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Trade Union Rights In the Asia-Pacific region

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INTRODUCTION

1. Introduction

- 1.1 The Asia Pacific region is home to around 4.46 billion people; this is 60 per cent of the world population¹. It is also home to five of the world's largest economies – *China, Japan, India, Korea* and *Australia* – and has the largest GDP of all continents, both nominal² and when measured in purchasing power parity³. In addition, countries such as *India, Japan* and *China* host some of the world's largest trade unions as well.
- 1.2 Despite these impressive numbers, many countries in the Asia Pacific region have a comparatively low record of compliance of trade union rights. All unions, including those in the public sector, face significant barriers, both in law and in practice. In many countries collective bargaining is absent or restricted in scope and, where it exists, limited rights for the participation of unions or lack of enforcement procedures are common⁴. Another problem observed in the region is the broad definition of “essential services”, which exclude workers – in some cases virtually the whole public sector – from exercising full trade union rights.
- 1.3 To some extent, the forms that these restrictions take have been shaped by and echo the region's development paths⁵. For instance, in *Japan, Malaysia, the Philippines, Singapore, and South Korea*, models of corporatism and enterprise unionism are prevalent. Trade union and labour laws in *Australia* and *New Zealand* have clear roots in British structures (despite a clear departure over the years). And in the industrial relations systems of *Bangladesh, Hong Kong, India, pre-reform Myanmar, Pakistan, and Singapore*, there are significant overlaps. In another group of countries of the so called socialist planned economies, such as *China, Laos, Mongolia, North Korea, and Vietnam*, there is a pattern of centralised or trade union monopolies rooted in the “party” and the State.
- 1.4 Where labour laws are still strong, enforcing and implementing workers' rights are nevertheless difficult. Comparatively, there are shortcomings in the labour inspection and law enforcement, and on the other hand the unions of many countries are not strong enough to enforce rights through social dialogue or industrial action. Two additional challenges are posed by the recently adopted ASEAN Human Rights Declaration (AHRD) and the Trans-Pacific Partnership Agreement (TPPA), which are expected to have profound impacts for social and employment models in the region.
- 1.5 Neo-liberal policies such as privatisation, liberalisation, new models for assessing performance, and austerity measures, are also having significant effects on the working conditions of public sector workers, being the rise of precarious employment one of the most worrying trends⁶.
- 1.6 The following sections will discuss all these issues in more detail and at the end some reflections and recommendations will be suggested for debate.

¹ See www.worldpopulationreview.com (last visited 17 July 2016).

² World Bank, *Gross domestic product ranking table* (2015), available at: <http://databank.worldbank.org/data/download/GDP.pdf> (last visited 17 July 2016)

³ See <http://www.worldpopulationstatistics.com/asia-population-2013/> (last visited 17 July 2016)

⁴ PSI, *Your Future in Public Hands* (2013), p. 6.

⁵ A good exposition of the influence of Asia's diverse development paths on trade union structures and methods appears in Youngmo Yoon, *A Comparative Study on Industrial Relations and Collective Bargaining in East Asian Countries*, (2009) Working Paper no. 8 ILO Industrial and Employment Relations Department, at pages 1-11

⁶ PSI, *op.cit.*, p. 3.

2. Trade Union Rights

- 2.1 The Asia Pacific region has a comparatively low ratification rate for ILO Conventions 87 and 98 (see map, in Annex), and there are many obstacles, violations, and threats to the right to organise throughout the region, both in the public sector and more generally. This section looks at the right to organize, collective bargaining, the right to strike, and also the general situation of civil liberties in the region, which are being interfered in different forms and to different degrees.

The right to organise

- 2.2 The most explicit restriction on the right to organise is the complete ban on public sector workers. For instance, in *Bangladesh*, the Labour Act 2006 (which grants the right to form and join unions) does not apply to workers in the public sector⁷. In *Cambodia*, the Labour Law excludes persons appointed to a temporary or a permanent post in the public service, and therefore they do not have the right to organize as trade unions⁸. In *Indonesia*, the specific legislation that regulates the right to organize of public servants has not been enacted⁹. In *Japan*, a range of laws prohibit workers in firefighting services, penal institutions and the Maritime Safety Agency to organise¹⁰. In *Malaysia*, the Trade Union Act states that members of the prison service cannot join or be accepted as members of any trade union¹¹. In *Pakistan*, both national and provincial legislation exclude some categories of public sector workers; for instance, workers employed in the administration of the State¹², in public medical facilities¹³, or the security services of companies in the energy sector¹⁴. In the *Philippines* firefighters and jail guards – among other public employees – are not eligible to form, join or assist any employee organization¹⁵. In *South Korea*, the Act on the Establishment, Operation, Etc., of Public Officials' Trade Unions prohibits politically-appointed officials and high level public officials to organize¹⁶. In *Sri Lanka*, prison and judicial officers cannot form unions¹⁷. In *Thailand*, it has been reported that the law prohibits employees of quasi-governmental institutions (which are growing in number) from joining unions¹⁸.
- 2.3 In other countries where organising is allowed, this right is impaired by single trade union systems. This is for instance the case of the All-China Federation of Trade Unions (which claims 239 million members¹⁹) and the Lao Federation of Trade Unions. Also in *Vietnam* legislation provides for a centralized system, named "democratic centralism"²⁰, under the Vietnam General

⁷ Bangladesh Labour Act 2006, Art. 1(4).

⁸ Labour Law, Section 1.

⁹ ILO, *CEACR Observation 2015*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3253425 (last visited 17 July 2016).

¹⁰ See the Public Corporation and National Enterprise Labour Relations Law (1948), the Local Public Enterprise Labour Relations Law (1952), the National Public Service Law (1947) and the Local Public Service Law (1950)

¹¹ Act 262 of 1959 (as amended up to 1 January 2006), Art. 27.

¹² Industrial Relations Act 2002, Section 1(3)(b).

¹³ *Idem.*, section 1(3)(e).

¹⁴ Section 1 of the BIRA, KPIRA, PIRA and SIRA.

¹⁵ Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, Rule II, Section 2.

¹⁶ Act No. 7380 of Jan. 27, 2005 (as amended), Art. 2

¹⁷ Trade Unions Ordinance 1935, Section 20.

¹⁸ ITUC, *Survey of violations of Trade Union Rights* (Thailand), available at <http://survey.ituc-csi.org/Thailand.html#abs-2> (last visited 17 July 2016).

¹⁹ ACFTU, *Chinese Unions Make Progress in 2010* (2011), available at <http://english.acftu.org/template/10002/file.jsp?cid=63&aid=622> (last visited 17 July 2016).

²⁰ Law on Trade Unions, Art. 6.1.

Confederation of Labor²¹. The relationship between the trade union centre and the ruling People's Action Party in *Singapore* has also been described as “somewhat similar ... though different in historical origin and structure”²². In countries where there have been historically strong trade union rights we are seeing these rights wound back. For instance, in *Australia* trade unions' “Right of Entry” legislation and protection from unfair dismissal are under repeated attack from conservative governments.

