities to promote general awareness of labour law and industrial relations. The Final Evaluation of the project found that it had met or exceeded its objectives, represented high value for donor investment, and made a lasting impact on industrial relations in Viet Nam.<sup>386</sup> Among other things, the Final Evaluation concluded that the project had strengthened the institutional capacity of all three social partners and made important contributions to policy development, including revisions to the Labour Code on strikes.<sup>387</sup>

181. The project successfully helped to establish an operational national infrastructure for industrial relations in Viet Nam, as well as a National Project Steering Committee (NPSC) –that also guided it in its work - with active representation from MOLISA, the VGCL, the VCCI and the VCA. At the provincial level, the project set up and assisted Provincial Project Task Forces (PPTF) in the seven most industrial of Vietnam's 59 provinces.<sup>388</sup> PPTF participants received effective, high-quality training from the ILO.<sup>389</sup> Each PPTF was responsible for working directly with 10 target enterprises and provided training on the Labour Code, me-

diation, problem solving, labour-management cooperation and collective bargaining. To achieve this objective, the project trained a total of 50 trainers in the seven provinces on core industrial relations skills, so that local personnel would be able to continue transferring essential skills to union officials and enterprise managers.

182. The PPTFs are the first official tripartite labour relations mechanisms at the provincial level in Viet Nam, and they have proven to be very effective. Their success at carrying out their objectives, together with strong industrial growth, has led to a high level of demand for their services, to which they have responded by expanding their training activities beyond their initial goal of 10 target enterprises. In Ho Chi Minh City, for example, the PPTF has created its own 'Interdisciplinary Strike Resolution Taskforce', which helps to mediate disputes that have led to strikes. PPTFs have also carried out tripartite visits to factories to assist with the implementation of labour laws. These activities have played a vital role in the early stages of facilitating sustained social dialogue in Viet Nam, and constitute important steps towards the realization of the principles in the Declaration.

183. The project worked effectively with the Government to improve its capacity to resolve labour disputes. As a result, the number of local labour officials with mediation skills increased from 15 in 2004 to 130 in 2005. The higher skill level was reflected in an increase in MOLISA's ability to settle disputes in the project's target enterprises; in 2005, 18.3 per cent of cases were successfully resolved, compared to 12.8 cases in 2003. At the provincial level, the project helped the Government to establish Industrial Relations Advisory Service Departments (IRASDs) within the offices of DOLISA (the provincial office of MOLISA). IRASDs are resource centres for the local social partners and provide information, advice, trainers and training materials. They have proven very popular: the Hanoi IRASD, for example, averages 250–300 information requests a month for information on the Labour Code and training on collective bargaining. IRASD officials are also frequently called upon to play an informal role in the resolution of labour disputes.<sup>390</sup> IRASDs now employ 21 trained officials, and receive financial support from the Government, having been established as permanent parts of the DOLISA structure.<sup>391</sup> The Final Evaluation of the project found that the IRASDs were a good example of sustainable project outcomes; they demonstrate that MOLISA has been able to

institutionalise the concepts, structure and culture generated by the project within its own organization.<sup>392</sup>

184. The project made a significant contribution to sound labour relations in its 70 target enterprises. From 2003-05, the number of target enterprises with an active labour-management committee grew from 58.5 per cent to 100 per cent - and those with an established conciliation council grew from 58.5 per cent to 93.3 per cent. During the same period, the proportion of enterprises with an updated collective agreement rose from 42.8 per cent to 66.6 per cent. In its work with the VGCL in target enterprises, the project also had a marked impact in terms of training unionists for collective bargaining. Between 2003 and 2005, the number of qualified local VGCL officials grew from 16 to 139 and the proportion of collective agreements at target enterprises rose from 21.4 per cent to 51.6 per cent. The number of workers in target enterprises that were union members increased from 46,050 to 59,300 during the same period of time.

185. The project also worked to develop the capacity of employers' and workers' organizations at the national level. It assisted the two employers' organizations in drafting a human resource management- training curriculum that they can use to teach industrial relations practitioners, and in producing information material for employers on industrial relations issues. The project also helped the VGCL to develop and implement a National Training Manual.

186. The ILO project in Viet Nam made a particularly important contribution to expanding knowledge and understanding of labour law and industrial relations. It prepared, published and distributed over 23,000 copies of an information book about the Labour Code, entitled *The user's guide to labour law*, and produced and distributed 2,000 posters summarizing key labour laws for display in workplaces. The Declaration project also played a role in developing knowledge about labour disputes and ways to avoid them, by supporting three research studies into strikes by the social partners, and by producing a number of discussion papers. It convened national conferences on industrial relations in 2004, 2005 and 2006 and assisted the University of Labour and Social Affairs in establishing the first Industrial Relations Department in Viet Nam. The project both funded and provided technical support for the preparation of the first curriculum by a team of eight faculty

members of the University, together with an expert adviser from the ILO.

187. In recognition of the lack of resources and capacity in Viet Nam to secure compliance with labour laws, the ILO has supported the introduction of self-monitoring. Some 10,000 enterprises are currently targeted in this scheme. The enterprises receive self-monitoring forms, which are subsequently submitted to inspectors. The inspectors then select a number of enterprises for control and verification.<sup>393</sup>

### **Forced labour and trafficking**

188. Trafficking of persons is a significant issue in Viet Nam. It is both a source country for trafficking and a transit country, with people from China and the Middle East being taken through Viet Nam to destinations including Australia, Canada and Europe.<sup>394</sup> Women and children in particular are trafficked in the sex trade and, to a lesser extent, for other forms of work. Women are trafficked west into Cambodia and Thailand as part of the sex trade, and north to China and Taiwan (China) for forced marriage and servitude.<sup>395</sup> There is also internal trafficking from rural to urban areas.<sup>396</sup> Although Vietnamese law prohibits trafficking in women,<sup>397</sup> and imposes penalties that range from two to 20 years' imprisonment, enforcement remains weak.<sup>398</sup> There do not appear to be any laws that specifically prohibit the trafficking of men,<sup>399</sup> although there are few reported incidences of this phenomenon.

189. The incidence of forced labour and trafficking has increased in Viet Nam in recent years – despite the introduction of tougher penalties for trafficking since the year 2000. The easing of state controls over the movement of people and the growing demand for labour in the cities have both contributed to higher numbers of workers seeking better opportunities outside their communities. The widespread lack of knowledge of workers' rights among many new entrants to the labour market heightens the risk of exploitation. The general lack of statistics on trafficking and forced labour in the country, however, makes it difficult to find accurate data on these general trends.<sup>400</sup>

190. Viet Nam's growing concern over the issue is reflected in a shift in government policy towards achieving compliance with international

instruments, promoting enforcement of anti-trafficking legislation, and implementing measures to combat forced labour. In 2005, the Deputy Prime Minister held a high-level meeting of all relevant agencies to assess anti-trafficking efforts and to chart a course forward.<sup>401</sup> The same year, the Government concluded a year-long survey of forced labour, which included a review of all relevant legal regulations.<sup>402</sup> Viet Nam ratified the Forced Labour Convention, 1930 (No. 29) in March 2007, and is having discussions concerning the possible ratification of the Abolition of Forced Labour Convention, 1957 (No. 105). Viet Nam has also ratified the Worst Forms of Child Labour Convention, 1999 (No.182).

191. As Viet Nam only ratified Convention No. 29 very recently, the ILO supervisory system has not yet issued any observations on Viet Nam's law and practice in the area. But Viet Nam does have a number of laws and policies in place to implement its obligations under the instrument. For instance, Vietnamese law prohibits forced labour and trafficking in persons and imposes penalties for non-compliance.<sup>403</sup> Nonetheless, preventing trafficking in women remains a serious challenge. Viet Nam has sought to address this problem through law reform, research and the establishment of practical programmes. It has also revoked laws that were inconsistent with the Declaration's principles, such as a 1999 Ordinance that required adult citizens to complete ten days of public labour each year unless they could find a replacement or pay a fee.<sup>404</sup> Vietnam is currently ranked a Tier 2 country by the United States Department of State, suggesting that Viet Nam does not fully comply with the minimum standards for the elimination of trafficking. Although the Vietnamese government has been accused of being sluggish in its approach to tackle this problem through legal channels, it has been commended for its efforts at the ground level.<sup>405</sup>

192. Viet Nam has developed a National Programme of Action on Trafficking of Women and Children (2004–2010) and is increasing its efforts to secure compliance with the law. Over the past five years, there has been a 60 per cent increase in trafficking cases brought before the courts – and from 2005–06, there was a 72 per cent increase in the number of human traffickers apprehended.<sup>406</sup> In 2005, security agencies with border control responsibility were trained in investigative techniques to prevent traffick-

ing.<sup>407</sup> The police have also taken on a more proactive role in combating trafficking through the creation of a specialized anti-trafficking force. The Vietnamese Government implemented a mass communications effort in 2004, in cooperation with the Chinese Government and UNICEF, to educate the public and local government leaders on trafficking. This yearlong campaign included workshops on local laws pertaining to the commercial sexual exploitation of women and children and training on ways to counsel trafficking victims.<sup>408</sup> The Vietnamese Women's Union runs information campaigns aimed at educating women and girls of potential dangers, and organizes repatriation programmes for victims of trafficking.<sup>409</sup> Other institutions, including MOLISA, the Youth Union, and the Committee for Population, Family and Children, have also implemented prevention and victim protection programmes.<sup>410</sup>

193. Viet Nam has acknowledged that it lacks the capacity to tackle forced labour and trafficking alone and has agreed to work with a number of other countries, intergovernmental and non-governmental organizations. It has established anti-trafficking partnerships with Cambodia and China,<sup>411</sup> and is also working with the United Nations Office on Drugs and Crime to combat trafficking in persons.<sup>412</sup> The Vietnamese Government's commitment to addressing this important issue was also reflected in its willingness to initiate action on such a sensitive topic during final discussions on WTO membership.<sup>413</sup>

194. The Declaration has proved to be instrumental in prompting Vietnamese authorities to establish a clear overview of the legal issues related to the ratification of the two ILO Conventions that deal with trafficking and forced labour. The ILO has assisted the Government of Viet Nam in this task by providing comments on draft legislation and giving associated legal advice, resulting in the ratification of Convention No. 29 in 2007. The ILO continues to provide legal support to Viet Nam in anticipation of its ratification of Convention No. 105.

## **Equality and non-discrimination**

195. Viet Nam ratified both the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in October 1997.

Data from the ILO's supervisory system – together with other sources – suggest that Vietnamese law contains important provisions to implement these obligations, but that there is scope for improvement of the legal framework. It is also evident that discrimination in the world of work, especially on the basis of gender and ethnicity, continues to occur in practice. During the period covered by this report, Viet Nam took important steps toward greater equality in employment and occupation. It revised legislative provisions that may be detrimental towards women in employment, implemented new legislation, undertook studies to assess discrimination in practice and embarked on an action plan for the advancement of women.

196. Both the Labour Code and the Constitution enshrine the principle of equality between men and women.<sup>414</sup> The Labour Code also guarantees free choice of occupation without discrimination and provides for equal remuneration for equal work.<sup>415</sup> Viet Nam has introduced a Law on Gender Equality that covers all fields of social and family life, including work, which came into effect in July 2007.

197. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has indicated a number of areas in which particular provisions of Viet Nam's laws might usefully be amended. It has emphasized the need to prohibit discrimination in all terms and conditions of employment, not just wages;<sup>416</sup> recommended a broader definition of equal work to ensure that it covers work of equal value; and noted that the concept of equal remuneration should cover payments other than the basic wage.<sup>417</sup> The CEACR has recommended that Viet Nam revise the section of the Labour Code listing jobs that women may not undertake due to excessive physical burden or the hazardous nature of the work, as well as the provisions of the Labour Code that stipulate different retirement ages for men and women.<sup>418</sup> The CEACR has also suggested that it is important that Vietnamese law provide explicit protection against discrimination on the grounds of political opinion, national extraction or colour.<sup>419</sup>

198. In practice, there are various forms of discrimination in employment and occupation in Viet Nam. Women continue to face discrimination in employment. The ILO noted in 2005 that a Vietnamese Government report had identified that female workers received on average

86 per cent of the basic wage of male workers, indicating a gender pay gap of 14 per cent.<sup>420</sup> Women receive less education and training than men,<sup>421</sup> and they are still over-represented in low-skilled and informal work.<sup>422</sup> Anecdotal evidence suggests that few women enjoy positions of seniority within enterprises and organizations.<sup>423</sup>

199. Discrimination on the basis of ethnic origin or religion continues. Reports in 2006 suggested that Vietnamese authorities discriminated against Christians on the basis of their religious beliefs.<sup>424</sup> Ethnic discrimination also occurs against some of Viet Nam's 54 ethnic minority groups.<sup>425</sup> Over 60 per cent of ethnic minorities live in poverty. The Government adopted an ordinance in 2005 prohibiting discrimination on the grounds of religious belief or religious organization, thereby addressing a concern expressed by the CEACR that Viet Nam's constitution may restrict freedom of religion.<sup>426</sup> As most of these minorities are self-employed in agriculture, government efforts to address social exclusion have focused on improving the employability of these groups and reducing poverty levels.<sup>427</sup> Improving health and education of ethnic minorities is becoming an increasingly significant part of the Government's agenda.<sup>428</sup>

200. Discrimination on the basis of disability also occurs in Viet Nam. This group constitutes around two to three per cent of the workforce. There is some evidence to suggest that people with HIV/AIDS face discrimination at work and social exclusion.<sup>429</sup> Viet Nam has sought to address discrimination on the basis of disability by allocating additional financial support for training personnel to take care of the disabled.<sup>430</sup> There has also been a noticeable positive change in the Government's awareness of, and attitude towards, HIV/AIDS over recent years. This has been demonstrated by a change in the Government's awareness-raising policy – that has shifted from grim depictions of HIV/AIDS victims to the promotion of a more positive image of these victims.<sup>431</sup>

201. The recognition of the principle of equality in Viet Nam is hampered by a lack of effective mechanisms to promote and protect this principle in practice. The Vietnamese Government, however, has made some important progress in this respect. The recent Law on Gender Equality seeks to improve recognition of equality in employment by setting out the responsibilities of

the different social partners.<sup>432</sup> The Government has adopted a *National strategy for the advancement of women 2001 – 10*, which contains targets concerning women's employment and training.<sup>433</sup> The Government has also indicated that it is reviewing the effectiveness of measures currently in place to encourage the employment of women, such as vocational training and financial and taxation benefits. MOLISA has a Research Centre for Female Labour and Gender. This research centre has collaborated with the ILO in carrying out a study of women's employment, published under the title: *Equality, labour and social protection for women and men in the formal and informal economy in Viet Nam: Issues for advocacy and policy development*.<sup>434</sup> The practical nature of this report and its findings provide the Vietnamese Government with an opportunity to effectively address gender inequalities in remuneration.<sup>435</sup>

## **Conclusion**

202. Viet Nam has shown a strong commitment to realizing the principles in the Declaration. Vietnamese labour laws now protect many fundamental rights of workers - and many provisions that were inconsistent with the Declaration have been removed. The Government has indicated its intention to ratify both Conventions relating to the principles of freedom of association and collective bargaining (Nos. 87 and 98), as well as the Abolition of Forced Labour Convention, 1957 (No 105).

