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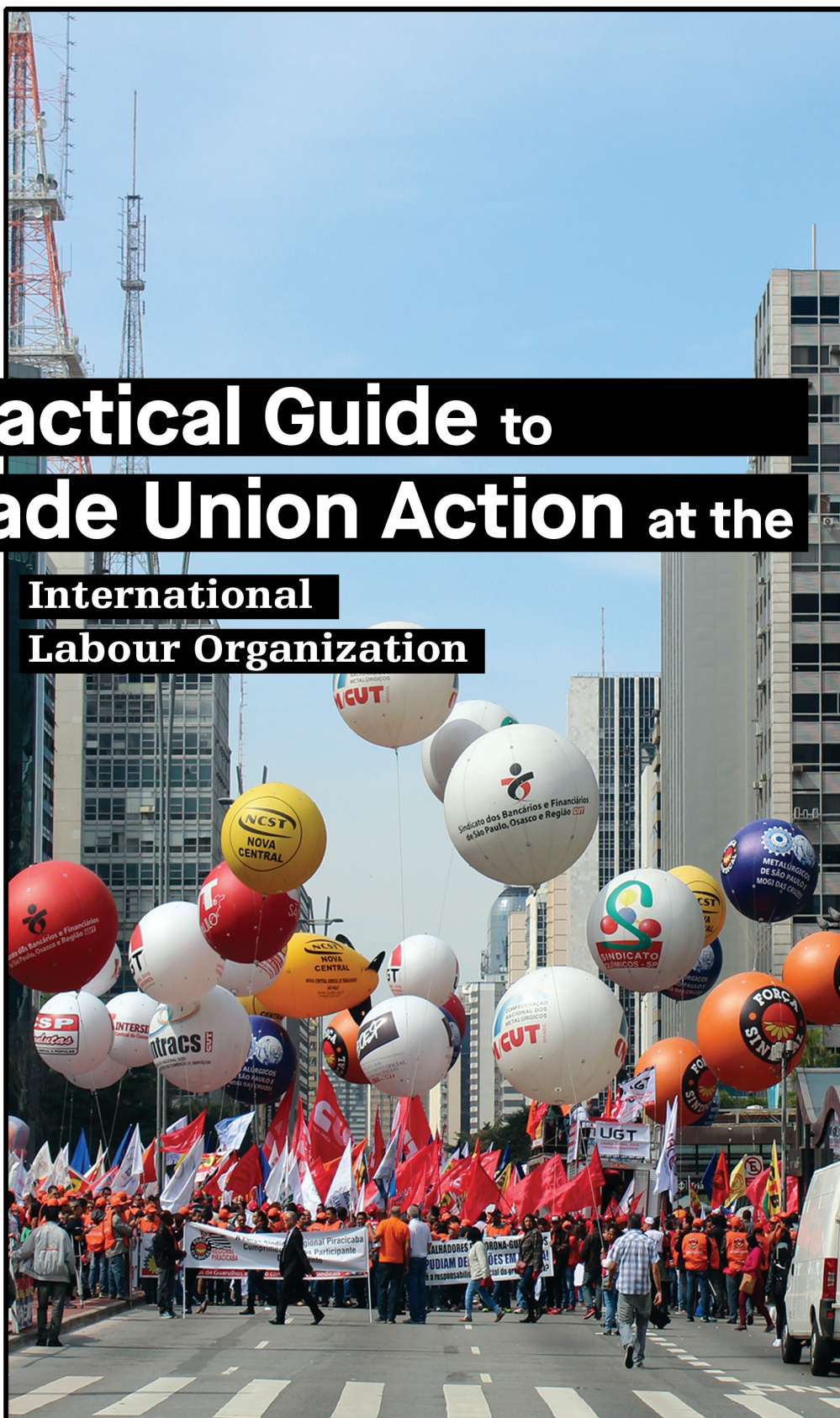
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# Practical Guide to Trade Union Action at the International Labour Organization

PSI REPORT SERIES - SPECIAL REPORT





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**PRACTICAL GUIDE TO  
TRADE UNION ACTION AT THE  
International  
Labour Organization**

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CARLOS LEDESMA

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## Practical Guide to Trade Union Action at the International Labour Organization

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# PRESENTATION

**T**his *Practical Guide to Trade Union Action at the International Labour Organization* is a fundamental tool for the exercise of trade union work in the international arena. It is not an academic piece of work, yet it contains all the required elements thereto including quality, accurate, and detailed information. Rather, this guide has been conceived with the aim of bringing practical information to the leaders of trade union organizations affiliated to Public Services International in Inter-America in order to deepen their trade union work in the different spaces of supervision, complaints, and political action of the International Labour Organization (ILO).

