

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

Asia Monitor Resource Centre

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AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking
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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
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Workers' Rights in Mongolia

Puntsag Tsagaan

Historical and political background

Mongolia was the largest land empire in history in the 13th and 14th centuries. However, the empire established by Chinggis Khan and his son Ugoodei Khan, weakened gradually due to internal struggles between kingdoms as well as resistance and uprisings within controlled nations. Later Mongolia became a dominion of the Manchu Dynasty for nearly two centuries until 1911.

When the Manchu Dynasty collapsed in 1911 Mongolia declared its independence, but was invaded by China in 1919. In 1921 with Soviet help, Mongolia (Outer) achieved final independence and unsuccessfully tried to build a socialist state from 1924 to 1990.

In late 1989 and early 1990 a pro-democracy movement led to the first multi-party elections. As a result the first permanent parliament called Baga Hural was established.

In 1992 Mongolia adopted a new Constitution, which guaranteed irreversible peaceful democratic changes in the country.



The second multi-party elections were held in 1992 when the Mongolian People's Revolutionary Party (communist party formerly) won 70 seats out of 76 in the Parliament. Mr. P.Ochirbat, who was nominated by new democratic parties, won the first Presidential election held in 1993. In 1996, the Democratic Coalition of new parties won 50 seats out of 76 in the Parliament and the first non-communist government was established.

Mr.N.Bagabandi nominated by the Mongolian People's Revolutionary Party (MPRP) was elected President in 1997 and re-elected in 2001.

During the 2000 parliamentary elections the MPRP occupied 72 seats out of 76 in the Parliament with popular support of 51 percent. This swing of the number of seats in Parliament is partly explained by the majority system of election.

Mongolia is a landlocked country between Russia and China. It has 1.56 million square kilometre of territory rich with minerals. It has a population of only 2.4 million. 60 percent of the population is below the age of 30. Adult literacy rate is 95 percent.

Despite the image of Mongolians as nomadic herders, more than half of the population is urbanised.

Economic situation

After 70 years of central planning Mongolia moved to a free-market economy. Mongolia had a difficult experience during the privatisation of livestock, state owned enterprises, and housing, and liberalisation of trade, prices, and exchange rates. The peak of inflation reached 320 percent in 1992 before reducing gradually. Annual inflation has stabilised at under 10 percent for the last four years. The exchange rate is also stable (1,105 Togrog is equal to US\$1).

Total gross domestic product (GDP) is approximately one billion USA dollars. Approximately, one third of GDP is produced in industry, one third in agriculture, and one third in the service industry. 70 percent of GDP is produced by the private sector that was non-existent before 1990. The Government is pursuing an open door policy towards foreign direct investment by creating favourable legal conditions such as tax holidays, customs duty exemptions, and concluding stability agreements.

Mongolia pursues a liberal trade policy with the outside world and became a member of the World Trade Organisation in 1997.

The most difficult social-economic problems are poverty and unemployment. One third of the population lives under the poverty line. The World Bank has been implementing a poverty alleviation project since 1994, but the level of poverty has not reduced. Unemployment officially stands at five percent, but according to the Asian Development Bank's calculation it is 17 percent by international standards. Thousands of Mongolians live as emigrants, many of them 'illegally' in other countries, mainly South Korea, Germany, and the USA.

Labour force

According to a census by the National Statistics Department in 2000 the population of 15 years old and older was 1,524,400, of who 944,100 or 62 percent were reported as economically active.

Employment has different forms now. Among the employed population (779,200) there were 321,400 contractors, 10,000 employers, 243,200 individual (sole proprietorship) entrepreneurs, 197,500 non-salaried family business participants, 3,700 co-operative members, 3,400 miscellaneous.

The 2001 Human Rights Baseline Study examined the barriers to exercising free choice of employment in Mongolia. The respondents in Ulaanbaatar indicated nepotism (18.9 percent), low salary (14.4 percent), and lack of profession (11.2 percent) were the three major factors. Also mentioned were bribing an employer to be recruited (10 percent) and age- and sex-discrimination (5.6 percent).

Labour movement

The CMTU

The Confederation of Mongolian Trade Unions (CMTU) founded in 1927 is the most representative national centre.