203. A key challenge for Viet Nam lies in developing an institutional and legislative framework that protects the fundamental rights of workers within a market-driven economy. Both employers' and workers' organizations have acknowledged the importance of strengthening their representative

roles, and all three social partners have demonstrated a commitment to working towards an effective system of social dialogue. Arriving at a crucial time in the development of a new industrial relations system in Viet Nam, the Declaration provided a framework within which the ILO - with funding support from the USDOL - could promote the concepts of tripartism and social dialogue.<sup>436</sup> The ILO's industrial relations project established a tripartite framework that serves both as an example of the concept and benefits of social dialogue and cooperation, and as a model for a national structure in the future. The ILO project also played a key role in strengthening the capacity of all three social partners, and in raising awareness of the fundamental principles and rights at work among employers and workers.

204. Further progress towards the realization of the Declaration's principles in Viet Nam will involve more labour law reform and greater efforts to ensure that the law is effective in practice. Viet Nam will need to amend its Labour Code, with ILO guidance, if it is to achieve compliance with the core principles concerning freedom of association and equality of employment opportunity. In other areas, such as the eradication of forced labour and trafficking in persons, the challenge for Viet Nam lies in developing programmes and strategies - and finding adequate resources with which to fund them - that will extend the protections already embodied in law to all Vietnamese workers. In attempting to comply with the principles contained in the Declaration, Viet Nam will need to strengthen further the capacity of key industrial relations actors and institutions. In the light of the strong commitment shown by the social partners and the significant progress made to date, there is considerable scope for Viet Nam to continue its work to realize the fundamental principles and rights at work for all its workers - and for the ILO to continue assisting in this effort.

# Brazil

Independent in 1822 (from Portugal), Democratic republic	
180 million inhabitants	
Ratified 7 of the 8 core Conventions	
GDP (2006)	US\$943 billion
Export (2006)	US\$137 billion
Import (2006)	US\$91 billion

205. Brazil is a federal republic, which achieved independence from Portugal in 1822. The country is divided into 26 States and one federal district. With an estimated population of 186 million, Brazil is the largest country in Latin America and the fifth largest in the world, in terms of both population and surface area. It shares a border with all South American countries except Ecuador and Chile. Characterized by broad ethnic diversity, Brazil has populations of European, African, Arab, Asian and indigenous peoples. The population is heavily urbanized, with 81 per cent of Brazilians living in cities.<sup>437</sup> Brazil was subject to military rule from 1964 to 1985 but returned to a civilian presidency in 1985. A Constitutional Assembly was convened in the Brazilian Congress in 1986, leading to the official promulgation of the current Federal Constitution in 1988 and making possible the direct presidential elections of 1989. The 1988 Constitution, which sets out a detailed list of political, social and economic rights,<sup>438</sup> enshrines many of the principles promoted by the Declaration: these include the right to union representation, the prohibition of forced labour, and the principles of equality and non-discrimination.

206. A founding member of the ILO in 1919, Brazil has ratified seven of the eight Conventions related to the Declaration. As part of a review of its Consolidation of Labour Laws (Consolidacao das Leis Trabalhistas - CLT), Brazil is working toward ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - although this will require reform of the CLT and amendment to the 1988 Constitution.<sup>439</sup> This review is one of a number of steps that Brazil has taken towards observing the rights and principles of the Declaration, including establishing a tripartite national forum to provide for more meaningful social dialogue on workplace issues. Brazil has focused in particular on the eradication of forced and compulsory labour, making considerable inroads toward its elimination. The ILO has provided technical assistance to Brazil to support these efforts. Brazil's commitment to addressing ongoing inequality and discrimination is manifest in the legal reforms it has carried

out and in the specialist agencies and programmes that it has created to pursue this goal. In particular, the current government has introduced two cabinet-level departments to promote gender and racial equality. The heads of these departments have been granted ministerial status and are both women.

207. Brazil has recently pursued ambitious social and economic initiatives, seeking to boost growth and, at the same time, to achieve greater social justice and equality. The principles of the Declaration have guided a series of labour policies over the past decade, as Brazil has developed programmes and institutions designed to reduce poverty, eliminate forced labour and fight gender, race and income inequalities. Brazil's economy has shown encouraging growth over the past few years, but one of the challenges that the country faces is to sustain this growth and harness it to drive poverty reduction and social change. Inequality tends to manifest itself along racial, gender and geographical lines, and discrimination in social and economic contexts continues to plague its ethnically diverse population. A high incidence of informal employment compounds the vulnerability of many workers and their families.

208. The current Government is headed by President Luiz Inacio Lula da Silva ("Lula"), a former metalworker and trade unionist. Lula was first elected in 2002, and re-elected in 2006. In his first year of office, Lula proceeded with cautious fiscal and monetary policy to successfully win the confidence of international financial markets. By 2004, the Lula administration started attempting to restore an active state role in the economy to stimulate macroeconomic growth, recover formal employment, and build up export surpluses and international credit for Brazilian exports once again. At the same time, provision was made for major expenditures on industrial policy, research and development, popular credit access programmes, public health and education investment, as well as direct subsidies to the poorest sections of the population.<sup>440</sup>

## The economy

209. Brazil is one of the world's key developing economies.<sup>441</sup> It has very significant potential, but it also faces large-scale challenges. The country's economy underwent major structural reforms in the 1990s - including privatization of state-owned enterprises, improved fiscal discipline and stabilization of the currency by pegging it to the US dollar.<sup>442</sup> Structural reform contributed to greater macroeconomic stability, but was associated with low levels of economic growth, which averaged two per cent per year between 1990 and 2003 and also led to high internal debt and increased vulnerability to global financial markets.<sup>443</sup> Some economists argue that ongoing high government debt levels are one of the main obstacles to further growth, leading to high taxation, as well as high interest rates and burdensome regulations.<sup>444</sup> Structural economic changes in the 1990s also had a negative impact on job creation in the formal economy.<sup>445</sup> In recent years, economic growth has increased, reaching 3.7 per cent in 2006. Stronger growth has been accompanied by strong exports, moderate inflation, and decreasing unemployment.<sup>446</sup> Brazil completed the early repayment of its entire outstanding IMF debt in December 2005 and has now achieved total independence from IMF debt restructuring.<sup>447</sup>

210. Although the service sector is the largest contributor to Brazil's GDP (67 per cent in 2006), industry accounts for 26 per cent of GDP,<sup>448</sup> representing one of the most advanced industrial sectors in Latin America.<sup>449</sup> Brazil is one of the world's largest sources of steel, petroleum products, minerals, semiconductors, telecommunications equipment and technology, biotechnologies, autos, trucks and other ground vehicles, textiles and shoes, apparel, chemicals and pharmaceuticals. It is also a significant producer of commercial aircraft (Embraer) and the largest and most technically advanced producer of ethanol.<sup>450</sup> Brazil leads the world in coffee production and is also a major producer of soya beans, cocoa, citrus fruits, sugar, livestock and other agricultural products.<sup>451</sup> The agricultural sector contributes eight per cent of GDP,<sup>452</sup> but accounts for 21 per cent of employment.<sup>453</sup> Exports have been solid over the past few years, exceeding US\$100 billion in annual terms from mid-2004 to mid-2005, and reaching \$137.4 billion in 2006.<sup>454</sup> Of this, 74 per cent were manufactured or semi-manufactured goods.<sup>455</sup> Furthermore, Brazil is

projected to become a net exporter of oil in 2007.<sup>456</sup> Its major export markets are the United States, which accounts for 18 per cent of all exports, Argentina (nine per cent) Germany (four per cent) and, increasingly, China (six per cent).<sup>457</sup>

211. The sustainability of recent economic growth will depend to a great extent on the efficacy of reforms undertaken by the current Government since 2002, which have emphasized both social equity and sound macroeconomic management.<sup>458</sup> Congress reformed the public sector pension system and the tax code in 2003; and the following year it passed legislation to reform the judicial system. In January 2007, the Government introduced a package of reforms to increase public investment and control spending growth.<sup>459</sup>

212. The administration has set dual priorities: economic growth and the eradication of poverty - with a focus on export promotion for economic growth. To this end, Brazil has been actively involved in regional, bilateral and multilateral trade liberalization efforts, and has been prepared to commit itself to increased trade while also requiring protection of fundamental workers' rights. Brazil has energetically sought to expand trade negotiations and access to foreign markets, and to strengthen already existing arrangements with Mercosur, of which Brazil is a founding member and driving force.<sup>460</sup> Mercosur signed Free Trade Agreements (FTAs) in 2004 with Colombia, Ecuador, Venezuela and Peru, expanding on previous agreements with Chile and Bolivia, and creating an economic foundation for the new South American Community of Nations. In harmony with the principles of the ILO Declaration, Mercosur's framework encompasses a Social Labour Declaration that explicitly recognizes equality, collective bargaining, freedom of association and the protection of minors.<sup>461</sup> A tripartite Social-Labour Commission has been established to review compliance issues in relation to the Mercosur Declaration.<sup>462</sup> Mercosur resumed trade negotiations with the EU in 2005 and is seeking agreements with Mexico and Canada. Brazil has also been a leader of the G20 group of developing nations in the WTO Doha Round talks,<sup>463</sup> which has aimed to create greater negotiating leverage for developing nations, particularly in relation to agricultural production and trade.<sup>464</sup>

213. Poverty and income inequality continue to be defining issues for Brazil. A skewed distribu-

tion of income means that the poorest ten per cent of the population account for 0.7 per cent of national income, and the richest ten per cent for 47 per cent.<sup>465</sup> Brazil has made marked progress, however, as national poverty levels fell from 40 per cent in the early 1990s to about 32 per cent in 2005.<sup>466</sup> The positive trend is also clear from the increase in Brazil's HDI from 0.75 in 1998 to 0.792 in 2004 (See figure 5.1).<sup>467</sup> But poverty and inequality still remain high. According to 2003 World Bank data, about 20 per cent of the population live on less than two US\$ a day and eight per cent live on less than one US\$.<sup>468</sup> Poverty is not distributed equally, and inequality is apparent across region, race, gender and levels of education.<sup>469</sup> The bulk of the underprivileged population consists of people of African or mixed race, and the north-eastern area of Brazil has the largest concentration of rural poverty in Latin America.<sup>470</sup>

214. The Government of Brazil is committed to combating poverty. In addition to creating a Ministry of Social Development in 2003 to oversee all social programmes and ensure greater coordination of poverty alleviation efforts, the Lula administration has promoted the Zero Hunger policy. This includes programmes designed to increase access to education and health, establish policies for job and income generation, and promote implementation of sustainable development strategies.<sup>471</sup> One of the major poverty reduction initiatives associated with the Zero Hunger policy is the Bolsa Família Programme, which provides cash transfers to poor Brazilian families if they meet conditions such as ensuring their children attend school and have vaccinations, as well as prenatal visits.<sup>472</sup> In 2006, the Bolsa Família was estimated to cost about 0.5 per cent of GDP - and roughly 2.5 per cent of total government expenditure. It covers 11.2 million families (about 44 million individuals).<sup>473</sup> A study by the UNDP Poverty Centre found that over 80 per cent of Bolsa Família benefits go to impoverished families living on less than one half of the minimum wage per capita, and that the programme has been responsible for a 20 per cent drop in Brazilian poverty since 2001.<sup>474</sup>

215. One of the most significant drivers of inequality in Brazil is the scale of its informal economy. Indeed, the high incidence of informal unemployment poses major challenges for Brazil's efforts to meet the fundamental principles of the Declaration. Informality in employment is closely linked to poverty: 58 per cent of



Source: UNDP: Human Development Reports, 2000, 2002, 2004, 2006

Brazilians who lived in poverty during 2002 lived in families headed by informal workers.<sup>475</sup> Between 1995 and 2005, the rate of informal employment remained steady at over 50 per cent,<sup>476</sup> with the majority of informal employment in the urban economy.<sup>477</sup> The share of unregistered workers<sup>478</sup> in the Brazilian economy was around 42 per cent in 1989, but rose during the 1990s as a result of the elimination of some 4.3 million formal sector jobs.<sup>479</sup> However, there are encouraging signs that recent growth is generating more jobs in the formal sector.<sup>480</sup>

### The labour market

216. The dramatic changes to Brazil's economy in the 1990s had a profound effect on the labour market, leading to rising unemployment, a sharp increase in the share of unregistered informal sector workers and a shift away from manufacturing to service and retail sector employment.<sup>481</sup> Brazil's workforce is comprised of around 92 million workers, which represents a total labour force participation rate of around 67.9 per cent.<sup>482</sup> Figures from 2001 indicate that the greatest proportion of the labour force, at 57.9 per cent, was employed in the service sector, followed by agriculture (21 per cent) and industry (21 per cent).<sup>483</sup> Just over 60 per cent of the workforce is comprised of wage-earning employees, 26.7 per cent are self-employed, 7.1 per cent are unpaid family workers and 4.2 per cent are employers.<sup>484</sup>

217. Unemployment is relatively high in Brazil and has remained at 9-10 per cent since 2001.<sup>485</sup> This official figure may understate the actual level of unemployment, as it is unlikely to capture the extent of under-employment, or those workers who are not actively seeking jobs.<sup>486</sup> Women are disproportionately affected by unemployment in

Brazil: although women made up 42 per cent of the labour force in 2004, they accounted for 57 per cent of unemployed workers.<sup>487</sup> Between 1998 and 2004, female unemployment remained consistently several percentage points higher than male unemployment.<sup>488</sup> Youth unemployment is also a significant issue, running at 18 per cent in 2001.<sup>489</sup> Job creation has been uneven in recent years, reflecting specialization in Brazilian industry. Although hiring has increased in the services sector, and has been relatively high in oil and ethanol refining, there have been lower growth levels in labour-intensive industries - and recruitment in sectors with low skills requirements such as apparel, footwear and wood products has decreased.<sup>490</sup> This has also contributed to a change in the skill composition of the employed workforce, particularly over the period 1995-2005, with jobs being increasingly held by workers with at least a high school education - at the expense of those with no education.<sup>491</sup>

218. Brazil faces a significant, ongoing policy challenge to improve its levels of formal employment, in part because of the variety and the complexity of the causes of informality. The World Bank has suggested that one factor leading to high levels of informality is the rigid and overly protective labour law,<sup>492</sup> although other commentators have argued that this view is not supported by evidence.<sup>493</sup> Other causes suggested by the World Bank include high payroll taxes, a high index of production informality and small firms, and the importance of the rural economy.<sup>494</sup> Informal workers earn less than 85 per cent of the income earned by registered employees,<sup>495</sup> and they do not enjoy the same safety net of social security benefits. However, the informal economy increasingly acts as an entry point for younger or poorly educated workers into paid employment, and this trend is growing as the labour market increasingly places a premium on skilled labour. There are also more women working in the informal economy (66 per cent) than men (59 per cent),<sup>496</sup> which reflects both the impact of discrimination in employment, and women's continuing need to balance work with family commitments.<sup>497</sup>

### **The status of fundamental principles and rights at work**

219. Brazil has taken many important steps toward implementing the principles of the ILO Declaration. It has ratified seven of the eight

core Conventions related to the Declaration, and the Government is working to reform the main labour legislation, the CLT. The goal is to bring the law into compliance with international standards so as to enable ratification of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87).<sup>498</sup> Barriers nonetheless remain; these include the unicidade framework of trade union organization (under which monopoly representation rights are given to certain unions recognized by the Government); the compulsory union tax; and limitations on collective bargaining rights for public servants. These first two issues, however, are under review in Congress and some progress has been made on the last. The right to collective bargaining and the right to strike are respected in practice, although there are still cases of company discrimination against unionists, and of workers being blacklisted after filing complaints against employers.<sup>499</sup>

220. With assistance from the ILO in the form of a project entitled Combating forced labour in Brazil, the Government has undertaken important law reforms and implemented many programmes to address the continuing problem of forced labour. As part of its National Plan for the Eradication of Forced Labour, Brazil has established a database of information on forced labour, and established pilot programmes to assist workers once they have been freed from this situation. Special inspection groups have rescued literally thousands of workers from forced labour.<sup>500</sup> The Government has also made considerable progress by campaigning to raise awareness of the ongoing problem of forced labour.