As detailed by Professor Carlos Ledesma in this guide, the ILO is the only multilateral organization in the United Nations system that operates with a tripartite structure, where the constituents – Governments, Employers, and Workers – make decisions on the basis of ‘social dialogue’, a dynamic that is fed by the generation of inputs – including complaints and proposals – that are discussed at every level, jointly by all three social actors.

Public Services International has a global and regional strategy in relation to the ILO that is hinged on supporting its affiliates, strengthening

their actions, and amplifying their voice in the highest international arenas, with the strength of trade union solidarity and the power of representation wielded by an organization representing more than 20 million workers in over 200 countries worldwide.

This guide is an instrument for affiliates to make the most of the work PSI has been carrying out at the International Labour Organization. This work is a fundamental cornerstone of our Global Union Federation struggle, and of the entire trade union movement, in our permanent pursuit of social justice and equality.

## PSI's work at the ILO

It is important that our affiliates fully understand the work that PSI carries out in the different spaces, forums, areas, and departments of the International Labour Organization. This Guide outlines the objectives, structure, and functioning of the ILO so that the unions that are part of PSI can join the work that our international team has been doing for years in the region and at the central office. This ongoing work includes claiming institutional and representation space for unions, developing experience and technical capacity, and building a solid track record of

activities that has garnered respect within the union movement and from the other social partners.

Strategic management of the two dimensions – knowledge of the ILO structure and knowledge of the tools of action that PSI leverages at the ILO – are key to carrying out the Programme of Action adopted

at the World Congress in Geneva 2018, supplemented and adapted to meet the region's priorities at the Regional Conference, IAMRECON 2019 in Buenos Aires. Next, we detail some major lines of action pursued by Public Services International in coordination with the ILO.

### Complaints and reparations at ILO supervisory bodies

- PSI Inter-America keeps track of complaints of violations of International Labor Standards filed by affiliates leveraging the multiple resources afforded by the ILO's standards control mechanisms, so that governments are forced to take concrete actions to stop violation of trade union rights. Similarly, in Geneva, where the ILO is headquartered, the PSI head office supports our affiliates in filing complaints, ensuring they are considered and that all documentation requirements are met.
- PSI participates in the Inter-American Technical-Political Committee of the Trade Union Confederation of the Americas (TUCA), which defines our region's priority complaints for a given year to be submitted to the ILO Committee on the Application of Standards (CAS). We bring our proposals to this committee and strongly influence the regional proposal that is subsequently submitted to the International Trade Union Confederation (ITUC).
- PSI, through its main office, participates in the activities of the International Trade Union Confederation, which defines the "long list" of countries which will join the employers at the negotiating table to decide on the "short list of 25 countries" to be addressed by the Committee on the Application of Standards at the ILO's annual International Labour Conference (ILC) is eventually defined.
- Together with the TUCA and the ITUC, PSI actively participates in the preparation of cases that are submitted to the Committee on the Application of Standards (CAS). PSI has the right to speak at the CAS, and actively exercises this right in all cases involving its affiliates, and on many occasions creates the conditions for affiliates from the country being analyzed in the Committee to take the floor in this very important forum and directly argue their cases.

## Proposals for new International Labor Standards

- PSI participates in all of the ILO's regional and global meetings through every step of the consultation process for the adoption of International Labor Standards. PSI participates directly in ILO bodies while simultaneously maintaining participation in the strategy of the entire trade union movement with the International Trade Union Confederation through the Global Union Committee. Likewise, at the regional level, PSI Inter-America participates directly in activities with the International Labour Organization, in coordination with the TUCA.
- PSI follows up on the deliberations of the ILO Governing Body, strengthening the work of the Workers' group. An example of this permanent work of our Global Union Federation can be seen in the leading role PSI played in recent years in the process of analysis, drafting, debate, and negotiation of Convention No. 190 on the elimination of violence and harassment in the world of work, and in the discussions on the future of work that culminated in the Centennial Declaration.
- Sectoral activity has distinct spaces within the structure of the ILO, and one of them is the Sectoral Policies Department (SECTOR), which reports on the problems and needs of different sectors, including those in the public sector and in education, where PSI is the most important representative organization. PSI has led the voice of workers' organizations in these and many other debates within the ILO, while the leaders of our affiliates have played the leading roles in these debates. In recent years, we can report, just to cite a few examples, PSI's engagement in the Global Dialogue Forums on Collective Bargaining in the Public Sector, Employment in Tertiary Education, in debates on Water and Sanitation, Local (municipal) Governments, and its ongoing effort to establish mechanisms to protect "whistleblower workers".