- 2.4 In practice, there have also been disincentives and punishments in many countries against workers who attempt to organize and establish trade unions, often in the form of preventing registration, threats, and anti-union dismissals, which not only affect public sector workers but workers in general. For instance, in *Fiji*, it was reported in 2014 that the government refused to recognise the Public Service Union, whereas public sector employees reported being too scared to engage in union activities out of fear of reprisals from their employer²³. In *India*, the Thriveni mining company had sought to prevent organising through a campaign of intimidation, beginning with the sacking of seven union organisers in September 2014²⁴. In *South Korea*, the Korean Government Employees' Union (KGEU) was denied registration in 2013, owing to a provision in its bylaws recognizing the union membership of dismissed workers²⁵. In *Malaysia*, the government-owned Malaysian Airlines Systems Berhad transferred their assets and airline business to a newly created separate legal entity, Malaysian Airlines Berhad (MAB), and as a consequence the in-house union ceased to exist. The National Union of Flight Attendants of Malaysia (NUFAM) duly applied to the new employer for recognition in a letter dated 11 September 2015, but first MAB and then the Director General for Industrial Relations have not responded to the application²⁶. In *Myanmar*, an attempt to unionise public sector workers, in 2013, resulted in the leaders being transferred to remote locations²⁷. In *Sri Lanka*, the Lanka Hospitals, a semi-government organization, dismissed employees and did not recognize the trade union of more than 1300 employees in 2015²⁸.

Collective bargaining

- 2.5 Akin to the right to organise, public sector workers of many countries in the Asia Pacific region cannot bargain collectively or have this right limited. For instance, in *Bangladesh*, where public workers cannot organize, wage rates and other conditions of employment are determined through simple consultation by means of government appointed tripartite wage commissions²⁹. The same in *Cambodia*, where civil servants' associations are not recognized as trade unions

²¹ *Idem.*, Art. 7.

²² Youngmo Yoon, *A Comparative Study on Industrial Relations and Collective Bargaining in East Asian Countries*, (2009) Working Paper no. 8, ILO Industrial and Employment Relations Department, p. 5.

²³ ITUC, *Survey on violations of Trade Union Rights* (Fiji), available at <http://survey.ituc-csi.org/Fiji.html#tabs-3> (last visited 17 July 2016).

²⁴ ITUC, *Survey on violations of Trade Union Rights* (India), available at <http://survey.ituc-csi.org/India.html#tabs-3> (last visited 17 July 2016).

²⁵ ITUC, *Survey on violations of Trade Union Rights* (Korea), available at <http://survey.ituc-csi.org/Korea-44-Republic-of.html#tabs-3> (last visited 17 July 2016).

²⁶ ITUC, *Survey on violations of Trade Union Rights* (Malaysia), available at <http://survey.ituc-csi.org/Malaysia.html#tabs-3> (last visited 17 July 2016).

²⁷ ITUC, *Survey on violations of Trade Union Rights* (Myanmar), available at <http://survey.ituc-csi.org/Burma.html#tabs-3> (last visited 17 July 2016).

²⁸ ITUC, *Survey on violations of Trade Union Rights* (Sri Lanka), available at <http://survey.ituc-csi.org/Sri-Lanka.html#tabs-3> (last visited 17 July 2016).

²⁹ ILO, *CEACR Observation 2013*, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3149778:NO (last visited 17 July 2016).

and do not enjoy collective bargaining rights³⁰. In *India*, the Industrial Disputes Act 1947 specifically excludes managerial and supervisory public servants and this means that their registered organisations cannot receive official recognition for bargaining purposes³¹. In *Japan*, employees in penal institutions and the Maritime Safety Agency do not have the right to bargain collectively, whereas the wages for administrative and clerical workers at the local or national level are set by law and/or regulations, partly based on recommendations issued by the National Personnel Authority and local personnel commissions³². In *Laos*, it is reported that the government unilaterally sets public sector wages³³. In *Malaysia*, public workers do not have collective bargaining rights and they can only discuss with its employer on matters concerning conditions of work through the Joint National Council and the Joint Agency Council³⁴. In *Pakistan*, workers excluded from the right to organize – referred above – and those covered by the Essential Services Maintenance Act 1952 are not allowed to bargain collectively. In *Sri Lanka*, legislation does not provide for genuine collective bargaining mechanisms for public sector workers, but rather established a consultative mechanism under which the demands of public service trade unions are considered, while the final decision on salary determination rested with the Cabinet of Ministers³⁵. In *Vietnam*, legislation is silent on public sector collective bargaining rights³⁶.

- 2.6 Other limitations include the exclusion of certain topics from the negotiations, as well as time constraints and the lack of enforcement mechanisms. For instance, in *Australia*, the Fair Work Act 2009 that applies to the federal level limits collective bargaining to one or more “permitted matters”, which for instance leave extension of unfair dismissal benefits to workers not yet employed for the statutory period, the provision of strike pay, and the payment of bargaining fees to a trade union, out of the scope of the negotiations³⁷. At state level, the Industrial Relations (IR) Amendment (Public Sector Conditions of Employment) Act 2011 of *New South Wales* provides that increases in remuneration or other conditions of employment are limited to 2.5 per cent per annum, and policies “regarding the management of excess public sector employees” are not permitted to be incorporated into industrial agreements³⁸. In *Myanmar*, the law requires collective agreements to be reached within just five days.³⁹ In the *Philippines*, the scope of collective negotiation is limited to terms and conditions not otherwise fixed by law⁴⁰, thus excluding issues such as wages, benefits and allowances, and working time⁴¹. In *South Korea*, civil servants have the right to collective bargaining, but the bargaining issues are limited to matters concerning trade unions, members' pay and welfare, and other working conditions⁴².

³⁰ ILO, *CEACR Observation 2013*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3146980 (last visited 17 July 2016).

³¹ Industrial Disputes Act 1947, Section 2.

³² ITUC, *Survey of violations of Trade Union Rights (Japan)*, available at <http://survey.ituc-csi.org/Japan.html#tabs-2> (last visited 17 July 2016).

³³ ITUC, *Survey of violations of Trade Union Rights (Laos)*, available at <http://survey.ituc-csi.org/Laos.html#tabs-3> (last visited 17 July 2016).

³⁴ ILO, *CEACR Observation 2015*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255358 (last visited 17 July 2016).

³⁵ ILO, *CEACR Observation 2015*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256579 (last visited 17 July 2016).

³⁶ Law that approves the Statute of the Civil Service, No. No. 8/2004, as amended by Law No. 5/2009.

³⁷ ILO, *CEACR Direct Request 2013*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3148207 (last visited 17 July 2016).

³⁸ *Idem*.

³⁹ Settlement of Labour Dispute Law, Sections 6 and 7.

⁴⁰ Executive Order No. 180, Section 13.

⁴¹ ILO, *CEACR Observation 2015*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3256564 (last visited 17 July 2016).

⁴² ITUC, *Survey of violations of Trade Union Rights (Japan)*, available at <http://survey.ituc-csi.org/Korea-44-Republic-of.html#tabs-2> (last visited 17 July 2016).

- 2.7 Employers' refusal to recognise and bargain collectively is a common problem too. In *Cambodia* there is insufficient protection when employers arbitrarily refuse to recognise representative unions for the purpose of collective bargaining⁴³. In *India*, there is no law compelling employers to recognise and bargain with trade unions. In *Sri Lanka*, there is no formal dispute resolution process in the public sector, where unions have to rely on ministerial decisions⁴⁴.