221. Brazil has also been working to address the ongoing problem of discrimination, particularly as it affects the world of work. The Lula administration has established national laws supporting international conventions on discrimination at work, and government agencies have been created to promote anti-discrimination policies. Yet discrimination on grounds of gender and race still occurs in the labour force and employment, as well as in other areas such as education.<sup>501</sup>

### **Freedom of association and collective bargaining**

222. Freedom of association and the right to strike are generally respected in Brazil,<sup>502</sup> al-

though there are some important exceptions both in law and in practice. The legal framework limits workers' freedom to form and join unions of their own choosing, and constrains free collective bargaining in a number of ways. There continue to be reports of acts of anti-union discrimination, particularly in rural areas. The Government of Brazil has been taking steps, including with the assistance of the ILO, to address the obstacles preventing it from promoting freedom of association and the right to bargain collectively more effectively. But in some cases the issues are long-standing, and legal reforms have been in preparation for many years without coming to fruition.

223. Both the Constitution and the CLT provide for union representation for all workers, with the exception of the military, uniformed police and firefighters.<sup>503</sup> Brazil ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in 1952 - and the Government has announced its intention to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).<sup>504</sup>

224. Before it can ratify Convention No. 87, Brazil will need to adopt certain constitutional amendments that are under consideration by the National Congress -<sup>505</sup> as well as to amend the CLT. A key issue is that the Constitution and the CLT together provide for a system of union representation known as *unicidade*: recognized unions have monopoly rights to represent workers of a given professional or economic category in a certain territorial division.<sup>506</sup> As it currently stands, the legal rule makes it difficult to establish an enterprise union, and even some sectoral federations and national trade union centres are technically not legal. The CLT also establishes a system for a compulsory 'union tax' that is levied on all workers, whether or not they belong to a union.<sup>507</sup> Notwithstanding these impediments to the establishment of legal trade unions, in practice there are literally thousands of freely-established, active trade unions in Brazil, and there have been for many years.<sup>508</sup> At the same time, however, the administration of the system of registration for trade unions does not ensure that all unions are representative. Neither does the proliferation of unions mean that all are effective as participants in social dialogue.

225. The Government has acknowledged the need for law reform to promote freedom of association and the right to bargain collectively

more effectively,<sup>509</sup> and indicated its intention to bring the CLT in line with international labour standards. To this end, Brazil has taken positive steps towards reform. In 2003, for instance, the Government established a National Labour Forum (FNT). The Forum's tripartite structure makes it a vehicle for social dialogue that contributes positively to Brazil's efforts to comply with its obligations under the Declaration.<sup>510</sup> The Brazilian Government has reported that one objective of the FNT is to translate the results of its discussions into legislative proposals that might be presented as draft constitutional amendments before the National Congress.<sup>511</sup>

226. The FNT released a report in 2004 that outlined key labour reform priorities, including the ratification of ILO Convention No. 87; a review of the trade union tax; a new framework for trade union organization and representation to replace *unicidade*; stronger collective bargaining rights; and a change in the application of labour laws to take into account small- and medium-sized enterprises.<sup>512</sup> The Government has drafted a bill on the basis of the FNT's conclusions, which is still under discussion by Congress.<sup>513</sup> Unfortunately, a political impasse in the Congress precluded the FNT proposal from being passed in the first Lula administration, and it is not clear that the Government will be able to secure the necessary political support in Congress for the constitutional amendment required to address the *unicidade* system. This is not the first proposal to reform the laws relating to the *unicidade* system: a proposed constitutional amendment was submitted to the National Congress in 1998, but shelved in 2000 on a rule of procedure.<sup>514</sup>

227. Data from the ILO's supervisory system indicate that Brazil's law and practice are inconsistent in certain respects with its obligations under Convention No. 98 to promote a voluntary system of free collective bargaining.<sup>515</sup> Section 623 of the CLT, for example, gives priority to government economic or wage policy over collectively negotiated conditions, and inconsistent terms of an agreement are thereby void.<sup>516</sup> In 1999, an ILO mission reported that the Government and its social partners were in complete agreement on the formal repeal of section 623, which was no longer applied in practice. Since then, various legislative drafts have been submitted to the National Congress to amend the labour legislation - but as of 2004, at least, it was not clear whether the provision had been repealed.<sup>517</sup>

228. An issue that Brazil does appear to have addressed is the operation of section 616 of the CLT, which allowed a negotiating party or the authorities to resort unilaterally to a *dissidio coletivo* - a form of compulsory judicial arbitration. This was a particularly significant constraint because of the very slow progress in the labour courts, due to a combination of a high case-load and systemic inefficiencies.<sup>518</sup> A proposed constitutional amendment to address this issue was submitted to the National Congress in 1998.<sup>519</sup> The provisions were eventually altered under Constitutional Amendment No 45 of 8 December 2004, which established that a *dissidio coletivo* was only available if both parties were in agreement.<sup>520</sup> This is a particularly significant development in terms of Brazil's obligations under Convention No. 98 to promote free collective bargaining. In addition, draft legislation proposed by the FNT provides for new dispute settlement mechanisms such as conciliation, mediation and arbitration.

229. A further obstacle to the implementation of the right to bargain collectively in Brazil is the Constitution's limitation on the ability of public servants to exercise this right. Brazil has given consideration to possible administrative reforms to address this matter,<sup>521</sup> and it has created a sectoral chamber within the FNT specifically to tackle issues linked to the public sector. As yet, however, the necessary constitutional amendment has not been adopted.<sup>522</sup>

230. In practice, there are many active trade unions in Brazil: an estimated 20,000 trade unions represented workers during 2003, which marked a significant increase from the 17,200 unions identified only three years earlier.<sup>523</sup> Collective bargaining is widespread in the formal sector, and union density has remained relatively stable over the past 20 years at around 20 per cent.<sup>524</sup> A recognized trade union that receives support through the trade union tax is required to negotiate on behalf of all workers in its professional category and geographical area, regardless of whether they are trade union members.<sup>525</sup> Thus, workers in the formal sector benefit from union coverage under the system of *unicidade*, irrespective of their membership status, although the proceeds of the trade union tax may only be used legally for particular benefits and services to union members - that is, legal, dental and medical services - and not for strike funds, political action funds or any other purpose not specifically listed in the CLT.<sup>526</sup> Nonetheless, there is still a troublingly

large informal sector that does not benefit from this collective bargaining umbrella.

231. Trade unions in Brazil are playing a growing role in the formation of social and economic policy. They are increasingly participating in government bodies that deal with economic and social issues - and tripartite consultation to solve labour disputes is becoming more frequent. Trade unions in Brazil carry out programmes of activities that address most of the principles contained in the Declaration, including the eradication of forced labour and the elimination of discrimination. Some workers' organizations and unions, such as the National Confederation of Agriculture (CAN), train workers to identify situations that may lead to forced labour.<sup>527</sup> The Single Central Organization of Workers (CUT), the *Força Sindical* (FS), the General Confederation of Workers (CGT) (now merged into the newly formed UGT), along with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and ORIT (Inter-American Regional Organization of Workers), have established an Inter-American Trade Union Institute for Racial Equality (INSPIR), which has facilitated discussion and policy regarding discrimination. The Institute has also made proposals for equal opportunity clauses, and has provided training for trade union legal experts.<sup>528</sup>

232. The Brazilian trade union movement overall is one of the strongest in Latin America, although the very large number of unions means that they are not all representative or effective, and many lack important capacity. The high proportion of workers in the informal economy represents a particular challenge for union organization in Brazil; nonetheless, the trade union movement has made strong inroads in this area, by creating cooperatives for informal workers and by working directly with the Federal Government to bring formal registration and social security guarantees to thousands of former members of the informal economy.<sup>529</sup> This is significant as informal workers account for more than 50 per cent of the labour market - and they do not enjoy union representation and are unable to fully exercise their labour rights.<sup>530</sup> In the past, gender balance has been an issue for Brazilian trade unions, but this is now evening out to some extent; in 1986, the proportion of male unionized workers was 75.6 per cent, but this had dropped to 65.2 per cent by 1999.<sup>531</sup> Moreover, all of the major national centrals (CUT, FS, CGT (now UGT)) have a policy

that requires at least 30 per cent of their national executive members to be women.

233. Trade unions in Brazil are also exposed to the risk of acts of anti-union discrimination, and it appears that the Government could have been more active in addressing this issue. It has been reported that trade union members are often dismissed, especially those who organize strikes,<sup>532</sup> and that unionists who file complaints are often blacklisted.<sup>533</sup> Brazilian trade unions have lodged complaints with the ILO over the creation of blacklists based on names of complainants taken from industrial tribunal websites.<sup>534</sup> Victimization of union organizers occurs in some rural areas, although this is largely restricted to the north and north-east of Brazil.<sup>535</sup> The FNT debated a draft law on preventing anti-union discrimination during 2005. This draft law proposed that penalties be imposed for any act undertaken by an employer or worker that was aimed at undermining or damaging trade union activity.<sup>536</sup> As the law currently stands, it is possible to dismiss union activists once a strike is terminated: if an employer pays full severance and legally mandated separation benefits to a discharged worker, the employer does not have to present just cause. This may be overridden if anti-union discrimination can be demonstrated as the reason for the dismissal, but the burden of proof is considerable and progress through the courts difficult.<sup>537</sup>

234. The Government of Brazil has taken steps to address the obstacles to implementation of freedom of association and the right to bargain collectively. It has emphasised the importance of the technical cooperation offered by the ILO to achieve the goals of the Declaration - but it acknowledges that there are still barriers, such as unciidade and the union tax requirements. In 2005, the Government identified a wide range of further needs for ILO technical cooperation in a number of areas, including: awareness raising; data collection and capacity for statistical analysis; legal reform; capacity-building in government institutions; training of government officials; the strengthening of employers' and workers' institutions; and the strengthening of tripartite social dialogue.<sup>538</sup>

### **Trafficking and forced labour**

235. Forced labour and associated problems of trafficking have been significant problems in Brazil for some time, arising out of exploitative

working conditions, and the common occurrence of forms of debt bondage. Recognizing its obligation to address these issues, Brazil ratified the Forced Labour Convention, 1930 (No. 29) in 1957; the Abolition of Forced Labour Convention, 1957 (No. 105) in 1965; and the Worst Forms of Child Labour Convention, 1999 (No. 182) in 2000. Forced labour is prohibited by the Constitution, and Brazil has also established several domestic laws expressly to address issues of forced labour. The ILO has assisted Brazil in its efforts since 2002, through its above-mentioned Declaration project: Combating forced labour in Brazil.

236. In 2004, the ILO reported that as many as 40,000 people in Brazil were working in conditions that amounted to forced labour, although the exact number was difficult to determine due to the remoteness of many of the workplaces, and the illegality of the work practices.<sup>539</sup> Widespread poverty is the underlying challenge for Brazil: workers are often easily seduced by promises of regular work and good pay,<sup>540</sup> and in some cases are prepared to sign up for work even though they are aware of the risk that they will face exploitative conditions.<sup>541</sup> For this reason, it is estimated that up to 40 per cent of victims fall prey to the trap of forced labour more than once.<sup>542</sup>

237. Forced labour in Brazil most commonly affects workers in various sectors of the rural economy, such as forest clearance, charcoal production, grass-seed sowing, sugarcane harvesting, cotton, coffee and mining.<sup>543</sup> Special ILO Committees reported in 1993 - and again in 1998 - that these workers were frequently recruited on the basis of false promises, transported from their places of origin or residence, and confined to workplaces that were isolated or difficult to reach.<sup>544</sup> On arrival, their work papers (carteiras) might have been taken away from them. Often they were forced to work in degrading conditions, in many cases without a wage and sometimes only in exchange for poor food. They frequently worked long hours, were housed in unhealthy and unsafe accommodation, and may have been forcibly prevented from terminating their employment relationship by acts of violence.<sup>545</sup> It has been reported more recently that workers commonly acquire inflated debt, often with exorbitantly high interest, for travel and living expenses, and are forced to work to pay off what they owe.<sup>546</sup> In some regions, the problem has manifested itself in forms of forced prostitution, especially

among female children.<sup>547</sup> The problem extends beyond Brazil's borders, too, mostly with respect to women. Brazilian women are among the primary victims of international trafficking entering the sex industry in Europe (principally going to Portugal and Spain). It is estimated that as many as 75,000 women and girls, many of them trafficked, are engaged in prostitution in neighbouring South American countries, the United States and Western Europe. Many of these women were not sex workers prior to leaving Brazil, but were coerced into prostitution upon reaching their destination.<sup>548</sup>

238. Data from the ILO's supervisory system suggest that there have been important obstacles to the effective enforcement of relevant laws, including inefficient and delayed inspection procedures – as well as procedural red tape at judicial proceedings. A particularly difficult problem has been a culture of impunity around forced labour, which may partially be attributed to the fact that criminal penalties have not been harsh enough to act as an effective deterrent. Brazil did amend section 149 of the Penal Code – which deals with slave labour practices – in 1998 to make sanctions more effective,<sup>549</sup> and added further details to elaborate on the offence in 2003.<sup>550</sup> Quite apart from inadequate penalties, however, until recently legal argument over the jurisdictional competence of federal courts to try cases involving breaches of section 149 created a further impediment to prosecuting offenders.<sup>551</sup> This issue placed pressure on State and local courts, but was settled in December 2006, when the Brazilian Supreme Court ruled that crimes related to forced labour must be prosecuted in the federal system.<sup>552</sup>

239. The number of convictions has steadily been increasing, reflecting greater administrative efforts in this area. Increased judicial awareness of forced labour issues has also led to changes in case law, and a greater role for the judiciary in the national strategy to combat forced labour. The National Association of Federal Judges, which forms part of the Special Commission of the Human Rights Council, has spoken out on the need to raise the awareness of magistrates concerning the problems encountered in the country in combating slave labour. Between February 2003 and May 2004, for example, the Attorney General initiated 633 administrative proceedings to verify allegations of slave labour.