## Course of action at the 'International Parliament of Labour'

- Every year, Public Services International exercises its right to speak at the plenary session of the International Labour Conference, the highest global stage of the debate on social and labor issues, where it presents a report on the global situation in the public sector, highlighting cases of violations of fundamental rights.
- In addition to the abovementioned participation in the Committee on the Application of Standards, the International Labour Conference (ILC) is an extremely important space for trade union strategy at the global level. Once a year, many Presidents, Ministers of Labor, and top business and trade union leaders meet in Geneva for the ILC. PSI coordinates the activities of its affiliates, proposes thematic meetings and negotiation meetings in high-level national cases, brings its voice to each of the spaces, commissions, bilateral and associated meetings, engaging in intense trade union representation work together with its affiliates.

## Development cooperation and trade union training

- The specific areas of joint work that the ILO maintains with social actors, including with the Bureau for Workers' Activities (ACTRAV), with which PSI collaborates directly and frequently, are clear in this Guide. PSI, ACTRAV, and other cooperating organizations develop actions and activities related to training, trade union development, bipartite dialogue with governments, and technical assistance, while the current agenda of activities extends to all the subregions of the Americas.
- Together with ILO and TUCA, PSI conducts a permanent campaign for the ratification of Convention No. 151 concerning Labour Relations in the Public Service and Convention No. 154 concerning Collective Bargaining, advocating before governments, legislatures, and civil society for the adoption of these key standards for our sector and policy that will make the rights enshrined therein genuinely enforceable.
- PSI is directly involved in the work of the ILO Office for the Americas and its subregional offices. PSI is actively engaged in tripartite social dialogue forums in each priority area and, of course, exercising its representative functions in the Americas Regional Meetings.

To conclude this introduction, it is worth pointing out that the Guide PSI Inter-America is presenting is a practical instrument that will allow our affiliates to make the most of the different ILO bodies for the submission of complaints and trade union engagement, where PSI has put in place a sound support structure, a true platform designed to bolster the efforts of PSI affiliates by linking them around its global policy objectives and strategy.

Public Services International gets its strength from its rank and file, from

its affiliates, and it is through that strength that it can fulfil its Global Programme of Action on the basis of a democratic practice of global trade union representation, an example of participatory action. That is why this magnificent *Practical Guide to Trade Union Action at the International Labour Organization*, prepared by Dr. Carlos Ledesma, who combines technical knowledge with a deep commitment to the trade union movement, is a key piece of our regional strategy and in line with the global agenda of Public Services International.

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**Marcelo Di Stefano**

PSI INTER-AMERICA REGIONAL EXECUTIVE COMMITTEE MEMBER

# INTRODUCTION

**T**he *Practical Guide to Trade Union Action at the International Labour Organization* contains clear information on the institutional and operational bodies of the International Labour Organization (ILO) for practical use by trade unionists.

## THE GUIDE INCLUDES SEVEN UNITS:

### Unit 1

Introduction to the ILO, opportunities for trade union engagement, and some key elements to be considered when using ILO instruments.

### Unit 2

The structure of the ILO and how trade unions participate in the bodies that make up the ILO's tripartite structure: the Governing Body and the International Labour Conference.

### Unit 3

The International Labour Office and how it can be useful to trade unions.

### Unit 4

The ILO's standards system and how trade unions intervene in it. Practical questions and answers about the elaboration and adoption of new international labor standards, procedures for their submission and ratification, and their revision and withdrawal.

### Unit 5

The ILO supervisory system and how trade unions can intervene. Practical questions and answers about the procedures of regular control of ratified Conventions, non-ratified Conventions and Recommendations, the procedures of special control, specifically the procedures for the examination of complaints (Article 26 of the ILO Constitution), and of

complaints before the Committee on Freedom of Association.

## Unit 6

Legal considerations relevant to the nature of ILO standards and the legal value of the pronouncements of its supervisory bodies.