Right to strike

- 2.8 This is another realm where many restrictions are in force, in the form of clear cut prohibitions for public sector workers, on the one hand, or through cumbersome procedures and the misclassification as "essential services", on the other. For instance, there are outright bans on public sector strikes in *Japan*⁴⁵ and *South Korea*⁴⁶. In *India*, in the state of Tamil Nadu the law prohibits government employees from engaging in strikes or similar action⁴⁷. In *Thailand*, employees of state enterprises are prohibited to strike⁴⁸. In *Cambodia*, a minimum service is imposed in all enterprises, regardless of whether they are public utilities or not, and workers required to provide minimum service and who do not appear for such work are considered guilty of serious misconduct⁴⁹. In *Australia*, the Fair Work Act 2009 provides – among others – for a procedure of "previous authorization"⁵⁰ and the unilateral suspension or termination of a strike⁵¹, whereas the Crimes Act prohibits a strike action to the extent that it threatens trade or commerce with other countries or among states, or results in the obstruction or hindrance of services by the Australian Government or the transport of goods or persons in international trade⁵². Countries operating an excessively high ballot threshold (i.e. over 50%) for lawful strike actions include *Myanmar*⁵³ and *Vietnam*⁵⁴.
- 2.9 Another common problem in the region is legislation that broadly defines "essential services" and therefore restricts the right to strike in sectors where the life, personal safety, or health of the whole or part of the population are not necessarily endangered. For instance, in *Fiji*, the newly adopted Employment Relations (Amendment) Act 2015 provides for a long list of services that include – among others – electricity, lighthouse and meteorological services; the financial, telecommunications, and public utilities industry; as well as the government, statutory authorities, local authorities and government commercial companies, as essential services⁵⁵. In *India*, the Essential Services Maintenance Act limits strikes in essential services but it does not say which services count. In *Malaysia*, the definition of essential services it is said to include healthcare,

⁴³ ITUC, *Survey of violations of Trade Union Rights* (Cambodia), available at <http://survey.ituc-csi.org/Cambodia.html#tabs-2> (last visited 17 July 2106).

⁴⁴ Benson, John and Ying Zhu (eds.), *Trade Unions in Asia: An economic and sociological analysis* (2008), p.193.

⁴⁵ ILO, *CEACR Observation 2011*, available at

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698656 (last visited 17 July 2016).

⁴⁶ The Act on the Establishment, Operation, Etc., of Public Officials' Trade Unions maintains a ban on industrial action in the public sector, such as strikes and work slow-downs. The Trade Union and Labour Relations Adjustment Act and public service legislation ban strikes by people working for the central government or local governments, and by those involved in the production of military goods. Teachers are also banned from striking by virtue of the 1999 Law on Establishment and Operation of Trade Unions for Teachers.

⁴⁷ Tamil Nadu Government Servants Conduct Rules, Rule 22.

⁴⁸ State Enterprise Labour Relations Act (SELRA), Section 33.

⁴⁹ Labour Law, Sections 326(1) and (2).

⁵⁰ Fair Work Act 2009, section 409(2), 437 and 443.

⁵¹ Fair Work Act 2009, Division 6 of Part 3-3.

⁵² Crimes Act, Sections 30J and 30K.

⁵³ Labour Organization Law, Art. 38.

⁵⁴ Labour Code, Article 213.

⁵⁵ ILO, *CEACR Observation 2015*, available at

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3254919 (last visited 17 July 2016).

education and transportation workers⁵⁶. In *New Zealand*, the list of essential services includes – among others – the production, processing, distribution, or sale of petroleum; water transport services; the processing of milk and meat products⁵⁷. In *Pakistan*, employees of the state administration, government services, state enterprises such as oil and gas production, electricity generation and transmission, and state-owned airline and ports – all of which are covered by the Essential Services Maintenance Act 1952 – do not have the right to strike. In *Sri Lanka*, it is reported that a broad and unrestricted definition of essential services allow the President to designate as essential any service "which is of public utility or is essential for national security or for the preservation of public order or the life of the community and includes any department of the government or branch thereof"; these powers have been used in relation to utilities, ports, and oil workers in 2009⁵⁸.

Civil liberties

- 2.10 Civil liberties are a core component of trade union rights. This has been recognized by an ILO resolution in 1970, which states that "the absence of [...] civil liberties removes all meaning from the concept of trade union rights"⁵⁹. These are: (i) the right to freedom and security of person and freedom from arbitrary arrest and detention; (ii) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (iii) freedom of assembly; (iv) the right to a fair trial by an independent and impartial tribunal; and (v) the right to protection of the property of trade union organisations.
- 2.11 The essential status of civil liberties has also been upheld by the ILO supervisory bodies. Both the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have stressed the importance of civil liberties in the enjoyment of trade union rights, and each requires that all appropriate measures be implemented so that trade union rights can be exercised in a climate free of violence, pressure and threats⁶⁰.
- 2.12 In practice, however, restrictions of civil liberties are widespread in many countries and are often exercised by state security bodies. While this is not exclusively aimed at curbing workers' rights, the chilling effect that violence and intimidation can have on trade unionists is obvious. There have been cases in almost every country in the region. For instance, in *Bangladesh*, hundreds have been injured by police in demonstrations both before and since the Rana Plaza collapsed in April 2013⁶¹. In *Cambodia*, a total of five people were shot dead, six other died later from injuries of beatings, and a further 20 or more were injured on incidents occurred on November 2013 and on 2 and 3 January 2014, when police opened fire on striking workers⁶². In *Indonesia*, police used tear gas and water cannons on workers protesting against a wage reform in

⁵⁶ ITUC, *Survey of violations of Trade Union Rights* (Malaysia), available at <http://survey.ituc-csi.org/Malaysia.html#tabs-2> (last visited 17 July 2016).

⁵⁷ Employment Relations Act 2000, Section 90 and Schedule 1.

⁵⁸ ITUC, *Survey of violations of Trade Union Rights* (Sri Lanka), available at <http://survey.ituc-csi.org/Sri-Lanka.html#tabs-2> (last visited 17 July 2016).

⁵⁹ ILO, *Resolution of 1970 Concerning Trade Union Rights and their Relation to Civil Liberties*, adopted on 25 June 1970 at the 54th Session of the International Labour Conference.

⁶⁰ ILO, *CEACR Observation 2011* (application of Convention 87 in Myanmar); and *CFA, 302nd Report*, Case No. 1790, para 296.

⁶¹ ITUC, *Survey of violations of Trade Union Rights* (Bangladesh), available at <http://survey.ituc-csi.org/Bangladesh.html#tabs-3> (last visited 17 July 2016).

⁶² ILO, *OHCHR-ILO joint statement on the release of the 25 persons arrested in November 2013 and in January 2014*, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/pressrelease/wcms_245233.pdf (last visited 17 July 2016).

November 2015⁶³. In *Pakistan*, the Khairpur Police lead a baton charge against protesting teachers and then arrested at least 18 of them when they tried to stage a sit-in on 28 June 2014⁶⁴. In the *Philippines*, seven union members were killed during the strike by the workers of the Hacienda Luisita in 2004, when a composite team of police and military enforced an order by the Secretary of Labour⁶⁵. In 2007, the UN Special Rapporteur on Extrajudicial Executions visited the *Philippines* and found evidence that the Government “sanctioned killings of members of civil society groups”⁶⁶. In *Sri Lanka*, police killed one and injured hundreds by firing into a crowd of demonstrating workers in May 2014⁶⁷.