240. The Government of Brazil has taken important steps over a number of years to address the problem of forced labour. As far back as June 1995, it established an Executive Group on the Elimination of Forced Labour (GERTRAF), designed to encourage inter-agency coordination on forced labour issues. At the same time, it established a Special Mobile Inspection Group (GEFM).<sup>553</sup> GEFM inspection teams play a significant role in the Government's efforts to eradicate forced labour because they investigate workplaces such as ranches and farms where slave labour is known to exist, based on information received from escaped workers; their aim is to free workers caught in this trap.<sup>554</sup> In 2003, the Government demonstrated a renewed commitment to issues of forced labour with the launch of its National Plan for the Eradication of Forced Labour (Plano Nacional para a Erradicação do Trabalho Escravo). The National Plan sets out to increase the number of raids by inspectors, although enforcement is made difficult by the remoteness of some of the locations.<sup>555</sup> To strengthen the capacity of the GEFM, the Brazilian Government tripled the unit's budget in 2004.<sup>556</sup> The Government also established a Commission on the Eradication of Forced Labour (Comissão Nacional de Erradicação ao Trabalho Escravo – CONATRAE) to replace GERTRAF, and to oversee and monitor the National Plan.<sup>557</sup> CONATRAE includes representatives of the Federal Government, the Public Prosecution Service, non-governmental organizations, and international institutions and bodies. Its functions include promoting better coordination between these bodies, and proposing mechanisms to guarantee greater effectiveness in the prevention and elimination of rural violence and the exploitation of forced labour.<sup>558</sup>

241. In a further step to deter the use of forced labour, the Brazilian Government has strategically targeted companies that are known to have used forced labour in a bid to make them more socially accountable. The Minister of National Integration signed a decree in 2003 containing 52 names (individuals or entities) that were using - or had used - slave labour. These individuals and entities would no longer be able to benefit from national subsidies or tax exemptions. This "dirty list" was revised in August 2006 to include the names of 178 companies and individuals. As of 2006, Brazil requires state financial institutions to deny financial services to those firms and individuals on the list.<sup>559</sup> The Government has also put forward a constitu-

tional amendment, which would allow for the confiscation of land from owners using forced labour,<sup>560</sup> and has proposed that expropriated land could be used in government programmes to benefit rescued workers. Concern has been expressed, however, that this amendment may not be passed due to a lack of political momentum.<sup>561</sup>

242. Alongside reform initiatives to address issues of deterrence and enforcement, the Government has also implemented preventive and rehabilitation measures. The Government adopted Provisional Measure No. 74 in 2002, which grants temporary financial assistance (three payments each corresponding to the minimum wage) to workers identified by the inspection services of the Ministry of Labour and Employment as having been subjected to a system of forced labour or reduced to a situation of slavery. As a result, since 2003, workers rescued from slavery have automatically been entitled to unemployment benefit for a period of three months; since December 2005, they have also been entitled to family allowance benefits.<sup>562</sup> Freed workers are also directed towards the services of the national employment system with a view to their integration into the labour market and their receiving vocational training.

243. Brazil still faces many challenges in its efforts to eradicate forced labour - and to consolidate on the gains that it has made so far. Overriding poverty continues to make many people vulnerable to forced labour, and businesses are tempted to use forced labour for economic reasons. There is also a continuing perception that wealthy landowners who use forced labour are immune to prosecution, which needs to be addressed through better enforcement. However, the efficacy of enforcement measures is also a problem in a country of Brazil's size, and a lack of resources means that there are often inspection delays. A further difficulty is that as the Government has focused greater attention on combating forced labour, those with vested interests have intensified their resistance, resorting on occasion to violence and intimidation against union and government officials.<sup>563</sup> In the worst case, four Labour Ministry officials were ambushed and killed in January 2004 in a shooting incident that authorities believe was related to the discovery of slavery in a farming region close to Brasilia.<sup>564</sup> The ongoing challenge for Brazil is to reinforce preventative measures, rescue work-

ers subject to forced labour and punish offenders - while also guaranteeing access for vulnerable populations to both basic social services (health and education) and income-generation and work opportunities.

### **Technical support from the ILO and the role of the social partners**

244. As mentioned earlier in the text, the ILO has been providing technical assistance to Brazil since 2002 under its Declaration project: *Combating forced labour in Brazil*.<sup>565</sup> The project's key development objective is to contribute to the prevention and elimination of forced labour, by supporting existing action against forced labour - while strengthening inter-agency coordination - and consolidating the enforcement role of mobile inspection units. The project began in April 2002 with an initial grant of US\$997,498 from the United States Department of Labor, and was originally intended to conclude in April 2005. A further US\$778,000 was granted in 2003, enabling the project to continue until December 2007, with total funding over its life of US\$1.728 million. The final extension has facilitated public awareness activities, as well as training for labour inspectors, prosecutors and police.

245. The ILO project has played an important role as catalyst for bringing together institutional partners and encouraging social dialogue in the fight against forced labour.<sup>566</sup> The independent mid-term evaluation of the project found that all 16 participants in CONATRAE identified this as being one of its major accomplishments.<sup>567</sup> The project has coordinated more than 50 events (including training and information seminars), reaching 11,059 people. Nearly 5,000 media items have been generated about forced labour and ways to address it. Most important of all, the project has directly contributed to more than 17,000 workers being rescued from conditions of forced labour.

246. The project's two main objectives were initially to strengthen and coordinate the actions of the institutional mechanisms designed to combat forced labour, and to implement preventive measures to avoid rescued workers falling back into this situation. These objectives were revised following the change of government in 2003. The creation of CONATRAE has

proven to be a positive development for the project, as it is a more representative mechanism than GERTRAF, which lacked the participation of civil society and non-governmental actors. Following the election of the new government, the project was also able to participate actively in the development of Brazil's National Plan. The project's objectives were further refined in 2005 - in part to reduce overlap with an anti-trafficking project being implemented by Caritas, a Catholic humanitarian organization. From this time onwards, it has focused on increasing public awareness of forced labour and the strategies and actions to combat it; strengthening the integration of CONATRAE and key stakeholders; improving the application of national international forced labour standards; and implementing measures to prevent further recruitment of workers into forced labour.

247. One of the project's most striking achievements has been its success in building capacity in government enforcement agencies, leading directly to many more workers being freed from forced labour. The number of people rescued by the Brazilian authorities rose from 583 in 2000 to 2,306 in 2002. A new record was reached in 2003 when 4,879 workers were freed, representing more than the total number of workers rescued over the period 1995 to 2001.<sup>568</sup> Over 10,000 workers were freed from 2004 to 2006. Victims were provided with immediate medical care, counselling and limited financial compensation.<sup>569</sup> The number of operations run by the mobile squads increased in 2006, and look set to have increased again by the end of 2007.<sup>570</sup> Prosecutions and convictions of trafficking offenders also rose in 2006.<sup>571</sup> The ILO project contributed to these results by training both labour inspectors and mobile inspection group coordinators. The ILO also donated approximately US\$ 40,000 in equipment (laptops, portable printers, digital cameras, and walkie-talkies) in 2004, and coordinated a national conference for labour inspectors in 2006.

248. With a view to improving the application of national and international standards in the legal system, the ILO project has provided technical support for legislative reform – as well as for the capacity building of judges and prosecutors. Among other things, it has, with legal advice and advocacy, supported the Government's proposed constitutional amendment that would allow it to confiscate the land of employers who use forced labour. The project

also hosted a forum in 2004 to train 300 labour lawyers on forced labour issues. More than 1,000 people attended a seminar for judges held in March 2005, to focus on the importance of forced labour cases and the jurisdictional issues that had been hampering the prosecution of offenders. The same year, a local university worked with the project to compile a CD-ROM that represented a comprehensive source of all jurisprudence on forced labour. Eight thousand were distributed to labour judges, prosecutors and the federal police; the information is also available via the Internet.

249. The national awareness-raising campaign has been a major success; several key stakeholders consider it one of the most important aspects of Brazil's progress on forced labour in recent years. This has not only had a positive impact on institutions and the community, but has enabled victims to better comprehend their experience.<sup>572</sup> The project organized a series of legislative workshops and public debates in 2002, which generated valuable public discussion and support leading up to the launch of the National Plan in 2003.<sup>573</sup> The Project played an important partnership role in the launch of the National Plan, as well as four similar State-level campaigns. A number of seminars for journalists were held in Sao Paulo and Brasilia over 2003, which resulted in a very significant increase in media coverage. It has been estimated that the media campaign, coordinated by the ILO, generated US\$7 million of media exposure and led to a 1,900 per cent increase in media items.<sup>574</sup> Anti-trafficking banners were placed in airports in 2004 and a National Preventive Campaign was launched in 2005, with the distribution of 4,000 posters, 60 banners and 300,000 booklets. The ILO has also supported the Brazilian government's 'dirty list' initiative through studies and advocacy.

250. The ILO has coordinated meetings of CONATRAE every two months to discuss activities on forced labour, using this as a channel to focus stakeholders, disseminate information and provide advice. In 2004, the ILO organized a two-day workshop on forced labour that was attended by 400 people, including CONATRAE participants, government officials and judges. The National Project Coordinator has been invited, in turn, to participate in and address conferences organised by other members of CONATRAE. The ILO staged workshops and round table discussions on slave labour at the World Social Forum that was held in Brazil in

2004, involving more than 600 judges, union officials, NGO leaders and government representatives. Through all of these events, the ILO has helped to build and strengthen key partnerships between the Federal and Labour Prosecutors' Offices, the Ministry of Labour and Employment, Federal Police, trade unions, employers' organizations and NGOs.<sup>575</sup> In order to help CONATRAE, the Ministry of Labour and Employment and the social partners build a better understanding of the application of anti-slavery laws, the ILO developed a database for the Ministry of Labour and Employment that it could use to collect data about forced labour inspections; it also trained labour inspectors in its use. This database was in operation by 2006 and is now being used routinely in the mobile squad's inspections.

251. The ILO project also helped to develop education and training programmes designed to help prevent the recruitment of workers into forced labour. The *Escravo, nem pensar* project, run by the NGO Reporter Brasil and supported by the ILO, has aimed to educate young people on forced labour, by placing it on the curriculum of schools in the regions that are most affected by the problems. By 2006, a training manual had been produced - and 500 teachers and 250 community leaders had been trained as part of this programme. Furthermore, 2,000 information brochures were distributed in the north and north-east regions of Brazil. Forced labour issues have also been introduced on the curriculum at the Catholic University of Brasilia. As a corollary to prevention measures, the ILO has further collaborated with the Government and civil society on efforts to rehabilitate those who have been victims of forced labour. This has included an education and skills-training programme for rescued workers, together with rehabilitation to reduce their risk of falling back into forced labour.

252. The social partners have played an important role in the project's activities, particularly by promoting awareness about forced labour. Workers' organizations endeavour to raise awareness amongst their members; train workers to recognize and avoid forced labour situations; and provide workers with information about work destinations and emergency contacts if they need to flee forced labour.<sup>576</sup> Employers have taken part in initiatives such as national voluntary compliance pacts and programmes to hire rescued workers.<sup>577</sup> The *Instituto do Carvao Cidadao* is an excellent

example of social responsibility in the private sector; various companies in the coal industry, working in collaboration with the Ministry of Labour and Employment and the ILO, formed an independent self-regulatory association in 2004 to monitor forced labour practices. The Institute has its own team of inspectors and promotes the reintegration of rescued workers back into the workforce by providing jobs for them. A similar initiative in the cotton industry is also being developed.

253. A number of companies have publicly agreed to boycott commercial dealings with companies that are known to make use of forced labour. In the State of Pará, steel companies publicly agreed to stop buying vegetable coal from companies that had been proven to use forced labour. The agreement was signed in 2004 and witnessed by the ILO, the High Court of Labour and the Ministry of Labour and Employment.<sup>578</sup> The National Covenant against Forced Labour, coordinated by the ILO and the Ethos Institute of Business and Social Responsibility, was concluded in May 2005, whereby a large number of public and private enterprises undertook not to buy products made using forced labour and to contribute to eradicating all forms of forced and degrading labour from the production chain. This type of action has spread to financial institutions and, in December 2005, the Brazilian Federation of Banks decided to recommend to all its members that they suspend loans to enterprises included on the Government's list of companies that use forced labour.<sup>579</sup> The business world and general community have also shown their support by providing financial support to the project, with in kind and monetary support adding up to an extra US\$5 million, tripling the project's original start-up funds.

254. The independent mid term evaluation of the project interviewed a great number of people who had been participants in project activities. All expressed the view that there was still more work for the ILO to do on forced labour, and that it was too early for the ILO to withdraw.<sup>580</sup> Although the project is scheduled to finish in December 2007, no exit strategy has been planned. The ILO's withdrawal at this point could have a significant adverse effect on the Government's fight to eradicate forced labour. In the light of the project's success to date, the mid term evaluation report recommended that it should continue until 2010. While the large number of workers rescued represents

a great achievement for the project and its partners, it also underscores the magnitude of the ongoing problem, and demonstrates that there is still much more progress to be made to eliminate forced labour in Brazil.