## Unit 7

How to use the international instruments of the ILO and the pronouncements of its supervisory bodies specifically for the elaboration and design of strategies and public policy proposals, to promote labor reforms and to support cases before national and international judicial bodies.

## Bibliography

Some of the publications used to develop this Guide.

This Guide is intended to be used by unions, union leaders, and union advisors. Care has been taken to explain the various ILO tools in a clear and practical way, with the aim of facilitating their understanding and the identification of relevant elements for their effective use. For this purpose, boxes, diagrams, concrete examples of trade union use of ILO tools and explanations of procedures through questions and answers have been used, with emphasis on the information that can be most useful and necessary for trade union action and advocacy in the ILO.

This Guide includes explanations of some of the many ILO tools. Knowledge and use of these tools contribute to the important work of trade unions in defending the rights of workers, which is the main reason for the ILO to exist.

## UNIT 1.

# UNIONS AND THE INTERNATIONAL LABOUR ORGANIZATION

### 1. What is the International Labour Organization (ILO)?

The ILO is a specialized agency of the United Nations. It is the only agency with a tripartite structure. The ILO has the power to develop international labor standards, monitor compliance, and to formulate policies and programs to promote decent work and social justice. The ILO was established in 1919, with the signing of the Treaty of Versailles that ended the First World War.

The ILO's creation is rooted in the concern over the miserable and intolerable conditions of the working class caused by industrialization.<sup>1</sup> The basic intention of the founders was to create an entity with the power to produce international labor legislation of a protective nature.

The Preamble to the ILO Constitution reflects the various ethical, political, social, and economic concerns regarding the inhumane working conditions of the working class and the conviction that universal and

lasting peace can be established only if it is based upon social justice. Part XIII of the Treaty of Versailles contains the ILO Constitution. Article 427 recognizes “that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance” and that “labour should not be regarded merely as a commodity or article of commerce.”

The ILO has been a strategic ally of trade unions. It was the first organization to legally recognize trade union rights, including the right to freedom of association at the international level.<sup>2</sup> The international instruments adopted at the International Labour Conference, the principles and decisions of the bodies of the ILO supervisory system, the technical assistance of the International Labour Office, and the political support of the ILO have had substantial influence on the promotion of protective labor legislation<sup>3</sup>

1. The ILO: what it is, what it does. 2005, pp.3-6. Available here: [http://www.ilo.ch/global/about-the-ilo/WCMS\\_082364/lang--en/index.htm](http://www.ilo.ch/global/about-the-ilo/WCMS_082364/lang--en/index.htm).

2. Committee of Experts on the Application of Conventions and Recommendations. General Survey on Freedom of Association and Collective Bargaining. 1994, paragraph 5.

3. VILLASMIL PRIETO, Humberto. *Una visión “americana” del centenario de la OIT: aproximación a la comprensión de una relación histórica*. ILO: 2019. En: [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/--sro-santiago/documents/publication/wcms\\_736787.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/--sro-santiago/documents/publication/wcms_736787.pdf)

and respect for the human rights claimed by trade unions.<sup>4</sup>

Currently, the ILO represents the concerns of 187 countries from every region and kind of development on the planet, and its activity includes the promotion of decent work for all people, independent of their wage-earning status or any other specificities or identities.

In a very different context from that which existed in 1919, the ILO must now affirm its political importance and its potential to meet the new and diverse challenges arising from a globalization dominated by the hegemony of financial capital and transnational corporations, namely global production chains, financial speculation in the 'real economy', digital transformations, and now the fallout of the Covid-19 pandemic.

In the context of unequal forces, trade union participation in the ILO is fundamental in order to influence its agenda, defend its normative and control system, promote the adoption of new international standards and the application of existing ones, and recall that the ILO exists to guarantee fair working conditions and to promote social justice.

The international trade union movement, fully aware of these concerns and challenges, is politically and institutionally committed to promoting trade union participation in the ILO. Public Services International (PSI) reaffirms this programmatic commitment with its affiliates worldwide in the document "Putting people over profit: PSI priorities 2018-2022",<sup>5</sup> adopted at its 30th World Congress (Geneva, 2017).