- 2.13 There are also many reports of arrests, detentions and raids on trade union premises. For instance, in *Fiji*, two of the most senior trade unionists were arrested and detained in January 2014⁶⁸. In *India*, as many as 268 members of the Centre of Indian Trade Unions (CITU) were arrested on 9 June 2015 when they staged a road block near Tirupur railway station to demand the respect of labour rights in industrial units⁶⁹. In *Malaysia*, police arrested 11 workers at a picket near a factory close to Jalan University, on 23 April 2015⁷⁰. In *Myanmar*, Police detained at least 13 factory workers on 4 March 2015 during a protest to demand higher wages and better working conditions⁷¹. Just to name a few.
- 2.14 In *South Korea*, these violations have reached limits never before seen in the country. Since President Park Geun-hye assumed office, on 25 February 2013, the government has been conducting a deliberate and systematic anti-union campaign through the criminalization of lawful trade union activities. For instance, after the 14 November 2015 demonstration, hundreds of trade unionist were summoned and many others were arrested. In this connection, the President of the Korean Confederation of Trade Unions (KCTU), Han Sang-gyun, was sentenced to 5 years in jail on 4 July 2016. This is an unprecedented severe criminal sanction against an assembly organizer, and he is not alone, since other prominent trade union leaders face similar penalties. For instance, the Vice-President of Korean Public Services and Transportation Workers' Unions (KPTU), Cho Sung-deok, was sentence to 2 years on 26 July 2016. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai, stated at the conclusion of his visit to *South Korea*, between 20-29 January 2016, that he sensed a “trend of gradual regression on the rights to freedom of peaceful assembly and of association [...]. Even the courts which should always interpret laws in favour of rights have recently been moving towards restricting rights rather than expanding them”⁷².

⁶³ ITUC, *Survey of violations of Trade Union Rights* (Indonesia), available at <http://survey.ituc-csi.org/Indonesia.html#tabs-3> (last visited 17 July 2016).

⁶⁴ ITUC, *Survey of violations of Trade Union Rights* (Pakistan), available at <http://survey.ituc-csi.org/Pakistan.html#tabs-3> (last visited 17 July 2016).

⁶⁵ ILO, *CAS discussions 2007 – Individual case* (Philippines), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2556229 (last visited 17 July 2016).

⁶⁶ UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions - Follow-up to report on the Philippines* (2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.8.pdf> (last visited 17 July 2016).

⁶⁷ ITUC, *Survey of Violations of Trade Union Rights* (Sri Lanka), available at <http://survey.ituc-csi.org/Sri-Lanka.html#tabs-3> (last visited 17 July 2016).

⁶⁸ ITUC, *Survey of violations of Trade Union Rights* (Fiji), available at <http://survey.ituc-csi.org/Fiji.html#tabs-3> (last visited 17 July 2016).

⁶⁹ ITUC, *Survey of violations of Trade Union Rights* (India), available at <http://survey.ituc-csi.org/India.html#tabs-3> (last visited 17 July 2016).

⁷⁰ ITUC, *Survey of violations of Trade Union Rights* (India), available at <http://survey.ituc-csi.org/Malaysia.html#tabs-3> (last visited 17 July 2016).

⁷¹ ITUC, *Survey of violations of Trade Union Rights* (Myanmar), available at <http://survey.ituc-csi.org/Burma.html#tabs-3> (last visited 17 July 2016).

⁷² UN, *Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Korea*, available at <http://freeassembly.net/news/statement-republic-of-korea/> (last visited 17 July 2106).

Trade union density

- 2.15 Despite these barriers and that levels of trade union membership in the Asia Pacific region are typically low, the density rates improve a little when calculated as a share of paid employment. The ILO reports as follows⁷³:

| Country | Year | Number of trade unions | Number of trade union members | Trade union density as a % of paid employment |
|-------------|------|------------------------|-------------------------------|---|
| Australia | 2012 | 142* | 1,840,400 | 18.2 |
| China | 2012 | 2,663,000 | 280,213,000 | 41.2 |
| Hong Kong | 2012 | 800 | 813,897 | 27.7 ¹ |
| India | 2008 | 9,702 | 9,573,299 | 32.9 ² |
| Japan | 2012 | 54,773 | 9,831,000 | 17.9 |
| South Korea | 2011 | 5,120 | 1,719,922 | 9.9 |
| Malaysia | 2012 | 694 | 889,718 | 9.3 |
| New Zealand | 2013 | 138 | 371,613 | 20.5 ⁵ |
| Pakistan | 2008 | 1,209 | 245,383 | N/A |
| Philippines | 2012 | 18,428 | 1,833,481 | 8.7 ⁴ |
| Singapore | 2012 | 66 | 613,418 | 35.5 |
| Sri Lanka | 2011 | 2,057 | 1,042,016 | 17.9 ³ |
| Taiwan | 2012 | 5,225 | 3,387,524 | 34.9 |

Figures for: * 1995 / ¹ 1999 / ² 2005 / ³ 2010 / ⁴ 2011 / ⁵ 2012

3 Implementation of Labour Rights

The implementation of labour rights (and rights in general) depends on a series of interrelated mechanisms that besides robust legislation (mentioned above) requires a well-resourced labour administration and inspection system and independent law enforcement bodies. In addition, this section deals with international instruments that in one way or another influence the adoption and implementation of national legislation.

Labour inspectorates

- 3.1 In *Australia*, for example, there is a two-tier system that includes occupational safety and health inspections and the Fair Work Ombudsman, who responds to broader complaints⁷⁴. In *India*, the competence corresponds to the central government, the state governments, or both, depending on the issues covered. So, for instance, factories, boilers and electricity are object of concurrent legislative powers – both state and central government – whereas railways, highways, by law declared establishments of public interest, by law indicated major ports, mining and oilfields come under the competency of the central government⁷⁵. *Indonesia* stands out in the region as

⁷³ ILO, *Industrial Relations Indicators, Trade Union Membership Statistics*, available at: <http://laborsta.ilo.org/applv8/data/TUM/UNIONS2014.xls> (last visited 17 July 2016).

⁷⁴ ILO, *Labour Administration and Inspection Programme (Australia)*, available at http://www.ilo.org/labadmin/info/WCMS_156044/lang-en/index.htm (last visited 17 July 2016).

⁷⁵ ILO, *Labour Administration and Inspection Programme (India)*, available at http://www.ilo.org/labadmin/info/WCMS_156047/lang-en/index.htm (last visited 17 July 2016).

having a robust labour inspection regime, which includes civil service investigators with prosecutorial powers⁷⁶. In *Singapore*, the inspectors have ample authority, which ranges from conducting workplace inspections and investigating workplace accidents to conducting research, outreach, and promotional activities with local and international partners⁷⁷. In *Vietnam*, where the inspectors are responsible for overseeing implementation of general working conditions and for ensuring compliance with regard to the establishment of trade unions in enterprises, the negotiation and application of collective bargaining agreements and the settlement of labour disputes, there is a greater emphasis on enforcement measures as well as responding on a case-by-case basis to complaints and denunciations⁷⁸.

3.2 Nonetheless, in practice these mechanisms face obstacles in many countries as well, for instance in the form of under-resourced staff, weak deterrent measures, or the implementation of self-compliance assessment systems. For instance, in *Bangladesh*, the Rana Plaza disaster exposed the poor labour inspection system and the negligence of the government, even with regard to basic safety at the workplace. In *Nepal*, the institution of labour inspection is almost inexistent and the lack of proper data collection implies that statistics and planning are not available⁷⁹. In the *Philippines*, the government introduced a self-reporting mechanism within the national inspection system to build a culture of voluntary compliance with labour standards⁸⁰. In *Thailand*, the “Thai Labour Standards” program was set up in 2003 as a voluntary compliance scheme for large enterprises focusing on Thai Corporate Social Responsibility Requirements, which is used as a system of certification of enterprises⁸¹. In *Vietnam*, despite that both the numbers and powers of labour inspectors increased, the informal workers as well as workers in smaller factories benefit very little, if at all⁸².

