

Enforcement of Human Rights through ILO Machinery

by Steven Simpson

A recent movement in the American human rights community has advocated making greater use of the supervisory machinery of the International Labor Organization (ILO) to promote and protect fundamental civil and political liberties. Proponents state that the ILO machinery enables the human rights community to hold accountable persistent human rights violators like China. States which

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are not parties to conventions guaranteeing civil and political rights can be held accountable for their actions before an international forum by means of the ILO's Committee on Freedom of Association (the Committee).

Despite its name, the ILO is not an organization solely concerned with the furtherance of international industrial relations. Since its inception in 1919, the ILO has included the protection of fundamental human rights as one of its objectives. Central to the ILO's effort to achieve this goal has been its promotion of the concept of "freedom of association." The idea of freedom of association originally focused on the right of workers to form and join organizations of their own choosing. Over

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time, this principle generally has been interpreted by the ILO's adjudicative bodies as only one aspect of the freedom to associate. Specifically, the concept has been construed to include: (1) right of security of person, or free-

dom from arbitrary arrest and detention; (2) freedom of opinion and expression; (3) freedom of assembly; and (4) right to due process and a fair trial by an independent and impartial tribunal. The ILO has interpreted these civil and political liberties as being within the right of association, since it considers them an integral part of social policy inextricably related to economic development.

Similar to the supervisory mechanism under the Optional Protocol of the International Covenant on Civil and Political Rights, the ILO recognizes that international human rights norms can best be ensured if individuals are given a central role in the monitoring process. However, the ILO's treatment of human rights issues differs from the Optional Protocol's individual complaint mechanism. The grievance mechanism is available against any of its 173 members for violations of the right of association even if the country is not a signatory to the Freedom of Association Convention or any

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other applicable ILO agreement. In contrast, under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the applicable supervisory body has jurisdiction only if the state in question has ratified one of the accords. Procedurally, the ILO permits non-sovereign entities to make complaints, but this right must be exercised on their behalf by employee or employer organizations.

In an effort to ensure ILO member states' adherence to the principle of freedom of association, the ILO's Governing Body in 1950 established special procedures and regulations under which complaints of alleged infringements of this right could be examined—regardless of what conventions the violating state had ratified. Specifically, the grievance mechanisms allow

the Committee to conduct an inquiry upon receipt of a written complaint fully supported by proof of the specific allegations. After investigating the complaint, the Committee may find a

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state in violation of the freedom of association. It may then recommend steps that should be taken to restore or ensure the right's observance by the State.

Despite the potential of the ILO as a tool to enforce international human rights standards, there are significant weaknesses in its practical application. While member states have an obligation to ensure the right of association, the Committee does not have the authority to enforce compliance. Professor Mark Hager of WCL, points out that "the Committee's role is not to condemn a government or to impose penalties. The Committee does not have the competence to undertake such action. Rather, it must rely upon the power of persuasion and on the use of 'shame' tactics to garner observance of human rights standards."

Another weakness of the ILO is its susceptibility to political considerations and dynamics. As an international organization representing States, as well as employee and employer associations, the ILO has often found its deliberations so politicized that effective action became impossible. This was especially evident during the Cold War when the ILO became so stymied by political debate that the U.S. felt compelled to withdraw from the organization for several years until political issues could be resolved. Since then, the ILO has worked to curtail this problem. It continues to be a troublesome concern, however, and often prevents the ILO from taking stronger measures against those states guilty of freedom of association violations.

Despite the above stated drawbacks, the ILO has been quite effective in holding governments accountable based upon its ability to investigate and

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reluctant to adopt such language, Ambassador Ferraro, at the request of the Task Force, convinced the legal advisor to not oppose its adoption.

Gilbert views this as one of the most noteworthy achievements of the Task Force. "While the right of refugee and displaced women to a safe and voluntary return to their place of origin and to protection after return must be ensured, this right is meaningful only if the principles of *non-refoulement*, or non-return, are fully respected and strictly observed." The team also was successful in lobbying for language in the Platform for Action urging states to apply the Refugee Convention so as to incorporate the particular experiences of women subject to gender-related persecution.

In spite of laudable efforts by Ambassador Ragne Lund and vigorous lobbying by the Task Force and by



Photo Courtesy of Gail Lerner

Participants take informal break to discuss issues on last day of Beijing Conference.



Photo Courtesy of Gail Lerner

Migrant, Refugee, and Displaced Women and their advocates give a press conference at the International Conference Center, Beijing.

women's groups from Africa and Latin America, the agreements reached in August could not be undone. Nonetheless, thanks to Ambassador Lund's herculean efforts, in a section which previously had applied only to refugees, the document, reaffirming the principle of burden-sharing, calls upon states and intergovernmental organizations to "ensure" that the international community provide assistance to refugee, internally displaced and other displaced women and (in language suggesting the right of the internally displaced to international protection) to pro-

vide *protection and assistance* consistent with the human rights principle of non-discrimination. Gilbert advises, however, that work on the rights of internally displaced persons did not stop at the conference. "Now that the conference is over," she says, "attempts must be made to enforce these principles, both at the international and the domestic level. Although the Platform is not binding as a treaty, it has persuasive powers, and States, having reached a consensus at an international forum, can still be held politically accountable. This is a gradual process, but now we've developed a large network of legal experts and women's advocates united in working on behalf of refugee and internally displaced women around the world." 🌐

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publicize governmental infractions. The ILO may not represent the consummate vehicle for promoting and protecting human rights, but U.S. NGOs are likely to find it an effective medium through which to advance their agendas. American human rights groups generally have not resorted to the ILO supervisory machinery but, according to WCL Professor Robert Goldman, "it may be time for a change, since it is critical for such organizations to be aware of all available means by which enforcement of human rights standards is possible." As the record of the Committee on Freedom of Association demonstrates, it has indeed been effective, despite the reality that its power is based upon its investigative ability to shed light on governmental infractions. 🌐

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ment had been reached by the parties as to form and amount of reparations, the Court undertook to determine the scope of reparations and amount of indemnifications, as well as procedural costs and fees.

7. *Provisional Measures in the case: Carpio Nicolle v. Guatemala*

- **Facts:** In 1993, Jorge Carpio Nicolle, a candidate for the Guatemalan presidency, was assassinated.
- **Stage of the Proceedings:** The Court ratified urgent measures requested by the Commission for the protection of certain witnesses and a prosecutor. 🌐

* The facts of this case can be found in the Winter 1995 issue of *The Human Rights Brief*.