### **Equality and non-discrimination**

255. Brazil has a long-standing commitment to the principles of equality and non-discrimination: it ratified the ILO's Equal Remuneration Convention, 1951 (No. 100) in 1957, and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1965. Brazil has also been a party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1984. The principle of equality is enshrined in Brazil's 1988 Constitution, which recognizes that 'all persons are equal before the law' and that men and women have equal rights and duties (Article 5). The Constitution prohibits inequality in wages, hiring criteria and performance of duties on the grounds of gender, age, colour or marital status (Article 7(30)), and discrimination on the grounds of disability in relation to wages and hiring criteria (Article 7(31)). The Constitution also provides for maternity leave (Article 7(18)), and for special incentives to protect women's status in the labour market (Article 7(20)).

256. Notwithstanding this legal framework, Brazil faces a continuing challenge to address systemic inequality and discrimination in the world of work, which particularly affects women and Afro-Brazilians. Together they comprise 68 per cent of Brazil's economically active population (55 million people); in 2001, there were 14 million economically active black women alone, representing 18 per cent of the economically active population.<sup>581</sup> Two thirds of these black women were employed in the informal economy,<sup>582</sup> and on average they earned 55 per cent less than other women.<sup>583</sup> Recognizing the magnitude of the problem, Brazil has been drawing on ILO technical assistance since 1995 to improve its capacity to implement its obligations under Convention No. 111 in both law and practice. More recently, the ILO and Brazil have been working together to include the effective application of the Convention among the objectives of the ILO's Decent Work Country Programme for Brazil, which was launched by the Ministry of Labour in 2007.<sup>584</sup>

257. The persistence of racial prejudice in Brazil has been well documented and discussed for many years; it is clear that racial discrimination in Brazil is pervasive.<sup>585</sup> Indigenous, black and mestizo communities continue to suffer from deep structural inequalities, despite ongoing positive steps taken by the Government. According to a survey cited by the Government in 2002, 90 per cent of Brazilians living under the poverty line were black or mulatto - and 60 per cent of these were working in the informal economy.<sup>586</sup> By comparison, 48 per cent of the white population were working in the informal sector. Although Afro-Brazilians constitute 45 per cent of the population, they are under-represented in professional positions, as well as in the middle and upper classes. The unemployment rate is higher among Afro-Brazilians, and their average wages are half those earned by the white population. The United Nations Special Rapporteur on the Independence of Judges and Lawyers reported in 2005 that less than 1 per cent of the senior positions in the judiciary and in the Public Prosecutor's Office were held by persons of African descent.<sup>587</sup> There is also a racial gap in educational opportunities: in 2002, the illiteracy rate was 10.6 per cent among whites, 25.2 per cent among mulattos and 28.7 per cent among the black population.<sup>588</sup> A number of universities are trying to provide greater access to opportunities in higher education by implementing affirmative action programmes - and in 2006 it was reported that over 30 universities had initiated a quota system that year.<sup>589</sup> In a further effort to bridge the education gap, the Ministry of Labour and Employment announced in July 2001 that 20 per cent of the budget of the Worker's Assistance Fund (FAT), which was R\$8.7 billion in 2000, would be invested in occupational training for the black and mulatto population, with preference given to women.

257. The gender gap in employment in Brazil signifies that women continue to face both de jure and de facto discrimination, including lack of access to the labour market. Although the women's labour force participation rate increased from 38.7 per cent in 1998 to 51.6 per cent in 2004, the female participation rate has consistently been 20 to 30 percentage points lower than that of men.<sup>590</sup> According to the Ministry of Labour and Employment, women earned 30 per cent less than men in 2002.<sup>591</sup> Women in Brazil are under-represented in political office and the professions: women occupied 11.4 per cent of ministerial posts in 2005. In 2006 they held only 12.3 per cent of the seats in the Senate,

and 8.6 per cent of the seats in the Chamber of Deputies - although this was an improvement over the figure of 5 per cent in 1990.<sup>592</sup> The United Nations Special Rapporteur on the Independence of Judges and Lawyers found in 2005 that women were drastically under-represented in the legal profession, holding a mere 5 per cent of the top posts in the judiciary and in the Public Prosecutor's Office.<sup>593</sup> Although the Federal Supreme Court is chaired by a woman, Justice Ellen Gracie, the Government's Special Secretariat for Policies for Women has identified the upper echelons of the judiciary as a particularly difficult arena for women to reach.<sup>594</sup>

258. The Brazilian Government has worked to address entrenched racial and gender inequality - both through reforms to its legal framework and the establishment of new institutions and agencies. The 1988 Constitution naturally plays a key role within the legal framework, as it contains several important provisions to protect the equal rights of all Brazilians. In December 2004, the National Congress approved Amendment No. 45 to the Constitution, which stipulated that international human rights treaties approved by three-fifths of the votes cast in both chambers should rank on a par with the Constitution. The Government has also amended key domestic laws. It amended the CLT in 1999<sup>595</sup> to include provisions prohibiting discrimination on grounds of gender, age, colour and family status - including pregnancy - in respect of access to employment, vocational training and terms and conditions of employment. The amendment also prohibited the publication of discriminatory employment advertisements, as well as the termination of employment or refusal to hire, promote or train an individual on the grounds of gender, age, race or family status. Moreover, the amendments contemplated the adoption of temporary measures to establish policies on equality of opportunity and treatment for men and women workers - particularly policies designed to correct inequalities that affect women's access to employment and vocational training, as well as women's general terms and conditions of employment.<sup>596</sup>

259. Following an ILO mission in 1995 that focused on discrimination in the labour market, Brazil embarked on a programme of wide-ranging reforms and pro-active policies in the area of workplace discrimination.<sup>597</sup> The Ministry of Labour and Employment created a programme entitled "Brazil, Gender and Race - United for Equal Opportunities". The ILO provided technical

assistance for the establishment of State-level Centres for the Prevention of Discrimination in Employment and Occupation (núcleos) in 1996. The Centres include representatives from State and municipal government, trade unions, enterprises, universities and organizations representing minority groups, women, blacks, indigenous people and disabled persons. They promote awareness of discriminatory employment practices, and receive and examine complaints of discrimination; these are sent to the Public Ministry or to the Attorney General's Office if mediation provided by regional Departments of Labour and Employment is unsuccessful.<sup>598</sup>

260. During the late 1990s, the Government established a Human Rights Commission; an inter-ministerial working group for the promotion of the black population; a Ministry of Agrarian Reform; and a tripartite Working Group for the Elimination of Discrimination in Employment (GTDEO). It also developed a National Human Rights Programme.<sup>599</sup> Since President Lula's election in 2002, gender and racial discrimination have received considerable high-level political attention. President Lula signalled his personal commitment to these issues in 2003, when he established within the Office of the President a Secretariat for the Promotion of a Policy for Racial Equality (SEPIIR), and a Special Secretariat for Policies for Women (SEPM).

261. SEPIIR received assistance from an ILO technical cooperation project between December 2003 and December 2005. This project - entitled National policy for racial equality - helped Brazil to design and implement national policies, and assisted the Ministry of Labour and Employment in increasing and deepening the impact of its programmes. Since 2004, the National Council for the Promotion of Racial Equality (CNPRI), which includes civil society representatives, has monitored the legitimacy of all measures taken to promote equality. The Lula administration has taken other key steps toward racial equality. It has appointed four Afro-Brazilians to the Cabinet, and appointed the first Afro-Brazilian justice to the Supreme Court. President Lula has urged the adoption of a Racial Equality Statute that would help to fulfil his pledge that, within five years, at least a third of federal employees would be Afro-Brazilian. The National Congress is currently reviewing this racial quota law that would set out a system of affirmative action for the civil service, universities and the private sector.<sup>600</sup>

262. SEPM has collaborated with the National Council for the Rights of Women, which was created in the 1990s,<sup>601</sup> and coordinated Brazil's first National Conference on Policies for Women in 2004. This led to the implementation of a National Plan for Policies for Women (PNPM) in 2005. The PNPM sets out the principles that are to guide government policies for the promotion of equality and enforcement of women's rights.<sup>602</sup> Another National Conference is due to be held in Brasília in August 2007 to evaluate the success of the PNPM and to look at the way forward, following the legal reforms of recent years. One of the most significant recent advances for women's rights in Brazil has been the adoption of Law 11340, commonly known as the Maria da Penha Law, which comprises a suite of legal reforms to recognize the gravity of domestic violence. But the Government faces a significant challenge in ensuring that sufficient resources are devoted to enforcing this law. A second important legal reform was the amendment of Brazil's Penal Code in 2001 to provide that certain types of sexual harassment may be punishable as a crime.<sup>603</sup> The Code now prescribes a penalty of one to two years' imprisonment for officials who use their position to pressure another person for the purpose of obtaining sexual advantage or favours.

263. The social partners have demonstrated their commitment to engage with the Government on the issues of equality and discrimination. The tripartite Commission for Racial and Gender Equality of Opportunity and Treatment at Work, established in 2004 within the Ministry of Labour and Employment, has been an important avenue for social dialogue. The Commission is a consultative body, whose objectives are to promote public policies for equal opportunities and treatment and to combat all forms of sexual and racial discrimination at work.<sup>604</sup> The members of the Commission include representatives of government, the six major trade union confederations, and the five sectoral employers' confederations. Employers have shown their support for equality in the workplace through the Gender Pro-Equity Programme. Launched in 2005, the Programme promotes equal opportunities for men and women in business by granting a promotional seal to organizations that commit to a set of concrete measures to ensure equality. Since its inception, the project has received the support of more than 60 corporations.<sup>605</sup> The ILO has provided important technical advice related to the im-

plementation of this programme at municipal and State levels.<sup>606</sup> The ILO is currently working with the Ministry of Labour and Employment to determine how best to promote equality in the policies of Mercosur.<sup>607</sup>

264. Although there have been significant advances, and important government initiatives to combat discrimination, there is still a lot of ground to cover. Brazil is a large, populous country with high levels of social exclusion and poverty. While the Government has implemented measures to prevent and to punish discrimination, its efforts are hindered by the scale of the challenge, and by its persistence. In particular, the combination of poverty and lack of employment prospects not only produces discrimination, but also help to entrench it - as workers with few opportunities are commonly reluctant to lodge complaints because they fear dismissal from the work they have.<sup>608</sup>

## **Conclusion**

265. Brazil has shown a strong commitment towards guaranteeing the rights and principles of the Declaration for all Brazilians. During the term of the socially progressive Lula government, a wealth of programmes, policies and institutions have been introduced in an effort to initiate change across a spectrum of human rights issues, and to move the country toward compliance with the fundamental labour standards of the Declaration. A programme of legal reform has been initiated, but is not yet complete. Despite the gains that have been made, more work is required to secure sustainable further progress.

266. In recent years, Brazil has enjoyed successful outcomes from its increased activity to combat forced labour, achieved with sustained technical assistance from the ILO. More workers are being freed from conditions of forced labour than ever before, and a highly effective national campaign has made the Brazilian public much more aware of the problem of forced labour. The ILO project has provided an example of how the social partners can work together productively to bring about positive changes for Brazilian workers. ILO technical assistance has played a key role in bringing together different stakeholders and building institutional capacity. However, the challenge remains to maintain the momentum of this suc-

successful campaign and to find ways to address the deeper problems that propel Brazilian workers into forced labour, such as poverty and lack of employment opportunities.

267. The biggest task ahead for Brazil is to find ways to bridge the income gaps within its population that make it one of the most unequal societies in the world. A more equal distribution of wealth would allow Brazil to improve social stability and strengthen its economic growth by including more people in the growth process. Moreover, increased government attention to gender and race issues has done relatively little to change the reality: racial and gender discrimination continue to mean that women and Afro-Brazilians have less access to work and education opportunities, and also earn less than their white male counterparts.

268. Brazil also needs to make more progress in its efforts to ensure that its labour laws ensure respect for freedom of association and the right to collective bargaining. While Brazil has reviewed its labour legislation and has indicated that it is prepared to ratify Convention No. 87, much depends on the successful passage of a constitutional amendment through Congress. Even if its laws are brought into compliance with its international obligations, making freedom of association and the right to collective bargaining effective in practice for most Brazilian workers will require significant institution and capacity-building. The Government will need more assistance in this respect, as will employers' and workers' organizations. With continuing support for its efforts to promote the fundamental principles and rights contained in the Declaration, Brazil will be able to continue making essential social and economic progress.



## The Achievements of the Declaration

269. The 1998 Declaration on Fundamental Principles and Rights at Work establishes a framework of minimum social standards that all States must promote and protect. Founded on internationally accepted values, and underpinned by ILO Conventions, the Declaration sets out the basic rights of all workers in the world, and the basis for fair competition in international trade. The Declaration was adopted in recognition of the fact that economic progress does not always go hand in hand with social progress, and that core labour standards can make a positive contribution in both these fields. At the same time, the Declaration acknowledges the need to respect the diversity of circumstances, possibilities and preferences of individual countries.

270. The four countries covered by this report have taken positive steps to fulfil their obligations under the Declaration. They have demonstrated that commitment by ratifying a significant number of the ILO's core Conventions; Indonesia has ratified all eight. Each of the countries also sought expert technical assistance from the ILO to help them in their efforts to realize the fundamental principles and rights at work in practice. With support from the international donor community, and in particular from the United States Department of Labor (USDOL), the ILO Programme on Promoting the Declaration was able to design and to implement sustained projects that delivered key benefits for Brazil, Indonesia, Morocco and Viet Nam, together with more than 70 other countries across the world. The Declaration served as the guide for national action, and the catalyst for the essential combination of political will, international support and ILO expertise.

271. The Programme on Promoting the Declaration has drawn upon the ILO's expertise to assist governments, employers and workers each to play their role in modern, democratic systems of economic and labour relations. It has supported governments by facilitating the drafting and adoption of legislation, while promoting the participation of all the tripartite partners in the process of developing legislative policy. As this re-

port clearly shows, however, a sound legislative framework is only the beginning. Key labour market institutions can only function effectively if each of the tripartite partners offers their support, and has the capacity to fulfil the role required of them. Government must be able to enforce and to promote compliance with its laws. Employers look to their organizations for support on how best to establish social dialogue and negotiations at the plant level. Workers look to their trade unions for information, training, and representation in bargaining and grievances. Declaration projects have played a major part in building the necessary capacity in governments, and also in employers' and workers' organizations. Declaration projects have also played a key role in helping governments, employers and workers to come together in tackling the challenge of eradicating forced labour and human trafficking, and in addressing the problems of inequality in the world of work.

### **Building capacity to realize the fundamental principles and rights at work**

272. This report has considered the efforts of four very different countries to make progress in realizing the fundamental principles and rights at work - and each one has faced different obstacles in its efforts to implement them. However, all of the four countries have benefited by looking to the Declaration as a guide for policy as they have worked to liberalize and boost their economies, and to improve their levels of economic and social development. Each country has gained from the technical assistance provided by the Declaration Programme to address key challenges and to overcome major barriers to progress. With ILO technical assistance to promote the Declaration, each of these four countries has laid a solid foundation to realize the fundamental principles and rights at work for an ever-increasing number of their workers.