Before 1990 when democratic changes took place in our country every employee was a trade union member. However trade unions fulfilled many functions of state, such as implementing social welfare, sanatoriums, and rest homes. At that time the trade union movement was a powerful organisation. When national enterprises were privatised many of them were closed due to the lack of finance, and poor management.



Anti-government demonstration for democracy and human rights in 1990. (Credit: R Enkbat)

The current young generation is not really interested in being union members. In 1990 the CMTU membership was more than 624,000 strong, but it has now fallen to 220,000 members.

The CMTU became surprisingly inactive and tolerant after the 2000 parliamentary elections. The CMTU organised no demonstrations or strikes at a time when hundreds of workers were dismissed for political reasons. Huge quantities of public money were spent in violation of laws by the ruling authorities and taxes increased sharply.

At a demonstration organised by opposition forces on 10 December 2001, CMTU Vice-President Mr. Narmandakh publicly criticised the Government for failure to meet pre-election promises such as increasing pensions and wages.

An agreement concluded between the Government, the Employers Association, and the CMTU for 2002-2003 years aimed to reduce some taxes (for example 15 percent VAT down to 10 percent), to keep unemployment at five percent when in fact it is much higher, to increase salaries and wages by 25 percent and 30 percent in 2002 and 2003 accordingly, and to ratify International Labour Organisation (ILO) Convention Nos. 29 and 105 on Elimination of Forced Labour and No 183 on Maternity Protection.

There are 12 trade unions affiliated to the CMTU:

- Agricultural and Food Workers' Union;
- Students' Union;
- Motor Transport Workers' Union;
- Private Sector Workers' Union;
- Construction Workers' Union;
- Railway Sector Workers' Union;

- State, Public, and Cultural Sector Employees' Union;
- Energy, Geology, and Mining Workers' Union;
- Trade and Service Sector Employees' Union;
- Mongolian Industrial Workers' Union;
- Health Sector Employees' Trade Union Federation;
- Transport, Communication, and Petroleum Workers' Union;

A Congress held every four years is the supreme body of the CMTU.

President of the CMTU is Mr. G. Adiya; Tel. +976-11-323527, Fax: +976-11-322128.

The Mongolian Free Trade Union Federation

This labour federation was established in 1990 in connection with democratic changes that took place in Mongolia. It was very proactive in 1990, but now is silent.

Labour legislation

Labour legislation in Mongolia comprises the Constitution of Mongolia, Labour Law and other domestic laws and relevant international treaties such as ILO conventions.

Constitution

The 1992 Constitution declares many new rights and guarantees that were forbidden for Mongolians previously under the single party system. There was no independent labour movement in Mongolia before 1990.

The new Constitution recognises for the first time the workers' right to freedom of association in political parties and other voluntary organisations on the basis of social and personal interests and opinion. It also guarantees the rights of private ownership, freedom of conscience and religion, freedom of speech, expression, and peaceful assembly, the right of movement and residence within the country, and the right to travel and reside abroad and to return home.

The Constitution also guarantees internationally accepted workers' rights such as freedom of association and collective bargaining; free choice of employment; favourable working conditions, remuneration, and rest; financial assistance in old age, disability, childbirth, and

childcare; and the protection of health and medical care. Forced labour is banned by the Constitution.

Labour law

Following democratic changes almost all laws have changed drastically or been replaced by new ones in line with democratic values and market economic principles.

The Labour Code approved in 1973 was changed several times and then replaced by the Labour Law of Mongolia in 1991.

This Law sets conditions for collective bargaining, individual labour contracts, wages, working hours, vacation, occupational safety, women's and children's work, dispute regulation, and disciplinary measures. This law considerably differs from the Labour Code, which regulated all labour relations, whereas the Labour Law is more flexible and sets minimum labour standards, with more discretion to collective agreements. The Law on Collective Labour Disputes Regulation 1993 regulates collective disputes and specifies rights and conditions for workers to strike.

The Labour Law was amended in 1999 to combine the provisions of 1991 Labour law and those of the Law on Collective Labour Disputes Regulation..

This law covers domestic and foreign enterprises, and labour relations for all workers except civil servants. A separate law for Civil Service employees was adopted in 1994, but one of its provisions specifies that issues not covered by the Civil Service law shall be regulated by the Labour Law.