3.3 The Association of Southeast Asian Nations, at its fourth Labour Inspection Conference, in July 2014, concluded that the labour inspectorates of member States are nascent and that their current focus is on capacity building and basic health and safety enforcement⁸³. It is likely, therefore, that many public sector workers will not see the benefits of labour inspectorates for some time, as industry rather than typical public sector workplaces are targeted.

Judicial bodies

3.4 In *Japan*, for example, complex laws make it very difficult to win dismissal and discrimination cases, especially for part-time and temporary workers in the private sector, though this is beginning to change following a number of important court victories⁸⁴. In *Cambodia*, there are no specialised labour courts despite a reference to the creation of such courts in a 1997 law,

⁷⁶ ILO, *Labour Administration and Inspection Programme* (Indonesia), available at http://www.ilo.org/labadmin/info/WCMS_153136/lang-en/index.htm (last visited 17 July 2016).

⁷⁷ ILO, *Labour Administration and Inspection Programme* (Singapore), available at http://www.ilo.org/labadmin/info/WCMS_150916/lang-en/index.htm (last visited 17 July 2016).

⁷⁸ ILO, *Labour Administration and Inspection Programme* (Vietnam), available at http://www.ilo.org/labadmin/info/WCMS_150920/lang-en/index.htm (last visited 17 July 2016).

⁷⁹ ILO, *Labour Administration and Inspection Programme* (Nepal), available at http://www.ilo.org/labadmin/info/WCMS_112606/lang-en/index.htm (last visited 17 July 2016).

⁸⁰ ILO, *Labour Administration and Inspection Programme* (the Philippines), available at http://www.ilo.org/labadmin/info/WCMS_209367/lang-en/index.htm (last visited 17 July 2016).

⁸¹ ILO, *Labour Administration and Inspection Programme* (Thailand), available at http://www.ilo.org/labadmin/info/WCMS_153137/lang-en/index.htm (last visited 17 July 2016).

⁸² Asia Monitor Resource Centre, *op.cit.*

⁸³ ASEAN, *Conclusions and recommendations of the 4th ASEAN Labour Inspection Conference* (2014), available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_329068.pdf (last visited 17 July 2016).

⁸⁴ Asia Monitor Resource Centre, *op.cit.*

meaning that labour issues that go to trial are handled by the regular court system⁸⁵. In *India*, labour courts have long suffered serious backlogs, with some cases dragging on for many years⁸⁶. In *Malaysia*, the government was unable to impose sanctions and employers are said to be able to evade rulings⁸⁷.

The ILO supervisory mechanisms

- 3.5 International and regional organisations also play a role in the respect of trade union rights in the Asia Pacific region. In the case of the ILO supervisory mechanisms, the ratification of Conventions 87 and 98 is comparatively low with respect to other regions (see map, in Annex). For instance, *China, India, Laos, South Korea, Taiwan, Thailand, and Vietnam* have ratified neither Convention 87 nor 98. *Myanmar* has only ratified Convention 87, whereas *Malaysia, Nepal, and New Zealand* have only ratified Convention 98. In addition, Conventions 151 and 154 have not been ratified by any country in the region, though in the *Philippines* a campaign to ratify Convention 151 reached very encouraging results between 2015 and 2016, as it received concurrences, endorsements and resolutions from vital labor policy implementing agencies in the country⁸⁸.
- 3.6 Moreover, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA) of the ILO have been pointing at some cases of non-compliance for decades, without many results. For instance, the violation of Convention 87 by *Japan* with respect to the prohibition for firefighters to organise has been repeatedly observed since 1954⁸⁹. The restrictions on the right to bargain collectively of employees in the public administration of *Malaysia* have been mentioned since the 80's⁹⁰. The prohibition on public workers to organise in *South Korea* was first examined in 1992⁹¹.
- 3.7 In addition, the procedures of Representations and Complaints under Articles 24 and 26, respectively, of the ILO Constitution, have been rarely used in the region⁹². With regard to trade union rights, only Complaints have been raised on two occasions: against *Myanmar* in 2010, and against *Fiji* in 2013. However, in both cases the Governing Body of the ILO decided to take no further action⁹³ and that the case not be referred to a commission of inquiry⁹⁴, respectively.

⁸⁵ ITUC, *Cambodia: New Trade Union Law Bad for Workers* (2015), available at <http://www.ituc-csi.org/cambodia-new-trade-union-law-bad> (last visited 17 July 2016).

⁸⁶ Fagernas, S., *Labour Law, Judicial Efficiency and Informal Employment in India* (2007), available at http://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp353.pdf (last visited 17 July 2016).

⁸⁷ ITUC, *Survey of Violations of Trade Union Rights* (Malaysia), available at <http://survey.ituc-csi.org/inefficient-labour-courts.html> (last visited 17 July 2016).

⁸⁸ However, the previous administration did not see the immediate need of such implementation, thus, it was not ratified. The campaign documents were submitted to the new administration in the hope that it may be reconsidered and endorsed for ratification by the current legislature, as the enabling law may further support trade union rights of the public sector.

⁸⁹ ILO, *CEACR Observation 1989*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2078004 (last visited 17 July 2016).

⁹⁰ ILO, *CEACR Observation 1989*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2078151 (last visited 17 July 2016).

⁹¹ ILO, *CFA Case no. 1629* (Report No 286), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902360 (last visited 17 July 2016).

⁹² These 2 procedures are based on the non-compliance of ratified ILO conventions by member States.

⁹³ ILO, *Complaint C87 (article 26) against Myanmar* (2010), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508356,en:NO (last visited 17 July 2016).

⁹⁴ ILO, *Complaint C87 (article 26) against Fiji* (2013), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:3150470,en:NO (last visited 17 July 2016).

ASEAN Human Rights Declaration

- 3.8 The Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR), a regional human rights institution, in 2009. The mandate of the AICHR included – among others – the development of an ASEAN Human Rights Declaration (AHRD), which was ultimately adopted in 2012.
- 3.9 This instrument, however, adopts a specific view on human rights that has attracted criticism from (particularly, though not exclusively, western) human rights scholars, NGOs, and from international bodies, because it fails to meet the minimum standards envisaged by other human rights instruments. For instance, the International Commission of Jurists called “on the people in the region and the international community to immediately repudiate the text”⁹⁵, and the ITUC called it a “retreat from the existing commitments of its constituent member states under the International Bill of Human Rights and the core conventions of the International Labour Organization”⁹⁶.
- 3.10 In addition, AICHR’s mandate does not contain explicit provision for receiving and investigating complaints of human rights violations. AICHR only reports to the ASEAN Foreign Minister’s Meeting by submitting an annual report and other reports as required, but these reports are not made public. Thus, the implementation of the AHRD is still in question.

Trans-Pacific Partnership

- 3.11 The Trans-Pacific Partnership (TPP) is a multilateral free trade agreement among twelve countries around the Pacific Ocean that includes *Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam*. It was signed on 4 February 2016 in Auckland, New Zealand, and is currently awaiting ratification to enter into force.
- 3.12 The TPP has been criticized for its secretive negotiations and because it will very likely lead to downgrading of workers’ rights, public sector reform, and difficulties in enacting public policies⁹⁷. Also, the treaty is likely to lock in the neoliberal policies of privatisation and liberalised labour laws⁹⁸.
- 3.13 However, there is limited information and analysis about its impact on trade union rights. For instance, the government of *Malaysia* recently stated that “as a signatory to the Trans-Pacific Partnership (TPP), was embarking on labour law reforms”⁹⁹. In this respect, labour clause of the TPP states that:

⁹⁵ ICJ, *ICJ condemns fatally flawed ASEAN Human Rights Declaration* (2012), available at <http://www.icj.org/icj-condemns-fatally-flawed-asean-human-rights-declaration/> (last visited 17 July 2016).

