

# Reforming labour law

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**B**RAZIL has embarked on a process of labour law reform which highlights both the contradictions and consensus which marks the new Brazil. With 170 million people, Brazil is one of the largest industrialised developing countries and yet large sections of the country remain agricultural, most of the economy is informal and poverty and inequality are widespread. Regulating this diverse labour market requires many different social, economic and legal initiatives. President Luis Inácio Lula da Silva and his Workers' Party administration came to power in 2003 as a coalition government of centre left forces rather than a true workers' government. The Workers' Party (PT) was founded by Lula himself, President of the São Paulo CNM metalworkers union (affiliated to the Centro Utica de Trabalhadores (CUT)). The PT was able to forge a national consensus among workers, civil society, rural voters and business to win the 2002 elections. Central to this consensus was the necessity to launch major reforms in many sectors, recognising that workers' lives are affected by many factors, including the state of the economy, social exclusion, discrimination, and trading practices.

In an effort to continue to maintain and widen the electoral consensus, the government established a new process of democratic dialogue and consultation which brings together social partners to develop a new comprehensive social framework. With PT and former trade union officials sharing Government cabinet posts and other key positions with former entrepreneurs, the union movement has had to develop a new relationship to the Government. While supporting the government generally, it strives to maintain its own independence and lobbies for the implementation of its own worker agenda. The process of trying to eradicate income inequalities and poverty while also respecting collective bargaining and trade union rights is not an easy one as the Brazilian labour law reform process shows.

Given the 2003 economic crisis and the decision to stay within IMF spending limits, Brazil's fiscal restraint measures in the first year of office led to conflict with the trade unions. Some accused the government of following the neoliberal policies they had denounced. Yet the Government argued it was trying to balance the needs of relatively more privileged workers with the needs of disadvantaged workers. For example, in the first six months of 2003, the Government revised the social security laws to reduce benefits regarded as fiscally unsustainable (eg. by increasing the retirement age and reducing the level of benefits). At the same time, it extended social security to previously excluded domestic and other employees, arguing that such extension could only come with cutbacks to other benefits. 20,000 government employees staged a massive protest in June 2003 to protest the reform. These contradictions have also been seen in the minimum wage reforms. Doubling the

minimum wage's purchasing power over its four year term was a key PT election plank. The government raised the minimum wage in 2003 from \$R200 to \$R240 (\$83 US) with trade unions lobbying for a \$R300 increase. In 2004, the Government proposed a further raise to \$R260 which was defeated in the Senate which wanted an increase to \$R275. The final outcome is not certain. While government employees lobbied for large pay increases, Lula's government argued for more moderate increases.

## Background to labour law reform

Labour law reform has been a goal of both the right and the left in Brazil. Conservative forces called for flexibilisation with less labour regulation, diminished protections for individual employees and restrictions on union power. At the same time, Lula's Workers' Party and the CUT itself were founded in part to bring about reform to labour law procedures which have long been regarded as undemocratic and ineffective. Labour centrals such as CUT, have no formal status in the labour law system. Treated like an NGO, the centrals gained power as result of their numbers and through workplace actions, with industrial unions developing in the highly industrialised areas surrounding São Paulo in the 1970s. Created in 1983 in the final struggles against the military dictatorship, the CUT is the largest trade union centre in Brazil with 3,500 affiliated trade unions, 7.5 million members and representing 22.5 million workers in bargaining. With the end of the military dictatorship, Brazil's Federal Constitution recognised the right of union organisation, the right to strike and collective bargaining and the maintenance of a confederation system of union structure based on municipal areas. Professional unions represent all members of the category whether a member or not in the municipal areas. Although not formally recognised, as a result of ILO Convention 144, such unions have been able to participate in labour activities but only the confederations have been permitted to participate in the labour courts.

Força Sindical, another labour central was founded in 1991, as a union in opposition to the CUT and it has also grown substantially in the last decade, supporting parties which are now part of the Lula coalition government. The metalworkers are the strongest force within CUT and are centred in São Paulo where there are significant steel, auto and aircraft plants. With the right to form unions without Labour Ministry authorisation, Brazil's unions proliferated to 18,000 but most were not democratically based. At the time Lula was elected President, the CUT was calling for an end to the corporative and verticalised union structure replacing it with a union plurality.