Working hours and pay

According to the Labour Law standard weekly work shall not exceed 40 hours; the normal working day shall not exceed eight hours. The official minimum wage set by the Government takes into account living expenses in various regions of the country. If an employee works overtime or on weekly rest days and is not given an alternative rest day s/he shall receive at least 1.5 times his/her average pay rate. There are eight public holidays a year. Employees working on public holidays, if not given another day off, shall receive compensation at double the rate of his/her average pay rate.

Minimum wages shall be established by the Government and reviewed every quarter. An opinion poll of 180 persons indicated that 77.8 percent of respondents answered that the amount of wages and pensions are not sufficient for adequate living.

Collective labour rights

Collective agreements are established for employees to gain better working conditions than those guaranteed by the Labour Law and provide for matters not directly covered by the law. The main principles of collective bargaining are:

- transparency;
- compliance with the legislation;
- an equal number of, and equality between, representatives of negotiating parties;
- State organisations and employers are obliged to provide employee representatives with all necessary information, rooms for meeting and discussion during non-working hours, and assistance in promotion and advertisement of the collective agreement.

Collective agreements must be registered within 10 days of signing at the local Governor of the soum and district. Implementation of collective agreements is monitored by both parties.

The right to strike and regulation of collective labour disputes is specified in Chapter 10 of the Labour Law. A collective labour dispute is defined as a dispute that arises out of compliance with a collective agreement. When a collective dispute arises, the parties shall attempt to settle it themselves, if they fail to do so the local governor appoints an intermediary to settle the dispute, if this fails the dispute goes to arbitration by three members. If all three stages fail to settle a collective dispute employees have the right to go on strike.

State defence, national security, and public order officials are prohibited from striking.

Trade union rights

The Law on Trade Union Rights was approved in 1991. It determines union rights, such as freedom of association, union registration procedure, rights to collec-

tive bargaining, represent members in dispute resolution bodies, monitor labour legislation, peaceful assembly, and strikes.

Registration

Founders of a trade union shall lodge application to register the trade union to the Ministry of Justice and Home Affairs.

Founders of the trade union must enclose the following documents with the application:

- documents indicating the name, location, and structure of the union;
- Articles of Association;
- founders' identities, names, and ID numbers;
- source of income.

The Ministry of Justice and Home Affairs must register the union within 14 days of receiving application or reject it.

If founders disagree with a decision of the Ministry of Justice and Home Affairs, they may appeal to court.

Rights

Basic rights granted by the Trade Union Rights Law are to:

- negotiate with management and employers, concluding collective or other agreement, and control its implementation;
- represent member's interests in labour dispute settlement;
- ensure the management observes national legislation concerning labour rights;
- demand to suspend, revise, or cease management decisions that violate labour rights;
- study opinions, needs and requests of trade unionists on any matters concerning the protection of labour rights and make demands of management, issue statements, or represent members in relevant institutions;
- appeal to the courts on behalf of members or employees whose rights are violated;
- discuss and organise discussions among trade unionists on any issues concerning labour rights;
- request the management to provide information necessary for union activities;

- organise demonstrations, meetings, and strikes according to legislation; and
- enjoy other rights ensured by Mongolian legislation.

Occupational health and safety

Employers are responsible for creating healthy and safe conditions in the workplace.

Work must be suspended if it adversely influences people's lives and bodies. Workers shall be compensated for damage caused by industrial accidents, poisoning, or occupational disease.

Non-discrimination and gender issues

Article 7.2 of the Labour law specifies: 'In labour relations no distinction, limitation, or privilege shall be made on the basis of nationality, race, sex, social origin or status, wealth, religion, or ideology.' There is no provision for menstrual leave.

When person is interviewed for hire, employers are prohibited to ask questions regarding personal life, opinion, marital status, political party membership, religious belief, or whether women are pregnant. However in small communities the managers can easily find who belongs to which party etc.

In practice employers employ people they know well. Some employers are corrupt or discriminate against age or sex. It is not unusual to hear radio job advertisements for young, tall, charming girls, while some organisations just employ men.

The Labour Law prohibits the employer from dismissing women workers on grounds of pregnancy unless the enterprise is dissolved, the woman is dismissed for a disciplinary offence, or a woman in charge of money or property has lost the employers' confidence.