273. The ILO's work in Brazil, Indonesia, Morocco and Viet Nam was supported by a total budget

of approximately US\$12 million from USDOL. In turn, the projects in these countries had a direct or indirect impact on the labour standards of their 253 million workers.<sup>609</sup> Working to realize the fundamental principles and rights at work has made an essential contribution toward achieving decent work for all workers, and to addressing the social ills of forced labour and human trafficking, harmful child labour, and other forms of exploitation and inequality in the labour market. But respect for these fundamental principles also makes a major contribution to the wider economy and society. Indeed, fundamental principles and rights at work can play a positive role in building human capability, and thereby contribute to the alleviation of poverty.<sup>610</sup> Although it is a measure of processes beyond the Declaration, it is noteworthy that during the period under review the Human Development Index (HDI) in all four of the countries covered in this report rose appreciably.

274. To consolidate and build on these gains, States must ensure ongoing respect for the fundamental principles and rights at work. A key means of achieving this is to establish and maintain essential labour market institutions, including sound and enforceable national legal frameworks. This was a major objective of the ILO Declaration projects in the four countries covered in this report. The projects assisted governments in reviewing and/or drafting labour laws and related legislation, enacting those laws, and developing the systems and capacities to make new legal frameworks effective in practice. Declaration projects also helped to establish and to improve the operations of labour dispute resolution bodies, and to begin the process of institutionalizing a culture of social dialogue. They provided training and support for those with responsibility for labour dispute resolution, including members of the judiciary, and they developed the skills of those who use dispute resolution services. While assistance with legal frameworks focused principally on labour standards and collective labour relations, in Brazil and Viet Nam the ILO provided support to improve legislation dealing with forced labour and human trafficking, as well as discrimination at the workplace. In all cases the projects sought to build the capacity of employers' and workers' organizations to represent their constituencies, to play their role in modern systems of industrial relations, and to contribute to the realization of all the principles of the Declaration. By supporting each of the tripartite

partners, and by working with them to design and deliver project activities, the ILO Declaration projects also contributed to the establishment of good governance and democracy.

275. The State must play a central role in the establishment of essential labour market institutions. Only the State can enact a labour law framework to protect workers' fundamental rights while promoting economic development - and only government can enforce labour law to ensure that all sides in the labour market are complying with the rules of the game. This means that government must develop the capacity and devote the resources that are needed to ensure that labour law plays its role in realizing the fundamental rights and principles at work. Thus a key focus of the ILO Declaration projects has been to strengthen the government institutions that are central to the efficient operation of the labour market. The projects have worked to improve labour administration, strengthen social dialogue and establish modern dispute settlement systems, including by improving the capacities of the judiciary.

276. ILO Declaration projects have paid close attention to the role of the government officials who have the front-line responsibility to apply - and in some cases enforce - labour law. The projects have focused in particular on labour inspectors, helping to improve their systems and their capacity not only to enforce the law but also to operate as an information resource for both employers and workers. In many cases the ILO Declaration project has provided labour inspectors with the basic resources required to carry out their work, including by donating computer equipment and vehicles. The projects in Brazil, Indonesia, Viet Nam and Morocco all set out to provide training directly to labour inspectors, and also to establish cohorts of experienced inspectors who could then carry out training themselves. In Viet Nam and Morocco there were clear successes. Viet Nam now has permanent Industrial Relations Advisory Service Departments in the seven provinces in which the ILO Declaration project was working. In Morocco, more than 80 per cent of all labour inspectors received training from the ILO Declaration project. There is a trained core of labour inspectors who can train new recruits, and the labour inspectorate has its first ever bilingual (French-Arabic) inspection manual. The Declaration project in Indonesia, however, was less successful in its work with the labour inspectorate, and its activities were re-focused in

areas where it was more likely to achieve positive outcomes. Conversely, a separate ILO Declaration project in Indonesia had significant success in training police on the rights of workers and trade union activists. This has been essential to bring an end to violations of the right to strike, and has been a particularly valuable contribution in a society where the police were previously used as a tool by an authoritarian regime.

277. Employers' and workers' organizations are the expression of the collective decision of their members to exercise their fundamental right to associate. The legal framework must protect the exercise of this right by facilitating the establishment and free operation of representative organizations. Once established, employers' and workers' organizations play a number of key roles, especially representing their members in collective bargaining and dispute resolution. They are essential institutions for spreading knowledge about labour rights and labour laws, and about the processes of negotiation and social dialogue. They are also key participants in tripartite institutions and processes for social dialogue and decision-making, including on matters of economic and social policy. To carry out these various roles effectively, workers' and employers' organizations must not only be representative and sustainable: the organizations and their officials must have key skills, knowledge and abilities. Basic economic knowledge is essential for effective negotiation in the course of collective bargaining. Advocacy skills are needed to represent workers in dispute resolution institutions when employers are frequently represented by legal counsel. Both are needed to participate in debates about labour market and labour law policy.

278. Developing the capacity of the social partners was a central component of the ILO Declaration projects in Brazil, Indonesia, Viet Nam and Morocco, as each country continued to develop its social and economic policies. The projects supported or provided training for thousands of trade union members, informing them about new labour laws and educating them in the basic techniques of negotiation and bargaining. The projects likewise supported or provided training to hundreds of employers on the same topics, and facilitated tripartite discussions on these and other issues. In Indonesia, the ILO Declaration project ran a training course for selected emerging trade union leaders. In Morocco, the project delivered training

directly to workers, and also established a network of trainers among officials of established and representative trade unions. In Viet Nam the project worked with employers and their organizations to develop knowledge about the role of employers in a market economy. In both Viet Nam and Indonesia, the projects carried out intensive work directly with employers in targeted enterprises, to improve their negotiation and bargaining skills and to help them realize the productivity gains of effective labour-management cooperation at the level of the enterprise. In both countries the participants reported significant improvements. In Brazil, the project worked with both unions and employers to provide the skills for them to raise awareness about and to combat forced labour.

279. The ILO Declaration projects have been designed to lead to outcomes that will be sustainable. A key indicator of sustainability is the decision to ratify ILO Conventions, and then to fulfil those international obligations by revising national legal frameworks. These are fundamental developments that are not easily reversed. Brazil, Indonesia, Morocco and Viet Nam have each taken these steps in association with ILO Declaration projects. Strengthening the institutional capacity of government, employers and workers is essential if labour law frameworks are to have a positive effect in practice. It also plays a large part in ensuring that the benefits of technical assistance flow beyond the individuals who are present in training sessions. By training trainers and facilitating the integration of industrial relations into curricula at university (as was done in Indonesia), or trade union training courses (in Morocco), the ILO Declaration projects have worked to help these and other countries to develop sound industrial relations practices that will endure beyond the projects themselves. In all the countries examined for this report, government, employer and worker representatives reported that they and their institutions had been significantly improved as a result of ILO technical cooperation to promote the Declaration. In all of the countries, those who have been involved directly with an ILO Declaration project have passed on their knowledge and skills, or used them in ways that suggest that the outcomes will be sustainable.

280. The ILO Declaration projects have also worked to achieve long term sustainability by focusing on awareness-raising about the fundamental principles and rights at work, both among workers and across the population gen-

erally. An essential strategy in many cases has been to use local language radio and newspapers to spread information. The ILO Declaration project in Brazil was particularly successful in this respect, generating more than 5,000 media items on the issue of forced labour. Raising awareness among workers and citizens about their rights and obligations, as well as the mobilization of civil society, helps to consolidate the achievements of a project and to generate local pressure for continued progress toward realizing the fundamental principles and rights at work. It is a particularly important strategy where trade unions represent relatively few workers (such as Morocco) or struggle to be representative and effective (such as Indonesia and Viet Nam).

281. The work of the ILO Declaration projects in Brazil, Indonesia, Viet Nam and Morocco has also been limited in certain respects. In Indonesia and Viet Nam, the projects were only able to operate in a limited number of provinces. While they sought to maximize their impact by working in the most industrialized provinces, obviously there are many parts of those countries in which more work could have been done. Brazil is a vast country in which the ILO Declaration project could not hope to have a comprehensive impact. In any event, a major limitation on the work of ILO Declaration projects that focus on improving industrial relations is that they carry out their work predominantly with institutions in the formal economy. This is partly a result of the terms in which national labour law frameworks regulate labour relationships. It also reflects, however, the scale of the challenge presented by the informal economy, and the limits that this places on governments and their social partners. The work of the ILO Declaration project in Morocco, for example, helped the Government to establish a plan to promote compliance with the Labour Code 2004, starting with enterprises with more than 50 employees. This is a valuable achievement. It remains true, however that a very high proportion of Morocco's workers are engaged in the informal economy and/or in very small enterprises. Nevertheless, promoting respect for the fundamental principles and rights at work and strengthening the capacity of the tripartite partners is an important way of tackling the challenges posed by the informal economy. These principles and rights apply to all workers, and can play a key role in upgrading conditions and reducing decent work deficits across the board.<sup>611</sup>

282. Brazil, Indonesia, Vietnam and Morocco are very different countries in terms of population, geography, economic development and political system. Each is undergoing a social and economic transformation, in response to its particular forces and needs. Notwithstanding their differences, all four have found it effective to draw on the Declaration as a guide for policy and institutional development. All have committed to realizing the fundamental principles and rights at work as a way of achieving continued economic development and social progress. Growing social pressure in Indonesia and Morocco contributed to the respective Government's willingness to look to the Declaration - and to the ILO - for assistance in complying with its obligations. In these countries that are moving towards a fully functioning democracy, the Declaration has made a positive contribution. In Viet Nam the Declaration has played an important role in facilitating a smoother transition from a planned to a market economy. In Brazil, the Declaration has been an effective focal point for efforts to promote the basic human right of all workers - i.e. not to be subjected to forced labour or human trafficking. In each of these countries the Government has been addressing critical issues, and in some of them it has been working to prevent serious social instability. The ILO Declaration Programme has played a valuable role in designing and delivering timely, cost-effective technical cooperation that has been carefully targeted to address key needs. By supporting and working with the social partners, the ILO Declaration projects have achieved significant results that are also sustainable going forward.

### **The way forward**

283. The Declaration and the projects that have been delivered to promote it in Brazil, Indonesia, Morocco and Viet Nam have helped those countries to develop and implement essential policy changes within a framework of tripartite negotiation. Each of them has gained important benefits from their efforts to realize the fundamental principles and rights at work. The ILO Declaration projects have shown that well organized and capable social partners are better able to engage in social dialogue and negotiation, and that this can contribute to stable labour markets with lower levels of industrial action. This facilitates economic growth, which, in turn, plays a key role in ensuring respect for the fundamental principles and rights at work.

284. The Declaration has been significant to a great extent because of its unique character. The Declaration expresses an obligation that binds ILO member States to protect and promote the fundamental principles and rights at work of all workers. But it also requires the ILO to use the Declaration follow-up mechanism as a means of identifying ways to help countries make progress. This review shows that long-term commitment is required to stimulate and to ensure fundamental change. Instituting change and developing tripartite institutions in countries with little or no tradition for social dialogue takes resources - and it takes time. The ILO Declaration projects can help to facilitate change. Institutionalizing respect for the fundamental principles and rights at work, and developing a culture in which social dialogue and negotiation are central to the conduct of industrial relations, requires continuous support over a prolonged period. Likewise, changing attitudes towards the persistent practices of forced labour and human trafficking, and the continuing problem of discrimination in the labour market, also take time. What is more, realizing the fundamental principles and rights at work in a country requires a coordinated effort by the tripartite partners. The Declaration has proved to be an effective vehicle for coordinating this effort. It also highlights the need for full commitment from all the tripartite partners, and the need for them to have the capacity to make that commitment effective.

285. The Declaration on Fundamental Principles and Rights at Work has made a key contribution to the economic and social transformations that are underway in Brazil, Indonesia, Viet Nam and Morocco. In Indonesia, the Declaration has played an important role in the move from an authoritarian regime to a multi-party democracy that strives to protect the rights of its citizens. In Morocco, the Declaration has contributed to a process of social and economic liberalization. In Viet Nam, the Declaration has been an essential means of building the ability of the Government, employers and workers to play the roles required of them, as the country continues its transition from a planned to a market economy. In Brazil, the Declaration has served as a means of building capacity to protect the fundamental human right not to be subject to forced labour, and the ILO's work to promote the Declaration has led to thousands of workers being freed.

286. In Brazil, Indonesia, Viet Nam and Morocco the ILO has provided technical cooperation to promote compliance with the Declaration that has been well received and has achieved sustainable results. With continued support from the international donor community, these and other countries can continue to make essential social and economic progress, by striving to realize the fundamental principles and rights at work. The ILO can effectively deliver expert technical cooperation that will help in this regard.



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# Footnotes

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240. Interviews with: representatives from the Labour Inspection Department, Rabat; a representative of CDT; a representative of AMDH.
241. Interview with a representative of FDT.
242. Interview with R. Lecourt, ILO CTA
243. CNSS data 2007.
244. Interview with a representative of FDT; Interview with representatives of the Labour Inspection Department, Rabat
245. Interview with a representative of the Ministry of Employment, Social Affairs, and Solidarity, Casablanca Region.
246. U.S. Department of State: Country Reports on Human Rights Practices, 2006, op.cit.; interviews with representatives of the Ministry of Employment, Social Affairs, and Solidarity, Casablanca Region, and the Labour Inspection Department, Rabat.
247. ICFU: Internationally-recognized core labour standards in Morocco, op.cit.; interviews with representatives of Ministry of Employment, Social Affairs, and Solidarity, Casablanca Region, and the Labour Inspection Department, Rabat.
248. Interview with representatives of the Labour Inspection Department, Rabat.
249. UNCTAD: Investment policy review of Morocco, TD/B/COM.2/76 (Geneva, February 2007).
250. MSI: Mid-term evaluation report: Strengthening industrial relations and labour law compliance in Morocco (2005), funded by the U.S. Department of Labour and implemented by the ILO, hereinafter referred to as : Mid-term evaluation report.
251. Interview with a representative of the Ministry of Employment, Social Affairs, and Solidarity, Casablanca Region. Interview with a representative of FCMCIS. Any enterprise with 50 or more employees must establish an 'enterprise committee' including the employer and their representative, elected representatives of the workers, and a representative of a trade union with members at the enterprise: Labor Code 2004, Arts. 464, 465.
252. Interview with a representative of UGTM.
253. Interview with a representative of CDT.
254. Interview with a representative of CGEM.
255. Interview with a representative of FDT..
256. U.S. Department of State: Country Reports on Human Rights Practices, 1999.
257. Interview with a representative of FDT.
258. Interviews with representatives of UGTM, CGEM, Casablanca and N. O. Touhami, Chief technical adviser (CTA), ILO.
259. Interview with a representative of FCMCIS.
260. Interviews with representatives of UGTM, FCMCIS, and CGEM.
261. Interview with a representative of CGEM.
262. Interview with a representative of CDT.
263. Interview with a representative of CGEM.
264. Interview with a representative of CGEM; Interview with El. H. Kafouni (Former trade union official).
265. Interview with a representative of CGEM.
266. ILO : Countries examined under the annual review of the Declaration (2000-2006) : Morocco ; and interview with a representative of CDT.
267. Mid-term evaluation, p 12.
268. Ibid, p 14.
269. Ibid, p 14.
270. The Mid-term evaluation puts the total number of labour inspectors at 340 in February 2004.
271. Under the new labour law, all enterprises with more than 50 employees have to have an enterprise committee.
272. Mid-term evaluation, p 27.
273. ILO: Technical Progress Report, 22 October 2006, p 2.
274. Interviews with: representatives from the Labour Inspection Department, Rabat.

