

Call for input on the role of workers' organisations in preventing and addressing contemporary forms of slavery
Submission from the Ministry of Labour

1. Are trade union rights, as protected by ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining), recognized in domestic legislative frameworks in your country? If so, please provide details including provision for remedies in case of breaches.

The ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (C87) and Convention No. 98 on Right to Organise and Collective Bargaining (C98) were both ratified by Trinidad and Tobago on May 24, 1963. Both Conventions are currently in force. There are several trade union rights recognised within Trinidad and Tobago's domestic legislative frameworks which reflect the position of international law, as articulated by C87 and C98. These legislative provisions are highlighted below:

Constitution of the Republic of Trinidad and Tobago, Chapter 1:01¹

The Constitution of Trinidad and Tobago guarantees certain fundamental human rights and freedoms for its citizens. Some of these include the right to life, liberty and security, the right to equality before the law and the right to freedom of expression. Amongst the many rights protected by the Constitution is the right to freedom of association and assembly which gives citizens the right to form and join a trade union or association. By virtue of Section 4(j) of the Constitution of the Republic of Trinidad and Tobago, all citizens of Trinidad and Tobago, regardless of their race, origin, colour, religion or sex, enjoy the right to freedom of association and assembly. Intrinsic to this right is the freedom of all citizens to form and join trade unions and organise their trade union activities accordingly.

Industrial Relations Act, Chapter 88:01²

Whilst the Constitution guarantees the right to join a trade union to every citizen of Trinidad and Tobago, the Industrial Relations Act, Chapter 88:01 ('the IRA') goes further to acknowledge the rights of workers, employers and trade unions who can take industrial action. The IRA is one of the main pieces of domestic legislation that extensively caters to the operations of Trade Unions in Trinidad and Tobago. Section 2(7) of the IRA states that, "*Nothing in this Act shall be construed so as to abrogate, abridge or infringe the principle of freedom of association, whether of workers or of employers in trade unions or other associations or organisations, respectively.*"

Employees are within their rights to join a trade union. As such, Trinidad and Tobago has many active trade unions which are responsible for the protection of workers' rights and the negotiation of collective agreements. In order to legally represent or engage in collective bargaining on behalf of any workforce, a trade union must possess a certificate of recognition. The Registration, Recognition and Certification Board decides on any application made by a trade union seeking certification. Where a trade union has obtained certification or recognition for workers in a

¹ <https://agla.gov.tt/downloads/laws/1.01.pdf>

² <https://agla.gov.tt/downloads/laws/88.01.pdf>

bargaining unit, the employer has to recognise that trade union as the Recognised Majority Union (RMU). The employer must also, in good faith, treat and enter into negotiations with the trade union for the purposes of collective bargaining.

Therefore, the IRA aims to prohibit an employer from making employment conditional on whether or not the employee is a union member and/or from dismissing, threatening to dismiss, altering a worker's position or otherwise prejudicing said worker if they propose to become a union member. The IRA does in fact contain provisions that reflect the principles of C87 and C98, as it relates to a worker's right to establish and join organisations of their own choosing and expressly provides for trade unions to organise their administration and activities. The Act further outlines the process for registration and certification of trade unions as well as provides for Collective Bargaining, collective agreements and the measures to be taken to encourage and promote the full development and utilisation of voluntary negotiation between employers or employers' organisations and workers' organisations. The relevant provisions of the IRA in which the rights identified in Conventions Nos. 87 and 98 are enshrined are as follows:

- Section 32(2) of the IRA allows for trade unions to obtain a certification of recognition;
- Section 51(1) of the IRA allows for the RMU and where there is none for any trade union to report a trade dispute to the Minister;
- Section 71 of the IRA outlines the rights of workers in respect of trade union membership and activities; it states that every worker as between himself, his employer and co-workers shall have the following rights, that is to say: (a) the right to be a member of any trade union or any number of trade unions of his choice; (b) the right not to be a member of any trade union or other organisation of workers or to refuse to be a member of any particular trade union or other organisation of workers; (c) where he is a member of a trade union, the right, subject to this Act, to take part in the activities of the trade union (including any activities as, or with a view to becoming an official of the trade union) and (if appointed or elected) to hold office as such an official.