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<sup>4</sup>. The ILO played a critical role in accepting complaints filed by trade unions regarding serious human rights violations perpetrated by dictatorships in the region, such as Pinochet's dictatorship and the dictatorship of the Military Junta led by Videla. An emblematic example was the Resolution on Human and Trade Union Rights in Chile. Available here: [https://www.ilo.org/public/libdoc/ilo/P/09648/09648\(1974-57\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09648/09648(1974-57).pdf)

<sup>5</sup>. Putting people over profit: PSI priorities 2018-2022



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## PUTTING PEOPLE OVER PROFIT: PSI PRIORITIES 2018-2022

Public Services International, 30th World Congress (Geneva, 2017)

- Use the tools available at the ILO to fight against violations of labour and trade union rights.
  - Defend the ILO against attacks on the legitimacy of its mechanisms.
  - Recognize the ILO's tripartite structure and its authority as the only legitimate international body with a mandate to address labour issues.
  - Continue to coordinate and support the actions of PSI affiliates at the International Labour Conference, focusing on standard setting and the Committee on Freedom of Association.
  - Give priority to work on Conventions 151 on Labour Relations (Public Service) and 154 on the promotion of collective bargaining.
  - Monitor the implementation of Conventions 100 on Equal Remuneration, 111 on Discrimination, 156 on Workers with Family Responsibilities, and 183 on Maternity Protection and continue to fight for equal opportunities for all and the elimination of discrimination.
  - Defend the right to strike at the ILO.
  - Build capacity at the regional level to ensure that member organizations are well prepared to support this work.
- 

The International Trade Union Confederation (ITUC) has expressed this commitment in the Declaration “Building Workers’ Power: Change the Rules”,<sup>6</sup> adopted at its 4th World Congress (Copenhagen, 2018), which stresses the importance of “reinforc[ing] the unique specificity of the ILO, defined by its tripartite governance structure and normative mandate, including its supervisory system.” At the regional level, the Trade Union Confederation of the Americas (TUCA) has stressed

the importance of trade union participation in the ILO in “Trade unionism of the Americas in the ILO”,<sup>7</sup> adopted at its 3<sup>rd</sup> Congress (São Paulo, 2016), where it reaffirmed the need to “contribute to the deepening of trade union advocacy on the ILO agenda, reaffirming a proactive stance in defense of its standards and control system and a partnership strategy.” National trade union centers and confederations around the world are actively involved in the ILO's

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6. Building Workers’ Power: Change the Rules

7. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/genericdocument/wcms\\_570475.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/genericdocument/wcms_570475.pdf)

standard-setting system and, together with local unions, use the mechanisms of its supervisory system and the technical assistance tools of the International Labour Office.