275. The training has also been used as an opportunity to introduce a wide range of the training tools and manuals available. Interview with R. Lecourt, ILO CTA. All enterprises with more than 10 employees must have a workers' representative, elected by their fellow workers: Labour Code, 2004, Art. 430.
276. Mid-term evaluation.
277. Interview with a representative of FDT.
278. Interviews with a representative of FCMCIS and R. Lecourt, ILO CTA.
279. ILO: Technical Progress Report, 2 May 2007, p 3.
280. Interview with a representative of UGTM.
281. World Bank: World Development Indicators 2007 (Morocco).
282. Interviews with representatives of CDT and AMDH.
283. Interview with a representative of CDT.
284. Interviews with representatives of CDT and AMDH.
285. Interviews with representatives of FDT and the Spanish Embassy.
286. United Nations: Report of the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, United Nations Commission On Human Rights, E/CN.4/2001/78/Add.1 (New York, 7 November 2000).
287. ICFTU: Internationally-recognized core labour standards in Morocco, op.cit.
288. Interview with a representative of the Spanish Embassy in Rabat.
289. Dahir No 1-99-200 of 25 August 1999.
290. Decree of 13 September 1938.
291. Dahir of 24 February 1958.
292. CEACR Observation concerning Convention No 29 (2006).
293. U.S. Department of State: Country Reports on Human Rights Practices 1999, 2006; ICFTU: Internationally-recognized core labour standards in Morocco, op.cit. United Nations: Report of the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, op.cit.
294. IPEC is currently implementing a programme targeting domestic child servitude.
295. The majority of child labourers in Morocco, however, work in the agricultural sector. In the year 2000, 84 per cent of economically active children in Morocco were in agriculture. E. Edmonds and N. Pavcnik: "Child Labor in the Global Economy" in: *Journal of Economic Perspectives* 18(1), Winter 2005, pp. 199-220.
296. Human beings are trafficking when their movement is non-consensual, taking place through force, deception, coercion sale or abduction. Smuggling of humans is a consensual, but illegal facilitation of movement for profit. Smuggling, however, frequently leaves the concerned persons vulnerable to exploitation. ILO: *An information guide - Preventing discrimination, exploitation and abuse of women migrant workers* (Geneva, 2004).
297. U.S. Department of State: *Trafficking in Persons Report* (2006).
298. U.S. Department of State: *Country Reports on Human Rights Practices*, 2003.
299. See Arts. 50-52 of Dahir No 1-03-196 of 11 November 2003, published in the *Bulletin Officiel* of 20 November 2003.
300. U.S. Department of State: *Trafficking in Persons Report* (2004)
301. U.S. Department of State: *Trafficking in Persons Report* ( 2005).
302. U.S. Department of State: *Trafficking in Persons Report* ( 2006).
303. U.S. Department of State: *ibid.*
304. The Government did, however, lodge reservations in relation to articles concerning the status of women, divorce and nationality. Commission of the European Communities: *Country Report Morocco*, op.cit.. The subsequent changes to the Family Code may have the effect of removing the perceived need for some of these reservations.
305. United Nations: CEDAW, op.cit.
306. Interview with CGEM, Casablanca
307. L.Skalli: "Women and poverty in Morocco: The many faces of social exclusion", in: *Feminist Review*, Vol. 69, No.1, 2001.
308. CEACR Observation concerning Convention No. 111 (2005).
309. CEACR Observation concerning Convention No 100 (1999-2007); CEACR Observation concerning Convention No. 111 (1999-2007).
310. CEACR Observation concerning Convention No. 111 (2007).
311. Human Rights Watch. *World Report 2002. Morocco*.
312. CEACR Observation concerning Convention No. 100 (2004).
313. Interview with a representative of AMDH.
314. CEACR Observation concerning Convention No. 100 (2005).
315. CEACR Observation concerning Convention No. 100 (1999).
316. CEACR Observation concerning Convention No 111 (2004).
317. CEACR Observation concerning Convention No. 100 (2005); CEACR Observation concerning Convention No 111 (2007).

318. CEACR Observation concerning Convention No. 111 (2005).
319. Ibid.
320. Ibid.
321. Labour Code, Articles 9 and 346.
322. Labour Code, Article 9.
323. Labour Code, Article 40.
324. U.S. Department of State: Country Reports on Human Rights Practices, 2005; Interviews with R. F. Meknassi, Professor and ILO National Project Manager of Global Compact, and a representative of AMDH.
325. CEACR Observation concerning Convention No 111 (2007).
326. OECD: Policy Insights No. 15: Culture, gender and growth (OECD Development Centre, 2005).
327. ERF: Poverty Reduction Strategies in North Africa, op.cit.; P.R. Agénor and K. El Aynaoui, op.cit.
328. U.S. Department of State: Country Reports on Human Rights Practices, 2000.
329. Human Rights Watch: Morocco Country Summary, January 2007
330. Interview with representatives of ABA.
331. Interview with a representative of CDT.
332. Interview with a representative of UGTM.
333. Interview with CGEM, Casablanca.
334. Interview with a representative of FCMCIS.
335. Interview with R. Lecourt, ILO CTA.
336. Interview with a representative of CDT.
337. Interviews with representatives of UGTM, FCMCIS, ABA and CGEM
338. Interview with representatives of ABA; Mid-term evaluation report
339. Viet Nam was not a member of the ILO during the periods 1976 – 80 and 1985 – 92. ILO: NATLEX database, July 2007.
340. U.S. Department of State: Background notes: Vietnam (2007).
341. Ibid.
342. World Bank: Vietnam at a glance, [http://devdata.worldbank.org/AAG/vnm\\_aag.pdf](http://devdata.worldbank.org/AAG/vnm_aag.pdf) (2006)
343. Interview with a representative of the United States Embassy, Hanoi.
344. Economist Intelligence Unit (EIU): Country Report: Vietnam (London, April 2007).
345. Ibid.
346. Ibid.
347. Asian Development Bank (ADB): Key Indicators 2007. Part I: Inequality in Asia (2007) p.100.
348. ILO: KILM database, July 2007.
349. Government of Viet Nam: Comprehensive Poverty Reduction and Growth Strategy ( Hanoi, September 2003).
350. ILO: KILM database, July 2007.
351. ADB: Key Indicators 2007, op.cit.; ILO: KILM database, August 2007.
352. ILO: KILM database, July 2007.
353. ADB: Efficiency enhances the competitiveness of Viet Nam, presentation by O. Shrestha at Ho Chi Minh City (December 2006).
354. General Statistics Office of Viet Nam, 2007.
355. Chang-Hee Lee: Industrial relations and dispute settlements in Viet Nam (Hanoi, ILO, 2006).
356. ADB: Vietnam: Private sector assessment, strategy and program assessment (2005).
357. Chang-Hee Lee: 'Recent industrial relations developments in China and Viet Nam: The transformation of industrial relations in East Asian transition economies', in Journal of Industrial Relations, Vol.48, No.3 (Thailand, ILO, 2006) pp. 415–429.
358. ILO: Promoting sound industrial relations at the workplace and strengthening the capacity of industrial relations actors (Status report, 2004).
359. ILO: NATLEX, August 2007.
360. ILO: Review of Annual Reports under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work, Part II (Geneva, March 2006) p. 142.
361. Labour Code, section 7(2); Law on Trade Unions, section 1(2).
362. Labour Code, section 7(4).
363. Labour Code, section 154.
364. Labour Code, section 46.
365. Labour Code, section 153(1).
366. Labour Code, section 46.

367. Law on Trade Unions, section 1.
368. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Vietnam, released by the Bureau of Democracy, Human Rights and Labor. The VGCL itself already enjoys the right to affiliate internationally.
369. Labour Code, section 174.
370. Labour Code, section 175.
371. Labour Code, section 176.
372. Labour Code sections 168–179.
373. P. Nicholson: 'Vietnam's labour market: Transition and the rule of law,' in S. Cooney et al: *Law and Labour Market Regulation in East Asia* (Routledge, London, 2002).
374. Interview with J. Sonoo, ILO CTA.
375. U.S. Department of Labor: *Foreign Labor Trends: Vietnam* (Hanoi, 2002).
376. As J Sunoo ILO CTA observed, many of the issues that precipitated strike action could have been easily resolved had workers and management established channels of communication.
377. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Vietnam', op.cit.
378. Ministry of Foreign Affairs, Denmark; Embassy of Denmark, Hanoi, 2007.
379. Interview with representatives of the VGCL.
380. The VCCI had around 7,000 members in 2006, representing a total of 150,000 enterprises. The VCA represents around 400 cooperatives. Do Quynh Chi: *Impact Assessment Study, Vietnam, Programme on Promoting the Declaration* (Hanoi, 2007).
381. Interview with representatives of VCCI.
382. ICFU: *Vietnam: Annual survey of violations of trade union rights* (Geneva, 2005).
383. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Vietnam, op.cit.
384. The Vietnamese Government maintains that around 90 per cent of workers in SOEs and 95 percent of workers in the public sector are union members: as reported in the U.S. Department of State: *Country Reports on Human Rights Practices: Vietnam, 2000–2005*.
385. Twenty per cent in foreign-owned and 50 per cent in domestic private companies: Chang Hee Lee: *Industrial relations and dispute settlements in Vietnam*, op.cit.
386. Interview with a representative of ILO, Hanoi; Do Quynh Chi: *Impact Assessment Study*, op.cit.
387. *Final Evaluation of the USDOL/ILO Industrial Relations Report* (Oslo, Scanteam, May 2006), pp 4-5.
388. *ibid*, p 27.
389. The project worked in Hanoi, Hai Phong, Hai Duong, Da Nang, Bing Duong, Dong Nai and Ho Chi Minh City. See: *USDOL/ILO Industrial Relations Report, Mid-term Evaluation (MSI, Washington D.C., 2005)* p ii.
390. *Final Evaluation* op.cit, p. 19.
391. *Ibid*, p. 21.
392. *Ibid*, p 21.
393. *Ibid*, p. 30.
394. Do Quynh Chi: *Impact Assessment Study*, op.cit.
395. U.S. Department of State: 2001 Country Reports on Human Rights Practices: Vietnam.
396. World Vision International: *Mekong human trafficking strategy* (Asia Pacific Region Office, 2007).
397. U.S. Department of State: *Trafficking in Persons Report* (2005).
398. Section 119 of the Penal Code and sections 24 and 33 of Order No 10/ 2003 on the Promulgation of the Ordinance on Prostitution Prevention and Combat, which contains measures aimed at curbing prostitution and provides for protection and prevention of trafficking of persons for the sex trade.
399. U.S. Department of State: 2001 Country Reports on Human Rights Practices: Viet Nam.
400. U.S. Department of State: 2001 and 2002 Country Reports on Human Rights Practices: Vietnam.
401. U.S. Department of State: 2004 Country Reports on Human Rights Practices: Vietnam.
402. Human trafficking in Vietnam, see: [www.humantrafficking.org/countries/vietnam](http://www.humantrafficking.org/countries/vietnam).
403. U.S. Department of State: 2005 Country Reports on Human Rights Practices: Vietnam.
404. See, for example, Article 5(2) of the Labour Code and Article 11 of the Decree on Administrative Penalties for Labour Offences.
405. This ordinance was removed in January 2007.
406. U.S. State Department: *Trafficking in Persons Report* (2007), op.cit
407. *Ibid*.
408. U.S. Department of State: 2005 Country Reports on Human Rights Practices: Vietnam.
409. U.S. State Department: *Trafficking in Persons Report* (2005).
410. U.S. Department of State: 2000 Country Reports on Human Rights Practices: Vietnam.
411. [www.humantrafficking.org/countries/vietnam](http://www.humantrafficking.org/countries/vietnam), op.cit.
412. C.Cacioppo (ed.): *Can Tho City, Han Giang Province and Tay Ninh Province in Southern Viet Nam. The situation*