Article 142 of the Criminal Code specifies that any act of violence or threat to the equal participation of women in political, economical, social, and cultural life is a criminal offence. Any guilty person shall be convicted for up to three years imprisonment or fined 25,000 - 100,000 Togrog.

Child labour

The main reason for child labour is poverty. Other reasons are insufficient social protection and bad quality education. In 2000 the Ministry of Education, Culture, and Science in 2000 reported that 53,000 children aged between eight and fifteen dropped out of school. 90 percent of them live in rural areas. 14.8 percent of them dropped out due to poverty, 9.3 percent did not like to study, 14.9 percent wanted to work on individual farms, 6.2 percent wanted to work in the city, 54.8 percent gave no reason. Child labour is mainly herding domestic animals, delivery work in the market place, selling in the street, or working as shoe polishers. The state should promote public awareness about child labour, take measures to eliminate poverty, provide work for parents and send those children back to school.

According to the Prime Minister Mr. Enkhbayar's speech in Parliament on 1 October 2002 the number of dropouts from school has reduced significantly. But unfortunately, he did not give a concrete figure.

Unfair dismissal

According to article 40 of the Labour Law employers can terminate contract of employment on these grounds:

- if the business organisation, or a unit thereof has been dissolved, or the job within it has been abolished, or the number of employees has been reduced;
- if it has been determined that the employee cannot meet the requirements of the job or position because of lack of professional qualifications or skill, or because of poor health;
- if an employee is 60 years of age and eligible to receive a pension;
- if an employee has repeatedly violated disciplinary rules or has committed serious violations, which, by terms of the contract of employment would automatically terminate labour relations;
- if an employee who is responsible for assets or money has acted wrongfully and as a result has lost the trust of the employer;
- if an employee is elected or assigned to perform other salaried work; or
- other grounds set forth in the contract of employment.

If employee dismissed on grounds not specified in article 40 of the Labour Law or if the law is applied incorrectly, s/he shall be entitled to complain to the state bodies.

An employee has the right to lodge a complaint on unfair dismissal to a court within one month following the date s/he received the decision from the employer according to the Labour law.

If a court refuses to consider a complaint due to failure to file it on time the complaint may be submitted to the National Human rights Commission of Mongolia (NHRCM) within one year from the date on which his/her rights were violated. The Commission shall reply within 30 days from the date of receipt of the complaint. The Commission shall issue demands or make recommendations.

Court decisions are enforced by the Court Decision Enforcement Department. But there is no mechanism for enforcing NHRCM decisions.

In the first half of 2001 Ulaanbaatar city courts received 239 complaints on unfair dismissal, of which 153 were upheld. In the second half of 2001 Han-Uul district court settled 13 disputes on unfair dismissal, and established 10 of them (or 77.7 percent) were legal. Civil servants are frequent victims of unfair dismissal, usually after general elections.

ILO conventions

Mongolia has ratified the following 12 ILO conventions:

- Convention No. 59 on Minimum Age (Industry) (Revised) 1937;
- Convention No. 87 on Freedom of Association and Protection of the Right to Organise 1948;
- Convention No. 98 on Right to Organise and Collective Bargaining 1949;
- Convention No. 100 on Equal Remuneration 1951;
- Convention No. 103 on Maternity Protection (Revised) 1952;
- Convention No. 111 on Discrimination (Employment and Occupation) 1958;
- Convention No. 122 on Employment Policy 1964;
- Convention No. 123 on Minimum Age (Underground Work) 1965;
- Convention No. 135 on Workers' Representative 1971;

Convention No. 144 on Tripartite Consultation (International Labour Standards) 1976;

Convention No. 155 on Occupational Safety and Health 1981;

Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) 1983.

According to the Constitution, international treaties to which Mongolia is a party shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession. Both the Constitution and the Labour Law of Mongolia uphold one of the most important international law principles, the ‘Pacta Sunt Servanda’. According to the principle if an international treaty (in this case ILO conventions) to which Mongolia is a party is inconsistent with domestic law, then the provisions of the international treaty shall prevail. So far there is no recognised contradiction between the ILO Conventions ratified by Mongolia and domestic legislation.