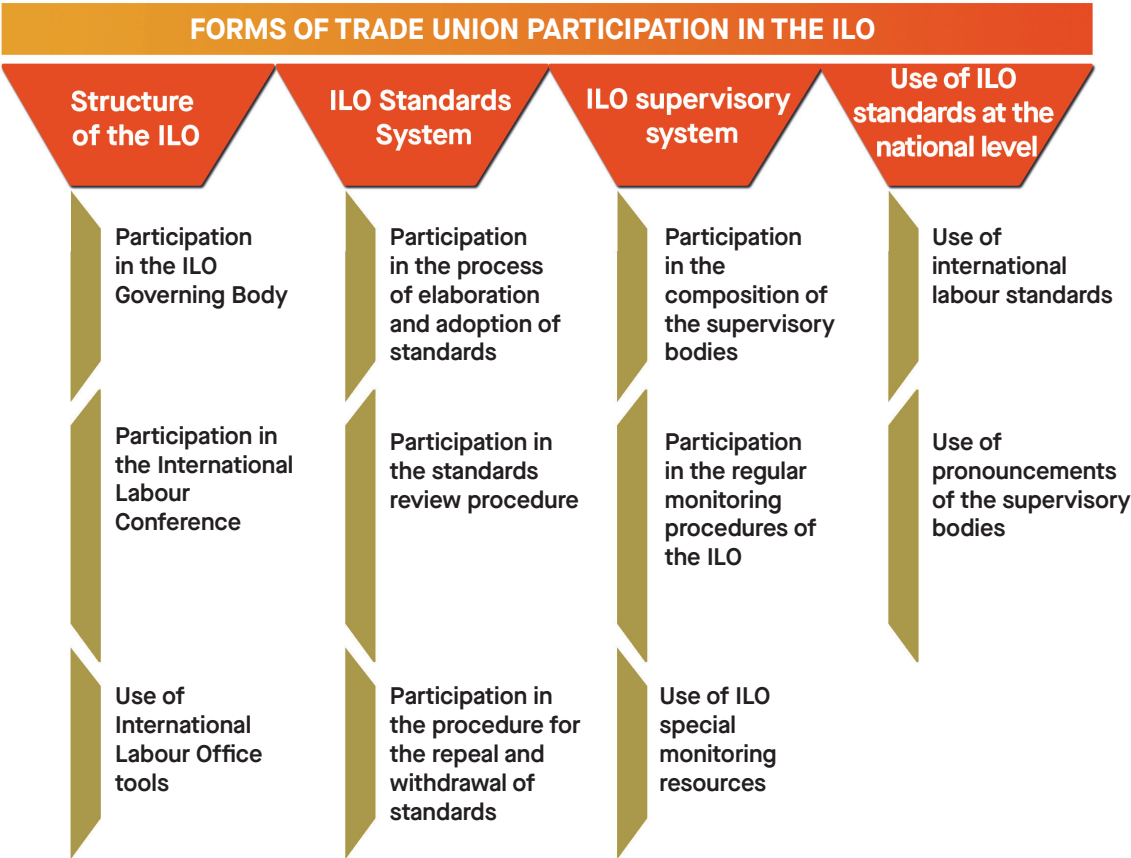
How do trade unions actually engage

at the ILO? In 2. below, we provide some information on the ILO's forums and mechanisms used by trade unions in their representation and advocacy work, which will be further explained in the guide units that follow.

## 2. What do unions do at the ILO?

Trade unions have played a leading role in the ILO since its creation in 1919, and continue to be its driving force today.<sup>8</sup> Trade unions participate

in the ILO through various spaces and mechanisms. Below is a diagram presenting the different forms of trade union participation in the ILO.



8. TAPIOLA, Kari. ILO. *The Driving Force Birth and Evolution of Tripartism - The Role of the ILO Workers' Group*. Geneva: ILO, 2019. Available: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_710908.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_710908.pdf)

### **ILO Structure.**

Trade unions are one of the "constituents" of the ILO. Trade unions are directly represented in two of the central bodies of the ILO's tripartite structure (the Governing Body and the International Labour Conference) and, together with the representation of governments and employers, set its political and legal orientation. How trade union participation in the ILO structure takes place will be described in **Unit 2** of this Guide.

### **Resources of the ILO Office**

Trade unions can use the resources that the International Labour Office makes available and which are useful for trade union work. The various tools that the Office makes available will be described in **Unit 3**.

### **ILO Standards System**

Trade unions can participate in the various processes of the ILO standards system. Within the framework of the ILO, trade unions are able to participate in the development of new international standards. As will be seen in **Unit 4**, the standards system includes procedures for the elaboration and adoption of international labor standards, as well as procedures for their revision and withdrawal.

### **ILO supervisory system**

Trade unions can participate in the ILO supervisory system and use its resources to denounce violations of rights regulated by international labor standards. Several of the supervisory bodies have a tripartite composition. As will be seen in **Unit 5**, trade unions have several mechanisms at their disposal with which to periodically review compliance with international labor standards and to denounce specific cases of violations of rights.

### **Use of ILO standards at the national level**

As will be seen in **Unit 7**, trade unions can use ILO instruments at the national level to demand spaces for dialogue and participation, promote labor reforms, sustain allegations before judicial tribunals, design strategies and public policy proposals, or expand rights through collective bargaining.

### 3. How are ILO mechanisms used?

As identified above, the ILO has a wide range of policy and legal tools that trade unions can use to defend and promote workers' rights. These tools have special features that trade

unions should take into account once they participate in the ILO and use them at the national level.

Here are some elements to consider:

#### Political legitimacy of the ILO's international instruments

The ILO relies on tripartite bodies, with a high level of institutional and political representation, and independent and technical bodies, with a high level of specialization in a number of world-of-work topics. The ILO is a space for social dialogue and a mechanism for building consensus. By using the international instruments of the ILO, trade unions can benefit from the unique political and legal support that this organization affords to their legitimacy and validity.

#### Protective nature of the international instruments of the ILO

International labor standards are minimum protective floors, not ceilings. National legislation may go beyond what is established by international labor standards, as long as it is in favor of the rights of individuals and groups protected by its provisions. This is an important feature that trade unions can highlight in contexts where the protection provided by international labor standards is being reduced.