## Participatory social dialogue

In July 2003, the Government launched the tri-

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partite National Labour Forum to study and recommend reforms to labour laws. Government, trade unions and the business community were organised to plan and carry out the transition to a new labour law system which is to cover both unionised and non-unionised workers. With 400 people directly involved in the working groups, the Forum convened an extensive consultative process with 27 conferences across the country. Over 10,000 people attended these conferences with a further 200,000 people involved in in-house sessions. The Forum had eight different working groups. The reform process is planned to extend over a number of years. The first three working groups reported to the President and Congress in March, 2004. These initial groups dealt with trade union structure, collective bargaining issues and conflict resolution. The other five working groups will likely report by the end of 2004. They are dealing with health and safety, education and training, micro-enterprises and co-operatives, employment standards, and labour system organisation.

After extensive consultations, compromises and negotiations, the tripartite Forum was able to reach consensus on their recommendations in the first three areas, with only one exception. A Bill was presented by the President's office to Congress incorporating this consensus. The reforms will likely receive first reading in the Assembly prior to the October 2004 elections and final approval after the elections. The main features of the Bill are as follows: 1) there will be legal recognition for the first time of trade union centrals and the vertical structure of those centrals at the state and municipal levels. 2) the role of trade unions in negotiating collective agreements and participating in other social issues will be strengthened; 3) the former government imposed union tax will be replaced over three years with a union dues structure which will allow only unions with the demonstrated support of workers to receive dues collected from all covered by bargaining and allow unions to collect a further maximum fee from its own members. 4) unions will have the right to negotiate at the state and national level and not just at the municipal level as before; 5) procedures will be established to allow for a single trade union to represent workers at a workplace defined by the primary nature of the employer's enterprise.

The only point where there was not consensus in the Forum was on giving unions the right to bargain at the workplace level. While the business community did not agree in the Forum, the Government Bill does allow for such bargaining and the business community has not opposed that aspect of the Bill. This new provision provides for a phase-in over three years starting with the requirement for larger employers to have a union committee at the workplace, increasing the membership of the committee with the size of the workplace, starting with employers with 100 or more employees. Employees of employers with less than 30 employees will have a union representative rather than a committee.

### The struggle for equality

A separate but equally important labour law reform process has also been taking place in the area of equity promoting laws and policies. The strong presence of women's organisations and aboriginal and black communities in the struggle to end Brazil's dictatorship has carried forward into the current regime. Central to the

Government's four year plan is the importance of achieving major progress in addressing the inequities facing Brazil's disadvantaged which include the poor, women, blacks, and indigenous peoples. Black and indigenous women, the poorest of Brazilian's poor suffer from multiple disadvantages as result of their race and colour. Brazil, with 76 million people of African descent has the largest African population outside of Africa. On his first day in office on 1 January 2003, Lula created a Special Secretary for Women and Racial Inequality, both reporting directly to the Presidency and having Ministerial status. The President's office also has special advisors with responsibility for gender and racial equality. The Secretaries work with the other cabinet ministers and ministries to ensure the needs and interests of women and racial groups are identified and addressed throughout all government policies and programmes including promoting affirmative action and social inclusion policies. The Secretariats have been convening consultation sessions and conferences throughout the country in order to develop the country's gender equality and racial equality plans. An example of the move forward on racial equality issues is the establishment of quotas in the Ministry of Foreign Relations for the hiring of black foreign affairs officers in order to redress the years of systemic exclusion of blacks from that Ministry. Another example is the Government's National Plan to eradicate Slave Labour which has included not only the release of slaves but the reintegration of former slaves back into Brazilian society.

### Trade unions and broader legal issues

Given the forces of globalisation, Brazilian unions have also expanded their partnerships and mandate to include not only the direct protection of workers' rights but also the work necessary to improve the economic and social development of Brazil and its world partners, particularly in Latin America. This broader perspective on labour law has led to a strong position against the Free Trade Agreement of the Americas negotiations. Despite the decision of the Lula Government to engage in the FTAA process, trade unions have lobbied for Brazil to withdraw and work within the regional MERCOSUR structure.

### Conclusion

While the Workers' Party won the Presidency, it does not control the Congress. In this context, there will be a continual struggle over the mandate of the government to forge the necessary support to advance the agenda of the trade union movement and defend workers' rights. While there has been progress in some areas, there are also concerns that the reform process may be slowing down. Brazil's new Government and its trade union movement have taken on a very large task in transforming Brazil so that it is a *pais de todos* - a country for all. The labour law reform process shows that the process of reform is uneven and difficult but consensus is possible and the need for reform is critical.

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