⁹⁶ ITUC, *ITUC/ITUC-Asia Pacific statement on ASEAN Human Rights Declaration* (2012), available at <http://www.ituc-csi.org/ituc-ituc-asia-pacific-statement.12479?lang=en> (last visited 17 July 2016).

⁹⁷ International Business Times, *How To Fight The Trans-Pacific Partnership: Anti-TPP Petitions, Protests & Campaigns* (2013), available at <http://www.ibtimes.com/how-fight-trans-pacific-partnership-anti-tpp-petitions-protests-campaigns-1475530> (last visited 17 July 2013).

⁹⁸ PSI, *Pacific Partnership is bad news for workers* (2014), available at <http://www.world-psi.org/en/trans-pacific-partnership-bad-news-workers-call-action> (last visited 17 July 2016).

⁹⁹ ILO, *Report of the Committee on the Application of Standards* (2016), Provisional Record 16(rev.) Part 2, 105th International Labour Conference, p. 107, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489124.pdf (last visited 17 July 2016).

“Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation”¹⁰⁰

3.14 It remains to be seen if other countries will follow suit and whether this trend will have a positive impact (or not) in the legislative restrictions reviewed in section 2.

4. Policy Issues

4.1 The public sector in the Asia Pacific region has – as elsewhere – been subject to significant changes in the last decades. These, in turn, have had a deep impact in the organization of work and the balance of power between workers and employers. This part outlines some key factors that shaped the public sector and the employment relationship between governments and their employees in recent years, namely: privatisation, liberalisation, performance-pay and incentive models, the two-tier workforce, and austerity measures. In addition to these, it is likely that the raise of “digitisation” and “robotisation” will also have an impact in the public sector in the forthcoming years.

Privatisation

4.2 Privatisation is – as it was in the 90’s for other regions as well – one of the main game shifters in labour relations and other areas. This process has mainly been promoted by international financial institutions, such as the World Bank’s International Finance Corporation (IFC), which, for instance, has lent more than 75 billion US dollars for water and sanitation projects around the world since 1995¹⁰¹. In the region this role is also played by the Asian Development Bank (ADB). Whereas the ADB explicitly set out its recognition of and commitment to the ILO fundamental principles and rights at work in its Handbook on Core Labour Standards of 2005, it has been raised that the ADB is failing to implement these standards in the projects that it is supporting. As an example, a study commissioned by the global union federations in *India* identified many areas of concern¹⁰², which include a lack of consultation with relevant trade unions and a failure to engage in collective bargaining¹⁰³, problems related to pay levels, and health and safety issues¹⁰⁴. The study also complained that “ADB has very few accountability mechanisms for companies and governments to respect core labour standards”¹⁰⁵.

4.3 However, these are not the only cases where privatisation has been linked to the decline of workers’ rights. For instance, in *Australia*, privatisation led to higher unemployment, larger wage

¹⁰⁰ TTP, Article 19.3.

¹⁰¹ The Guardian, *Water Privatization: a worldwide failure?* (2015), available at <https://www.theguardian.com/global-development/2015/jan/30/water-privatisation-worldwide-failure-lagos-world-bank> (last visited 17 July 2016).

¹⁰² Avilash Roul and Manoranjan Pegu (Eds.), *Workers’ Rights in ADB funded Projects in India: Non-Implementation of Core Labour Standards* (2013), available at http://www.world-psi.org/sites/default/files/documents/research/psi_book_jan.pdf (last visited 17 July 2016).

¹⁰³ *Idem.*, p. 15-17 and 42-43.

¹⁰⁴ *Idem.*, p. 22 and 30-33.

¹⁰⁵ *Idem.*, p. 2.

gaps, and the weakening of unions¹⁰⁶, and the practice is spreading to the region's developing economies. In *India*, where industry level bargaining was dominant, privatisation led to the downsizing of the sector and thus the transformation of industry level bargaining to company level bargaining¹⁰⁷. In *Nepal*, mass-privatisation has been partly to blame for the exodus of workers to other countries¹⁰⁸. In *Japan*, privatisation and sub-contracting has reduced the number of public sector workers and increased the number of people working on temporary and non-standard contracts in public services¹⁰⁹. In *Myanmar*, the Minister of Industry announced in 2011 that up to 90 per cent of state-owned industry would be privatised¹¹⁰.

Liberalisation

- 4.4 Liberalisation is believed to be harmful to public sector unions for two reasons, namely: (i) it disrupts state monopolies and encourage competition in previously public sector industries, which leads to downwards-pressure on labour rights; and (ii) liberal economic policies have a negative impact on labour laws affecting both the public and private sectors. There is evidence of this from across the region. In *India*, more flexible work arrangements (recruitment and dismissal), stricter registration and recognition regimes, and an increased number of days lost due to lock-outs (rather than strikes), have taken effect since the process of liberalisation began¹¹¹. In *Sri Lanka*, liberalisation has been blamed for weakening labour rights, non-implementation of labour laws by employers, and non-enforcement by the State¹¹².
- 4.5 Liberalisation is also at the roots of precarious working conditions, which is growing both globally and in the region across all sectors. For instance, in *Australia*, the Australian Council of Trade Unions (ACTU) found that 40 per cent of the total workforce is "casualised"¹¹³. In *South Korea*, some 50 per cent of the workforce is estimated to be on casual or non-permanent work, and the rights available to workers recruited through employment agencies are declining¹¹⁴. Similarly, in *Japan*, over a third of workers are non-regular¹¹⁵. In *Malaysia*, the government has amended its employment laws to facilitate sub-contracting, although it has proposed regulations to prevent employers from using outsourced workers for permanent roles after pressure from the trade union movement¹¹⁶. In *Indonesia*, the percentage of permanent workers in the formal workforce fell from 67 to 35 per cent between 2005 and 2011¹¹⁷. Also in *New Zealand* the public sector has experienced a significant growth in precarious work¹¹⁸. In *India*, union figures indicate that

¹⁰⁶ Wettenhall, R., *Privatization in Australia: How Much and What Impacts?* (1998), in *Asian Review of Public Administration*, 10 (1-2), p. 144-158.

¹⁰⁷ Surendra Pratap, *Collective Bargaining in India: Recent Trends* (2011), available at <http://www.amrc.org.hk/content/collective-bargaining-india-recent-trends> (last visited 17 July 2016).

¹⁰⁸ Dahal, Dev Raj, *The Current Trade Union Situation in Nepal*, presented at FES-Global Unions Coordination Meeting (2002), available at <http://library.fes.de/pdf-files/iez/01962.pdf> (last visited 17 July 2016).

¹⁰⁹ Asia Monitor Resource Centre, *Rights for Two Thirds of Asia: Asia labour law review 2008*, available at <http://www.amrc.org.hk/sites/default/files/Asian%20Labour%20Law%20Review%202008.pdf> (last visited 17 July 2016).

¹¹⁰ The Guardian, *Bargain basement Burma – if you have friends in high places* (2011), available at <http://www.theguardian.com/global-development/poverty-matters/2011/jan/27/burma-privatisation-military-junta> (last visited 17 July 2016).

¹¹¹ Surendra Pratap, *op.cit.*

¹¹² Benson, John and Ying Zhu (eds.), *Trade Unions in Asia: An economic and sociological analysis* (2008), p. 193.