Social insurance for workers

In addition to the Labour Law, the Social Insurance and Health Law 1994 contains important provisions concerning social insurance for workers.

According to this law social insurance in Mongolia covers:

- old age/retirement pension;
- disability benefit;
- benefit for loss of breadwinner;
- unemployment benefit;
- sickness and employment injury benefit.

Under this system, pensions and benefit payments are paid to eligible recipients on the basis of pooling a centralised social insurance fund by collecting contributions from both employers and employees.

Social security covers pensions, benefits, health, employment injury, occupational disease, and unemployment benefit. Each item has its own fund and under the law it is prohibited to make a transfer from one fund to another or use the resources for purposes other than specified.

Pension system

‘Main Guidelines for Pension Reform to be Followed by the State to the Year 2021’, (the Guidelines), which was approved by Parliament in May 1999. The Guide-

lines envisages a two-step reform, involving first the immediate introduction of a system of individual accounts funded on a pay-as-you-go basis and, second, the gradual investment of some portion of contributions into the capital markets of Mongolia and, potentially into other countries as well.¹ The approach to pension reform contained in the Guidelines document has the following objectives: (a) preserving the concepts of fairness and individual equity in how workers are treated by the system; (b) protecting the needs of the elderly and persons close to retirement; (c) insuring that current workers receive reasonable pension benefits when they retire, without subjecting them to unreasonable risks; (d) making the pension system financially stable and eliminating the dependence of the system on the general budget; and (e) introducing market-based economic reforms intended to encourage the development of private capital markets and increase economic growth.

Individual pension accounts

In June 1999, the first of the above two reform steps became law with the passage of the ‘Law on Individual Pension Contribution Accounts’ (law on Individual Accounts). In late 1999, and in accordance with the law on Individual Accounts, the State Social Insurance General Office began a system of individual pension accounts for persons born on or after 1 January 1960.²

Under these individual accounts, a worker’s pension will be determined by the total lifetime amount of contributions made by the worker and by employers on the worker’s behalf. Initially, benefits to current and new retirees will continue to be funded entirely from contributions from current workers, as is done under the old pay-as-you-go system. Workers’ contributions to the system will not be invested on their behalf during this phase of the reform. As described below, this is an interim step designed to achieve many of the advantages of funded pension systems while managing the cost and risk of moving to a funded system in a country with underdeveloped capital markets and a large number of aged people who will not have enough working years to accumulate individual retirement funds of their own.³

Individual accounts look and act like bank accounts, although no funds are actually kept in them. In this sense, individual accounts are simply an administrative record of pension contributions. Annually, the accumu-

lated balance in a worker's account is increased by the rate of growth in average wages in the economy over the past three years. A worker's pension is computed by dividing the worker's individual account balance at retirement by the average life expectancy for persons of the worker's age when the worker retires.

The pension reform outlined above is believed to be consistent with a commitment to private sector led growth and market-based economic reforms.

The age qualification for pension benefit 60 years for men and 55 years for women. A minimum 20 year work record is required. The lowest pension must not be below 75 percent of the minimum wage.

Privileged pension

There are four groups that benefit from special treatment. These include (a) women with four or more children and twenty years of service (retirement at 50); (b) men with twenty years of service who have worked under ground for ten years (retirement at 50); (c) men with twenty years of service who have worked in hot conditions for ten years (retirement at 50); and (d) women with twenty years of service who have worked in hot conditions for seven and a half years (retirement at 45).

Mongolia's State Budget expenditure by function reveals that in 1998 social expenditures made up close to three-quarters of current expenditures (and 46 percent of total expenditures).

Unemployment benefit

Workers who have paid unemployment insurance premiums for at least 24 months prior to becoming unemployed, with nine months' premiums paid continuously are eligible for unemployment benefit. The benefit rates are as follows:

- 45 percent of average salary or wage earned in the last three months if the work record is under five years;
- 50 percent if work record is five to 10 years;
- 60 percent if work record is 10 - 15 years;
- 70 percent if work record is above 15 years.

The benefit is granted for a maximum of 76 working days.

Sickness or temporary loss of work ability benefit

The coverage of this benefit is either mandatory or voluntary and is run by the State Social Insurance Department and its local affiliates.