Additional relevant provisions of the IRA *vis à vis* C87 and 98 are presented at **Appendix I**.

It should also be highlighted that, in order to seek protection under the IRA, a person must fall within the definition of a "worker" as set out in the Act. Nonetheless, it should be noted that persons excluded from the definition of "worker", by virtue of Section 2(3) of the IRA, still benefit from the rights afforded to them under Article 3 of the Convention, as mentioned above. There is nothing in the Constitution, the Trade Unions Act, Chapter 88:02 (TUA), the IRA, or indeed any law in Trinidad and Tobago that prevents any person (including those excluded from the definition of "worker" due to section 2(3) of the IRA) from enjoying their rights under Article 3 of C87.

Trade Unions Act, Chapter 88:02³

Another integral piece of domestic legislation is the Trade Unions Act, Chapter 88:02 ('the TUA'). In Trinidad and Tobago, all trade unions are regulated by the TUA. The Trade Unions Ordinance No. 20 of 1932 which came into force on July 1, 1933 was enacted to address the concerns of the working class and was a precursor to the TUA. The Ordinance provided for the registration of

³ <https://agla.gov.tt/downloads/laws/88.02.pdf>

Trade Unions, which were all to be supervised by a Registrar of Trade Unions. The Trade Unions Ordinance became The Trade Unions Act, Chap. 88:02 upon the country's Independence and included provisions for peaceful picketing and immunity for trade unions for actions in tort; which provisions were not contained in the Ordinance. The Trade Unions Act was last amended in 1980. It is important to note that efforts are currently underway to amend the Act with the aim of strengthening this piece of legislation to ensure the continued protection of the right to freedom of association and assembly. The proposed amendments to the TUA are currently before Cabinet, for consideration.

Section 5 of the Act ensures that trade unions are not deemed to be unlawful as being in restraint of trade. By virtue of Sections 8 and 9, there is a Registrar of Trade Unions whose responsibility is to keep a register of all trade unions registered under the Act and discharge all the duties required by the Act and Regulations. According to Section 10, prior authorisation or approval by authorities is required for the legitimate establishment of a union. Sanctions are imposed for the organising or joining of an illegitimate/unofficial organisation (an organisation that is not officially recognised in accordance with the Act). Pursuant to Section 16(4) of the TUA, the Registrar may at any time order the books, accounts, vouchers, documents, securities and funds of any trade union to be inspected or audited by some fit and proper person or persons appointed by him or her, and the secretary, treasurer and other officers of a trade union shall make available to the person or persons so appointed all the accounts, books, documents, vouchers, securities and funds of the trade union for purposes of inspection or audit.

By virtue of Section 18 of the TUA, a trade union must fulfil certain criteria to the Registrar's satisfaction in order to become registered. A general statement of receipts, funds, effects and expenditure to the Registrar before June 1 every year must be submitted according to Section 29(1) of the TUA. All unions have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes in conformity with Convention No. 87. Moreover, it should be noted that Section 32 of the TUA expressly provides that all offences and penalties under the Act may be prosecuted and recovered in the manner provided by the Summary Courts Act. Unions therefore have recourse available as remedies can be pursued in cases of any breaches of the TUA.

Trade Disputes and Protection of Property Act, Chapter 88:03⁴

The Trade Disputes and Protection of Property Act, Chapter 88:03 ('the TDPPA') was enacted in 1943. The TDPPA essentially acts as a defence to protect trade unions from tortious liability when taking part in lawful industrial action such as peaceful picketing, lockouts and strikes amongst other things. This is by virtue of Section 2 of the TDPPA which prevents the law of trespass from interfering with the right to peaceful picketing. Trade unions often use this as a tactic during strikes to prevent workers from working as long as no obstruction is caused. Section 4 of the TDPPA provides for unlawfulness to be prevented by way of intimidation, annoyance by violence and besetting without any legal authority.