¹¹³ ACTU, *Lives on Hold: Unlocking the potential of Australia's workforce* (2012), available at <http://www.actu.org.au/media/609158/lives-on-hold-final.pdf> (last visited 17 July 2016).

¹¹⁴ ITUC, *Precarious work in the Asia Pacific region* (2014), available at http://www.ituc-csi.org/IMG/pdf/report_2014_precarious_work_lr.pdf (last visited 17 July 2016).

¹¹⁵ *Idem.*

¹¹⁶ ITUC, *Precarious work in the Asia Pacific region* (2014), available at http://www.ituc-csi.org/IMG/pdf/report_2014_precarious_work_lr.pdf (last visited 17 July 2016).

¹¹⁷ *Idem.*

¹¹⁸ *Idem.*

32 per cent of public sector workers are in precarious employment (2 per cent higher than the rate in the private sector)¹¹⁹.

Performance-pay and incentive models

- 4.6 Performance-pay is also on the rise in the Asia Pacific region, where organizations are more likely to have tools, guidelines, and metrics in place when compared to those in Europe¹²⁰. Also, organizations in *India*, *Singapore*, and *Japan* are more likely to demonstrate higher levels of executive commitment to performance-pay with respect to those in *Latin America*, *Italy*, or *Spain*¹²¹. In *South Korea*, there has been a shift to a performance-pay evaluation system since the 90s¹²², and a similar model has been introduced through civil service reforms in *Macau*¹²³. In *Japan*, although the government was relatively late to adopt performance-pay, the practice increased and over the past ten years it has been used in around 60 per cent of companies¹²⁴. This is a worrying trend since the principle of performance-pay or incentive models have the potential to disrupt collective bargaining and shift the focus to workplace-level negotiations.

Two-tier workforce

- 4.7 As public sector workplaces become more liberalised, workplaces can also develop a two parallel types of staff: permanent public employees and short-term or contracted workers. The latter are less formal workers who are more difficult to organise, since, for instance, they lack job security or have a different status. In addition, the interests of these temporary (or precarious) workers may be different when compared to the more permanent civil service staff, which makes bargaining more complex. In *Macau*, for example, while there are special rules governing civil servants, there has been a large increase in contractual employment and up to 40 per cent of public sector workers are on temporary contracts¹²⁵. Also in *South Korea* there has been a significant increase in irregular work in the public sector¹²⁶. In *India*, contract work is increasingly common both in the public and private sectors¹²⁷.

Austerity measures

- 4.8 The Asia Pacific region is also experiencing a rising in unemployment associated with the global financial crisis and austerity measures. For instance, in *Nepal*, high unemployment due to austerity has negatively affected the capacity of trade unions to bargain collectively¹²⁸. In *India*, Unions have criticised the governments' approach to economic recovery as being "jobless"

¹¹⁹ IndustriALL, *Precarious work in India* (2012), available at http://www.industrial-union.org/sites/default/files/uploads/documents/a4_india_report_new2.pdf (last visited 17 July 2016).

¹²⁰ Mercer, *Global Performance Management Survey* (2013), available at: https://www.imercer.com/uploads/imercerReports/pdf/mercer_global_pm_survey_exec_overview.pdf (last visited 17 July 2016).

¹²¹ Mercer, *Global Performance Management Survey* (2013), available at: https://www.imercer.com/uploads/imercerReports/pdf/mercer_global_pm_survey_exec_overview.pdf (last visited 17 July 2016).

¹²² Asia Monitor Resource Centre, *op.cit.*

¹²³ *Idem.*

¹²⁴ Takashi Shimizu, Andy Neely, Bassil Yaghi, Nigel Youell, *Enterprise Performance Management: the Japanese State of the Art*, available at: <http://www.som.cranfield.ac.uk/som/dinamic-content/media/CBP/Areas%20of%20Expertise/Japan.pdf> (last visited 17 July 2016).

¹²⁵ Asia Monitor Resource Centre, *op.cit.*

¹²⁶ Asia Monitor Resource Centre, *op.cit.*

¹²⁷ *Idem.*

¹²⁸ Dahal, Dev Raj, *op.cit.*

rather than “job-led”, due to its cuts in the public sector, which is de-unionising public sector workplaces¹²⁹.

- 4.9 Overall, the ILO has noted a trend of growing unemployment since the crisis; the number of job seekers globally grew by 5 million in 2013, 45 per cent of whom were in South and East Asia¹³⁰. Yet despite these problems unemployment rates in the region have remained comparatively low, for the most part running at 5 per cent or lower, according to ILO figures. Exceptions are: the *Philippines*, 7.3; *Indonesia*, 6.3; *Pakistan*, 6 overall, but notably 5.3 for men and 8.3 for women; *Australia*, 5.4; and *New Zealand*, 6.2¹³¹.

Digitisation / Robotisation

- 4.10 Digitisation and robotisation of public sector work is a challenge that cannot be underestimated in the forthcoming years, since it will have an impact on the labour force and the provision or delivery of public services. As a result, it is likely that these developments will also have an impact on trade union rights.
- 4.11 In the *European Union*, where it has a more coherent and single approach, digitisation is taking place as part of public sector modernisation efforts, which aims to “reduce administrative burden on businesses and citizens by making their interactions with public administrations faster and efficient, more convenient and transparent, and less costly”¹³². These efforts include the delivery of services digitally as the preferred option, through a single contact point or a one-stop-shop, ensuring that citizens and businesses supply the same information only once to a public administration¹³³.
- 4.12 In the Asia Pacific region, though more limited, many countries have set their own priorities and goals. For instance, in *Australia*, the government launched the Digital Transformation Office in January 2015, which will “enable innovation, improve productivity and change the way in which the government and its citizens interact”¹³⁴. In *New Zealand*, the government set ten challenging goals, in 2012, for the public sector to achieve during the subsequent five years, being one of these for people to be able to “complete their transactions with government easily in a digital environment”¹³⁵. In *Singapore*, at least six government agencies will digitise the majority of their records and processes for higher productivity by 2020¹³⁶.
- 4.13 Robotisation, on the other hand, is one of the six disrupting technologies¹³⁷ that will have a high impact on the world of work in the coming years¹³⁸. In the case of robotisation, unlike digitisation,

¹²⁹ Asia Monitor Resource Centre, *op.cit.*

¹³⁰ ILO, *Global Unemployment Trends 2013: Risk of a jobless recovery?* (2014), p. 11.

¹³¹ ILO, *Asia-Pacific Labour Market Update* (2013), available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/-ilo-islamabad/documents/publication/wcms_232657.pdf (last visited 17 July 2016).

¹³² European Commission, *EU eGovernment Action Plan 2016-2020*, available at <https://ec.europa.eu/digital-single-market/en/egovernment-action-plan-digitising-european-industry> (last visited 17 July 2016).

¹³³ European Commission, *EU eGovernment Action Plan 2016-2020*, available at <https://ec.europa.eu/digital-single-market/en/egovernment-action-plan-digitising-european-industry> (last visited 17 July 2016).

¹³⁴ PricewaterhouseCoopers, *All hands on deck: Mastering the art of government digitisation*, available at <https://www.digitalpulse.pwc.com.au/mastering-government-digitisation/> (last visited 17 July 2016).

¹³⁵ World Economic Forum, *How New Zealand is Digitising Public Services*, available at <https://www.weforum.org/agenda/2015/06/how-new-zealand-is-digitising-public-services/> (last visited 17 July 2016).