Sick leave benefit rates are as follows:

- 45 percent of average salary if the work record is under five years;
- 55 percent of average salary if the work record is five to 14 years;
- 75 percent of average salary if the work record above 15 years.

Employment injury and occupational disease benefit

There are two schemes, mandatory and voluntary, of employment injury and occupational disease insurance scheme. Persons covered under such schemes can get benefits for disability, loss of breadwinner status, temporary loss of work abilities, and restoration of such abilities.

If the person has lost his or her ability to work due to employment-related injury or occupational disease, the benefit rate is set according to the degree of loss of ability. If the loss is above 30 percent, the benefit rate must at least equal 75 percent of the minimum wage.

Maternity benefit

The maternity benefit rate is 70 percent of the average salary or wage. The benefit is granted for a total 120 days: 60 days before delivery and 60 days after. Women who qualify have paid social insurance premiums for at least 12 months, with the last six months continuously paid.

Conclusions and recommendations

Mongolia is a country of transition in broad sense. It is remarkable that Mongolia peacefully moved to democracy. The nation's political, economic and legal structures have gradually changed over the last 12 years, with both accomplishments and failures. In this regard, shaping and implementing laws concerning workers' rights are no exception. Following are some of the issues that must be the centre of attention of trade unions and workers.

Achievements

It should be recognised that Mongolian workers' political, civil, and labour rights have expanded greatly in line with the international treaties concerning human rights and freedom. These positive changes have reflected in the Constitution, Labour Law, and other laws.

Mongolia has ratified some ILO core conventions and intends to ratify more. In accordance with the new Constitution, ratified ILO conventions are supposed to be as effective as domestic laws.

At the same time, it should be pointed out that the laws are not perfect and need improvements especially in terms of implementation. For example, penalties for violation of labour law in some cases are too weak. Fining a business by US\$5 is not sufficient punishment.

Disappointments

It is true that many workers are disappointed by the gap between expectations about democracy and the results of the transition towards a market economy. Despite the successes in democratisation, there are a number of burning social and economic problems to be solved such as unemployment, poverty, and crime.

Weak enforcement of laws

Labour law outlines minimum standards and gives much discretion to enterprises and trade unions for collective bargaining. But in fact, on many occasions, minimum conditions become the maximum conditions.

According to the CMTU, in private enterprises, especially in many foreign owned textile industries, even minimum conditions are not applied. For example, according to the Labour law employees shall be paid for overtime work after eight hours work at a rate at least 1.5 times average pay rate. But 62 percent of respondents in foreign invested companies indicated that they did not receive overtime payment. In addition to insufficient wages, low standards of safety, health and sanitation in the working environment, daily 9-12 hours of work without overtime payment are examples of existing violations. But workers are afraid of being dismissed and rarely lodge complaints with the authorities.⁴

Corruption

Growing corruption in government, including the judicial branch leads not only to injustice and ignorance of workers' protection by laws and international treaties, but also to mismanagement of public money paid by workers.

Reforms and assistance needed

Mongolian trade unions did not reform much in recent years. For this and other reasons, the number of unionised workers has reduced continuously, while workers' rights and freedom were much expanded by law. There is a clear need for training and re-training of trade unionists in how to work and fight to protect workers' rights in a completely new social and economic environment.

Application of treaties

It is almost impossible to find the ILO conventions in the Mongolian language. Therefore, it is difficult to imagine how to apply international treaties in courts.

In conclusion, it must be emphasised that in general the legal frames on workers' rights are shaping well, but the most important challenge is how to implement them properly and efficiently with minimum of social loss and pain.

Notes

1. Pay-as-you-go systems – also referred to as Pay go systems – are pension systems in which current contributions are used to pay current benefits. The long-term financial stability of any pay-as-you go system depends upon demographic, economic and labour market conditions.
2. Individual pension accounts are also called (a) *unfunded defined contribution* accounts and (b) *notional defined contribution* accounts (or NDCs).
3. Funded systems are pension systems in which pension contributions are invested in securities. Pensions are determined by the value of those securities at the time a worker retires. Pensions are subject to investment risk. This means that the ultimate pension earned under a funded system will depend upon the performance of the investments held in the system.
4. 2001 Human Rights Baseline Study.