Section 6 of the TDPPA states, "*an action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the*

⁴ <https://agla.gov.tt/downloads/laws/88.03.pdf>

trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained in any Court. Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided by Section 14 of the Trade Unions Act, except in respect of any tortious act committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute.” Therefore, this piece of legislation supports trade unions’ right to organise and provides protection for picketers who are acting in connection with an industrial trade dispute. These provisions go hand in hand with C98 as it relates to rights of trade union members to carry out their functions without the intervention of employers as outlined in Article 1 and 3. Additionally, the trade union members are protected from financial exploitation from their employers. Provisions within the TDPPA therefore ensure that unions enjoy adequate protection against any acts of interference and protect workers against anti-union discrimination as articulated in C98.

Moreover, Sections 7 to 10 of the TDPPA provide for the remedies in case of breaches. Section 7 regulates criminal liability with particular reference to criminal conspiracy in relation to trade disputes being punishable on summary conviction. Section 8 aims to protect the public from the suspension of the day to day essential supplies and health measures. As such, it provides that a person may not break his contract with anybody who is concerned with the providing of these facilities to the public. Section 9 goes further to indicate the penalty for breach of a contract if done wilfully and maliciously so that he/she will be liable to a fine of seven hundred and fifty dollars or to imprisonment for three months whilst Section 10 speaks to the recovery of penalties in accordance with the Summary Courts Act, Chapter 4:20.

It should be noted that a consultative process to amend this Act commenced in 2023, with a view to amending the TDPPA in due course.

In conclusion, there are many provisions in national legislation, as outlined above, that coincide with the principles of International Labour Organisation Conventions No. 87 and No. 98. The procedures and regulations set out in the legislative frameworks aid in achieving the overarching objective to protect the rights and freedoms of trade unions and assist trade unions in effectively carrying out their functions.

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Additional Industrial Relations Act Provisions Relevant to the International Labour Organisation Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining

- Section 7(c) of the IRA allows the Court to enjoin a trade union or other organisation or workers or other persons or an employer from taking or continuing industrial action;
- Section 16(2) of the IRA which deals with the interpretation of orders and collective agreements states, where there is any question or difference as to the interpretation or application of the provisions of a registered collective agreement (within the meaning of Part IV) any employer or trade union having an interest in the matter or the Minister may make an application to the Court for the determination of such question or difference;
- Section 17(b) of the IRA states, the Court shall expeditiously hear, inquire into and investigate every dispute and all matters affecting the merits of such dispute before it and, without limiting the generality of the foregoing, shall in particular hear, receive and consider submissions, arguments and evidence made, presented or tendered (whether orally or in writing)— by the trade union concerned on behalf of the workers involved in the dispute;
- Section 19(1)(d) of the IRA states, an order or award of the Court shall be binding on any trade union on whom such order or award is at any time declared by the Court to be binding, as well as on its successors;
- Section 33(1) of the IRA allows for the Board to have regard to the views of the employer and the trade union concerned as to the appropriateness of the bargaining unit;
- Section 34(1) of the IRA provides that, “Subject to this Act, the Board shall certify as the recognised majority union that trade union which it is satisfied has, on the relevant date, more than fifty per cent of the workers comprised in the appropriate bargaining unit as members in good standing;”
- Section 35 and 37 of the IRA outlines the effect of certification when a trade union is certified as a Recognised Majority Union (RMU);
- Section 40(1) of the IRA provides for compulsory recognition and duty to treat with a trade union when they obtain the certification of recognition for workers comprised in a bargaining unit. It states that the employer shall recognise that trade union as the RMU, and the RMU and employer shall in good faith treat and enter into negotiations with each other for the purposes of collective bargaining;
- Section 41 of the IRA provides for a record of the union’s certification as well as the effect of such;
- Section 42 of the IRA extensively outlines provisions in the event of victimisation of an officer, delegate or member of a trade union for trade union activities;
- Section 63(2)(b) of the IRA states that a person is guilty of an industrial relations offence and a trade union is liable to a fine of ten thousand dollars if any industrial action is not in conformity with Part V the Disputes Procedure;
- Section 67(5) of the IRA outlines penalties for a trade union or the holder of an office in a trade union if they allow an industrial action to be brought in an essential service which is prohibited.