- of migration and trafficking of children and women: A rapid assessment, a study prepared for ILO sub-regional project to combat trafficking in women and children (2006).
413. See the information on UNODC technical cooperation projects at: [www.unodc.org/unodc/trafficking\\_human\\_beings.html](http://www.unodc.org/unodc/trafficking_human_beings.html).
414. Interview with a representative of ILO, Hanoi.
415. Section 109 of the Labour Code; Article 63 of the Constitution of the Socialist Republic of Vietnam.
416. Sections 5 and 111 of the Labour Code.
417. CEACR Individual Direct Request concerning Convention No 111 (2002).
418. CEACR Individual Direct Request concerning Convention No 111 (2002). The CEACR has also recommended that the government implement objective systems to analyse jobs and apply wage scales: CEACR Individual Direct Request concerning Convention No 100 (2002).
419. These amendments were introduced in 2002. CEACR Individual Direct Request concerning Convention No 111 (2005).
420. CEACR Individual Direct Request concerning Convention No 111 (2002). The Vietnamese Government has suggested that the current laws are broad enough to cover these grounds of discrimination, but the CEACR has emphasized the need for legislation to explicitly refer to each of the seven grounds of prohibited discrimination: CEACR Individual Direct Request concerning Convention No 111 (2005).
421. ILO: Equality, labour and social protection for women and men in the formal and informal economy in Viet Nam: Issues for advocacy and policy development (Hanoi, Labour and Social Affairs Publishing House, 2003), as cited in CEACR Individual Direct Request concerning Convention No 100 (2005).
422. World Bank: Vietnam Gender Assessment 2006 (Washington D.C., 2006).
423. N. Kabeer et al.: Preparing for the future: Forward-looking strategies to promote gender equality in Viet Nam (Hanoi, UNDP, 2005).
424. Interview with a representative of the Ford Foundation.
425. Human Rights Watch: No sanctuary: Ongoing threats to indigenous montagnards in Vietnam's Central Highland (2006).
426. United Nations: United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 25th Session, New York, September 2001
427. CEACR Individual Direct Request concerning Convention No 111 (2005).
428. World Bank: Vietnam Gender Assessment 2006, op.cit.
429. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Vietnam.
430. Interview with a representative of the Ford Foundation.
431. Human Rights Watch: No sanctuary, op.cit.
432. Interview with a representative of the Ford Foundation.
433. ILO: NATLEX database, July 2007.
434. CEACR Individual Direct Request concerning Convention No 111 (2005).
435. CEACR Individual Direct Request concerning Convention No 100 (2005).
436. Ibid.
437. Do Quynh Chi: Background study, op.cit.
438. U.S. Department of State: Background note : Brazil (2007).
439. S. Gacek: 'Revisiting the corporatist and contractualist models of labor law regimes: A review of the Brazilian and American systems', in *Cardozo Law Review* (August 1994) p.58.
440. ILO: Country baselines under the 1998 ILO Declaration Review (2000-2007): Brazil (Freedom of association and the right to collective bargaining).
441. S. Gacek: 'Brazil, a nation of the present: A reply to Petras', in *Social Policy* (Fall 2004), Vol. 35 Issue 1, pp 5-12.
442. The term BRIC has been coined to describe the collective potential of Brazil, Russian Federation, India and China.
443. United States Embassy, Sao Paulo: Foreign Labor Trends, prepared by the U.S. Department of Labor (2002), p.4.
444. T.Vinod: From inside Brazil: Development in a land of contrasts (Stanford University Press / World Bank, 2006), pp.12-14.
445. 'Lula's comfortable win', in *Economist* (2006). See: [www.economist.com/research/Backgrounders/dis-playstory.cfm?story\\_id=8099007](http://www.economist.com/research/Backgrounders/dis-playstory.cfm?story_id=8099007)
446. Foreign labour trends, op.cit.
447. U.S. Department of State: Background note: Brazil, op.cit
448. IMF: Brazil – outstanding debt (See [www.IMF.org](http://www.IMF.org) for more information on Brazil)
449. Economist Intelligence Unit (EIU): Brazil Country Profile 2007.
450. U.S. Department of State: Background note: Brazil, op.cit.
451. United Nations Economic Commission for Latin America and the Caribbean (ECLAC): Economic survey of Latin America and the Caribbean, (2007); ECLAC: 2006 Panorama of Latin American international insertion, 2007 trends (2007); World Trade Organization (WTO): Annual Report 2006 (Geneva, 2006).

452. European Commission (EC): Country Strategy Paper 2001-2006 (2002), p.8.
453. U.S. Department of State: Background note: Brazil, op.cit.
454. ILO: KILM database, 2005.
455. T.Vinod, op.cit., p.17.
456. See: [www.brasil.gov.br/ingles/about\\_brazil](http://www.brasil.gov.br/ingles/about_brazil). Main exports in 2006 were transportation equipment and parts (14.6 per cent), metallurgical products (11.0 per cent), soybeans, meal and oils (7.6 per cent), and chemical products (2.9 per cent); EIU: Country Report: Brazil (London, 2007), p. 6.
457. U.S. Department of State: Background note: Brazil, op.cit., pp. 5-6.
458. EIU: Country Report: Brazil, op.cit.
459. World Bank: Country Assistance Strategy for Brazil (2003), p.17.
460. U.S. Department of State: Background Note: Brazil, op.cit., p. 5.
461. Mercosur is the Southern Common Market, a regional trade agreement between Brazil, Argentina, Uruguay and Paraguay that was founded in 1991. Venezuela became the fifth full member in 2006.
462. Mercosur Socio-Labour Declaration (Rio de Janeiro, December, 1998), [www.mercosur.int](http://www.mercosur.int).
463. XIX Meeting of the Socio-Labour Commission of Mercosur, 23 June, 2006.
464. U.S. Department of State: Background Note: Brazil, op.cit., p. 4.
465. G20 website: [www.g-20.mre.gov.br/index.asp](http://www.g-20.mre.gov.br/index.asp).
466. UNDP: Human Development Report 2005 (New York, 2005), p. 56.
467. IBRD/IFC: Country Assistance Strategy Progress Report for the Federative Republic of Brazil, FY2004-2007 (World Bank), p.2.
468. UNDP: Human Development Reports 2000-2006. HDI Value is the numeric value of the HDI index, incorporating indicators such as life expectancy, education and income per capita.
469. World Bank: Country Brief 2007.
470. Foreign labour trends, op.cit., p.8.
471. EC: Country Strategy Paper, op.cit., p.12.
472. See: [www.fomezero.gov.br](http://www.fomezero.gov.br).
473. For an overview of the Bolsa Familia programme, see: [www.mds.gov.br/bolsafamilia/](http://www.mds.gov.br/bolsafamilia/)
474. K. Lindert: 'Brazil: Bolsa Familia Program: Scaling-up cash transfers for the poor', in: Principles in action. Sourcebook on emerging good practices, Managing for Development Results (March 2006).
475. See: [www.undp-povertycentre.org/newsletters/Working Papers 21.pdf](http://www.undp-povertycentre.org/newsletters/Working Papers 21.pdf).
476. M. C. Neri: Decent work and the informal sector in Brazil, Working Paper (Geneva, ILO, 2002), p.2.
477. C. H. Corseuil and L. Ramos: Brazilian Labor Market Performance: 1995-2005, Seminar on labour markets in Brazil, China and India, 28 March 2007 (OECD, 2007), p.6.
478. ILO: KILM, 4th edition (Geneva, 2005) (See: Table 7b. Employment in the informal economy, Series 2. informal sector - national definition).
479. All workers in Brazil must have a carteira de trabalho, a document which acts as a record of the worker's current and former employment contracts. Any worker who has not registered their employment contract in their carteira de trabalho is considered an informal worker. See: R. Paes de Barros and C. H. Corseuil: The impact of regulations on Brazilian labor market performance, Research working paper (New York, Inter-American Development Bank, 2001), p.24.
480. Foreign labor trends, op.cit, p.6.
481. 'Adios to poverty, hola to consumption' in: Economist (London), August 16, 2007.
482. Foreign labour trends, op.cit., p. 6.
483. ILO: KILM database, 2005.
484. Ibid.
485. Ibid.
486. C. H. Corseuil and L. Ramos, op.cit. Unemployment was at 9 per cent in 1998, increasing to 9.7 per cent in 2003 and falling to 8.9 per cent in 2004. See: ILO: LABORSTA, 2004 ("Unemployment, general level"); Unemployment was at 10 per cent in 2006. See: OECD Statistics ("Total unemployment: Brazil"), [stats.oecd.org](http://stats.oecd.org)
487. Foreign labor trends, op.cit., p. 4.
488. ILO: LABORSTA, 2004.
489. Female unemployment has varied slightly over the years from 1998 to 2004; measured at 11.6 unemployment in 1998 and 12.3 in 2003, the rate fell back to 11.7 in 2004. See: ILO: LABORSTA ("Unemployment: General level" ).
490. World Bank: World Development Indicators database, April 2004
491. EIU: Country Report, Brazil, op.cit. p. 6.
492. C. H. Corseuil and L. Ramos, op.cit., pp. 5-6.
493. World Bank: Brazil: Equitable, competitive, sustainable – contributions for debate (Washington D.C., 2004), p.316.
494. R. Galli and D Kucera: 'Labor standards and informal employment in Latin America', in : World Development, vol. 32 (2004), No. 5, pp. 809-828.

495. World Bank: Brazil: Equitable, competitive, sustainable, op. cit., p.316.
496. Foreign labor trends, op. cit., p.7.
497. M. C. Neri, op.cit., p.2.
498. W. F. Maloney and W. V. Cunningham: "An alternative view of the informal sector," in: F.G. Carneiro et al (eds.), The third dimension of labour markets, demand, supply and institutions in Brazil (New York, Nova Science Publishers, 2006), p. 31.
499. ICFTU: Internationally recognized core labour standards in Brazil (Geneva, 2004).
500. ILO: Country baselines, op.cit. p. 4.
501. ILCCR: Examination of individual case concerning Convention No 29 (2005).
502. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Brazil (Washington D.C., 2006).
503. Freedom House: Freedom in the world 2007, Brazil, p. 4, see: [www.freedomhouse.org](http://www.freedomhouse.org)
504. ICFTU: Internationally recognized core labour standards in Brazil (Geneva, 2006), p.1.
505. Brazil also ratified the Collective Bargaining Convention, 1981 (No. 154) in 1992.
506. ILO: Country baselines, op.cit., pp. 9-10;
507. Constitution of Brazil, Article 8; Consolidation of Labour Laws (CLT), sections 513, 516 and 611-613; S. Gacek, op.cit.
508. CLT, sections 578-579; see: S. Gacek, op.cit.
509. See: Committee on Freedom of Association (CFA) case reports No. 325 on complaints against the Government of Brazil (2001). However, Cardoso claims that the lack of competitiveness created by unicidade is a myth and that workers have a real choice regarding which union they will join. He states that this is borne out by statistics showing that there are over 16,000 unions currently operating in Brazil. A. Cardoso: Industrial relations, social dialogue and employment in Argentina, Brazil and Mexico, Employment Strategy Paper (Geneva, ILO, 2004). See also: S. Gacek, op.cit., who reported on the multiplicity of unions in Brazil, notwithstanding unicidade, in the mid 1990s.
510. ILO: Country baselines, op.cit., p.12.
511. The three major central trade union federations involved in this work are the Single Central Organization of Workers (CUT), the Força Sindical (FS) and the General Confederation of Workers (CGT).
512. CEACR: Individual observation concerning Convention No 98 (2006).
513. ICFTU: Brazil: Annual survey of violations of trade union rights (Geneva, 2006), p.2.
514. ILO: Country baselines, op.cit, pp. 9-10.
515. Ibid, p. 2.
516. Article 4 of Convention No. 98 states: 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.'
517. CEACR: Observations concerning Convention No. 98 (1999 -2007); and CFA: Case reports on complaints against the Government of Brazil (2000-07).
518. CEACR: Individual observation concerning Convention No. 98 (2004).
519. ICFTU: Brazil: Annual survey (2006), op.cit., p. 2.
520. Constitutional amendment 623/98; CEACR: Individual observation concerning Convention No. 98 (2002).
521. CEACR: Individual observation concerning Convention No. 98 (2006).
522. CEACR: Individual observation concerning Convention No. 98 (2004).
523. CEACR: Individual observation concerning Convention No. 98 (2006).
524. ILO: Country baselines, p. 3.
525. A. Cardoso, 2004, op.cit., p.28.
526. Foreign labor trends, op.cit., p.12; see also S.Gacek, 1994, op.cit.
527. S. Gacek, 1994, op.cit., pp. 52-53.
528. ILO: "Waiting in Correntes: Forced labour in Brazil," in: World of Work, No. 50 ( Geneva, 2004), p. 15.
529. ICFTU: "Brazil: Black women, prey to all forms of discrimination," in: Trade Union World (Geneva, 18 July 2001).
530. Presidency of the Federative Republic of Brazil: Senado aprova reforma da Previdência, 10 October, 2005 ([www.presidencia.gov.br](http://www.presidencia.gov.br))
531. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Brazil (Washington, D.C., 2006), p. 24.
532. J.S. Arbache: "Unions and the labor market in Brazil," in: R.P. Barros et al. (eds), What good can labor market institutions do for the poor (New York, Nova Science Publishers, 2006), p. 55.
533. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Brazil, op.cit., p. 24.
534. ICFTU: 2004, op.cit.
535. ICFTU: 2006, op.cit., p.3.
536. U.S Department of State: 2006 Country Reports on Human Rights Practices: Brazil, op. cit., p.24.
537. ILO: Country baselines, op.cit., p. 12.

538. S.Gacek, 1994, op.cit.
539. ILO: Country baselines, op.cit., p. 4.
540. ILO: "Waiting in Correntes: Forced labour in Brazil," op.cit., p.14.
541. Ibid; and interview with Human Rights Committee (SEDH) representative, 2007.
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543. ILO: "Waiting in Correntes: Forced Labour in Brazil," op.cit., p.14.
544. ILO: Combating forced labour in Brazil, Mid term evaluation report (BRA/01/SOM/USA), 2003, p.6.
545. ILO: Report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution alleging non-observance by Brazil of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).
546. Ibid.
547. ILO: "Waiting in Correntes: Forced labour in Brazil," op.cit.
548. CEACR: Individual observation concerning Convention No. 29 (2000) regarding the issue of child prostitution in the State of Rondonia.
549. U.S. Department of State: 2006 Country Reports on Human Rights Practices: Brazil, op.cit.; and United Nations Office on Drugs and Crime (UNODC ): Combating Trafficking in Human Beings in Brazil (2003).
550. CEACR: Individual Observation concerning Convention No. 29 (2000).
551. Act No 10.803. It establishes a penalty of between two to eight years' imprisonment for crimes imposing conditions of slavery on people. By 2004, Brazil had also amended its laws to ensure that there was no difference in penalties between urban and rural areas. CEACR: Individual Observation concerning Convention No. 29 (2004).
552. Certain courts have ruled that such trials are not within the competence of the federal judicial system. According to this interpretation, the responsibility for commencing proceedings should therefore be removed from the federal Attorney-General's Office to the offices of the attorney-generals in each state.
553. U.S. Department of State: Trafficking in Persons Report (2006), p.1.
554. Ordinance No. 550 MTb of 14 June 1995.
555. ILO: "Waiting in Correntes: Forced Labour in Brazil," op.cit., p. 15
556. One official reported that 15 days of travel by boat and foot was necessary to reach a farm that was known to be using forced labourers. See: ILO: "Waiting in Correntes": op.cit., p. 15
557. ILO: Combating forced labour in Brazil, BRA/01/50/USA (Project document, ), p.3.
558. See: [www.mj.gov.br/sedh/ct/conatrae/conatrae.htm](http://www.mj.gov.br/sedh/ct/conatrae/conatrae.htm).
559. It has been involved in the creation of a mechanism to refuse the granting of public financing to the owners of lands where such exploitation has occurred; coordination between stakeholders concerning the proposed amendment to the Constitution for the confiscation of the lands of owners exploiting slave labour.
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561. ICFTU, 2004, op.cit.
562. B. Sharma, 2006, op.cit., p.5.
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564. B. Sharma, 2006, op.cit. p.4.
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580. ILO: Decent Work in the Americas, op.cit. p.41.

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592. U.S. Department of State: 2006 Country Reports on Human Rights Practices, op.cit.
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