¹³⁶ Channel New Asia, *Redesign of portals, digitisation of records part of Gov't's tech push: MOF*, available at <http://www.channelnewsasia.com/news/singapore/redesign-of-portals/2685410.html> (last visited 17 July 2016).

¹³⁷ Others are: the internet of things, big data, cloud computing, 3D printing, and machine learning.

¹³⁸ Technology at work, *Top 6 Disruptive Technologies You Should Know*, available at <http://technologyatwork.itcilo.org/techwork-the-top-6-disruptive-technologies/> (last visited 17 July 2016).

the Asia Pacific region is the leading market for the introduction of robotic automation. According to a study of 2015, Asia (including *Australia* and *New Zealand*) was by far the biggest robot market with about 139,300 industrial robots sold in 2014, which is 41% higher than in 2013¹³⁹. It is estimated that between 2015 and 2018 about 1.3 million new industrial robots will be installed in factories around the world¹⁴⁰. Of these, a third is expected to be placed in *China*¹⁴¹, and major growth is expected in other countries in the region, such as *India*, *South Korea*, and *Taiwan*¹⁴².

5 Reflections and Recommendations

Trade union rights and implementation of labour rights

- 5.1 The report highlights restrictions on trade union rights in the four major areas of concern: right to organise, collective bargaining, right to strike, and the realisation of civil liberties. These restrictions can be observed in almost every country, both in the law and the practice, to a greater or lesser extent.
- 5.2 Also with respect to the implementation of labour rights, it is noticeable that in most countries – with a few exceptions – labour inspectorates and law enforcement bodies face obstacles. In the case of labour inspectorates, it is in the form of limited resources and mandate, and also the lack of enforcement powers or the petty fines that do not act as enough deterrent. In the case of the law enforcement bodies, such as the judiciary, it could be the overload of work and lack of resources or specialization to deal with labour issues (though the examples presented are few as to be conclusive). But if the ultimate goal is the solution of industrial disputes, the implementation of (or the creation of a culture of) effective dispute resolution mechanisms, such as mediation and arbitration, should be considered as well. And that is a component that was missing in this report.
- 5.3 In any case, if trade unions want to change the scenario there are two possible ways that can be considered: one **internal**, which requires capacity building and enough bargaining power (i.e. stronger unions) to sit and negotiate with the law makers to (i) remove barriers, (ii) create suitable mechanisms for dispute resolution and/or (iii) provide the means and resources to those already existent. Stronger unions, in turn, can only be achieved through more unionisation (see also below) and through building meaningful alliances, with other unions or workers, and NGOs and civil society organisations, both at national and international level. In other words, through more and more solidarity.
- 5.4 On the other hand, the **external** option involves international and multilateral frameworks with the ability to influence national legislation and practice. Of those that were reviewed in the report, the limited influence that – on a comparative basis – ILO Conventions 87 and 98 and the supervisory mechanisms have had in the region is evident. In a number of countries that have ratified ILO Conventions 87 and 98 the respect of trade union rights, however, remains low. For instance, in *Bangladesh*, *Cambodia*, and *Indonesia*, public workers cannot join or form trade unions. This ban also affects some categories of public workers in *Pakistan*, the *Philippines*, and *Sri Lanka*. As a result, the right to collective bargaining (at best they enjoy a “consultation” right)

¹³⁹ International Federation of Robotics, *World Robotics 2015*, available at <http://www.ifr.org/industrial-robots/statistics/> (last visited 17 July 2016).

¹⁴⁰ *Idem*.

¹⁴¹ *Idem*.

¹⁴² *Idem*.

and the right to strike in these countries are severely restricted too. In *Japan*, public workers do not have the right to strike, whereas in *Pakistan* and *Fiji* the definition of “essential services” blocks many and all public workers, respectively, to exercise it. Despite many of these issues have been raised by the ILO supervisory mechanisms for (many) years, their observations and recommendations have not been enough persuasive either. There are also outstanding issues with regard to the enjoyment of civil liberties, most notably in *Cambodia* and the *Philippines*, but also in *South Korea* more recently.

- 5.5 Second, the ASEAN Human Rights Declaration is a rather new instrument with two main shortcomings: (i) its view on human and labour rights is rather different or departs from the definition of other well-established human rights instruments and ILO conventions, and (ii) its executive arm, the ASEAN Intergovernmental Commission on Human Rights (AICHR), does not have the mandate to receive and investigate complaints on violations of human rights under the Declaration. Therefore, its effectiveness is still in a limbo.
- 5.6 Whereas the widely criticised Trans-Pacific Partnership (TTP), apart from the fact that it has not entered yet into force, is a trade agreement after all, with emphasis in the elimination of commercial barriers. Despite this criticism, the wording of its labour clause is a huge departure from the more common “respect fundamental labour rights” included in many other international instruments (which can be interpreted and implemented in many different ways), since it makes mandatory the insertion of the four ILO principles and fundamental rights at work in national labour legislation. Thus, if the legislative reform materializes (like in *Malaysia*, which is already acting upon), national labour legislation could be in line with ILO instruments in a few years, and this potentially means an improvement in the fundamental rights at work. But it remains to be seen if and when other member States will follow suit, and the overall impact it will have on labour.

Policy issues

- 5.7 All the processes described above are (and will continue to be) disruptive to industrial relations, to a greater or lesser extent. Privatisation has contributed, in general, to strip unions off both bargaining rights and membership. Liberalisation opened the door for the precarisation of work, by which workers enjoy little security, face serious barriers to unionization, and place downward pressure on the sector. The promotion of performance-pay and incentive models also operates as a deterrent to unionisation, whereas two-tier workforce complicates the bargaining process and decreases leverage. Also, austerity measures have led to cuts and more restrictions on collective bargaining, despite the comparatively low unemployment in the region.
- 5.8 Pure coincident or part of a concerted attack, the truth is that all these issues have an impact on trade union rights. However, in the case of privatisation, is there a possibility that these changes are balanced by shifting workers from the public sector to the private sector, where there are less restrictions for unionisation, collective bargaining, and right to strike?
- 5.9 Digitisation and the increasing robotisation of the economy will shape the future of work and will certainly challenge many jobs in the public sector. In addition, the less human interaction will also test the abilities of workers to organise and will make more difficult (if not impossible) to disrupt the provision and delivery of services. So, how this automated future will affect trade union rights is a task that workers in the public sector should start discussing now, because is not a question of whether or not the introduction of these technologies will have an impact on public services, but how profound it will be.

5.10 Again, to resist and challenge these changes, building stronger unions is key. Therefore, the real dilemma is how to develop more effective models for recruiting and representing a wide array of workers. Unions could explore some alternatives, for instance:

- seek to represent all or more workers, including atypical and precarious workers in both the public and private sectors (i.e. more flexible membership terms, short-term memberships, full membership rights from day one);
- develop services for affiliates suited for or that cover the needs of atypical, precarious, contracted, temporary, autonomous workers involved in providing public services (i.e. if the union is barred from or cannot effectively represent certain categories of workers, explore the otherwise more expensive alternative of individual representation and legal assistance to appeal to those workers)
- evaluate the possibility for reconstituting (former) public sector unions under private sector labour law (i.e. for workers shifted from the public to the private sector).

5.11 National and sectoral level bargaining models offer one possibility to ensure that all workers within a given service enjoy representation, though in many cases bargaining at these levels has been phased out. Where this is the case and existing bargaining models do not offer effective solutions for workers in the privatised services or for temporary or atypical workers, trade unions must look at other alternative services they can offer to their members.

ANNEX