#### Relationship between ILO bodies, mechanisms and procedures

ILO bodies, mechanisms and procedures are connected and closely related. By participating in the bodies of the ILO structure (the Governing Body and the International Labour Conference), trade unions have the potential to strengthen the ILO's standard setting and supervisory system. When using the ILO supervisory system, it is important to remember that the different procedures of regular and special control have a relationship with each other and can be used complementarily.

### **Coordinated use with other national and international protection tools**

Trade unions can use all the political and legal tools of the ILO in coordination and in parallel with the use of national protection systems (labor administrations, judicial courts) and other systems of international human rights protection (the universal system of the United Nations and the regional systems – Inter-American, European and African). The coordinated use of national and international protection systems reinforces the systems and provides the greatest possible effectiveness to the protection and promotion of human rights for the benefit of the protected persons or groups.

### **The international instruments of the ILO are part of international law**

International Labour Conventions are international treaties adopted within the framework of an international organization and are, therefore, subject to the provisions of the 1969 Vienna Convention on the Law of Treaties (Article 5). The Vienna Convention establishes rules for the observance and interpretation of international treaties in accordance with the principle of the hierarchy of international law. A summary of these rules is included in **Unit 6**.

### **The international instruments of the ILO are part of international human rights law**

As will be seen in Unit 6, ILO standards regulate rights recognized by the most important international human rights treaties. The decisions and jurisprudence of international bodies for the protection of human rights that have clarified the scope of the obligation to respect, protect and guarantee, without any discrimination, the exercise of human rights and have established special rules of interpretation are important to keep in mind when using the ILO instruments.

## UNIT 2.

# UNION PARTICIPATION IN THE STRUCTURES OF THE ILO

### 4. What is the Structure of the ILO?

The central structure of the ILO is made up of three bodies:

The Governing Body (tripartite). Considered the executive body of the ILO.

The International Labour Conference (tripartite). Considered the "legislative" body of the ILO.

The International Labour Office. The permanent secretariat of the ILO.

Each of these three bodies has functions related to ILO's policy and legal guidance and action and to the functioning of the ILO standards and

supervisory systems.

The following is practical information on each of these bodies.

### THE GOVERNING BODY OF THE ILO

#### What is it?

The Governing Body is a tripartite body that is considered to be the executive body of the ILO. It meets three times a year (usually in March, June, and November) at ILO headquarters in Geneva.

#### Composition

- 56 titular members: 28 Government delegates, 14 Employers' delegates and 14 Workers' delegates (in a ratio of 2:1:1) and 66 deputy members: 28 Government delegates, 19 Employers' delegates and 19 Workers' delegates (in a ratio of 2:1:1).
- Ten of the titular government seats are permanently held by States of chief industrial importance: Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom, and the United States.
- The other members are elected every three years.

## Functions

- Decision-making on ILO policy;
- Setting the agenda of the International Labour Conference;
- Discussion and decision-making on issues related to standards and the supervisory system;
- The adoption of the Programme and Budget to be submitted to the Conference;
- The election of the Director-General.

## Regulation

The operation of the Governing Body is determined by its Compendium of rules and by a series of practices and rules of procedure. All these rules are contained in the Compendium of rules applicable to the Governing Body of the International Labour Office (ILO, 2019), which can be found here: [https://www.ilo.org/gb/about-governing-body/WCMS\\_586687/lang--en/index.htm](https://www.ilo.org/gb/about-governing-body/WCMS_586687/lang--en/index.htm)

## More information about the Governing Body is available here:

<https://www.ilo.org/gb/lang--en/index.htm>

# THE INTERNATIONAL LABOUR CONFERENCE OF THE ILO

## What is it?

The International Labour Conference is the "legislative" body of the ILO. It meets once a year (usually in the first weeks of June) at ILO headquarters in Geneva.

## Composition

- Each Member State is represented by a delegation composed of two government delegates, one employer delegate, and one worker delegate, plus their respective technical advisers.
- The employer and worker delegates are appointed in agreement with the most representative national organizations of employers and workers.
- Government, employers', and workers' delegates must be duly appointed by ILO Member States.
- Each delegate may be accompanied by up to two technical advisers for each item on the agenda of the Conference session.
- Any delegate may designate one of his or her technical advisers as an alternate. Each alternate shall participate in the discussions and in the voting under the same conditions as the titular delegates.

- Both governmental and nongovernmental international organizations attend as observers. For example, the International Trade Union Confederation or Global Union Federations such as Public Services International may have delegates as observers.

## Functions

- The development and adoption of international labor standards.
- The supervision of the application of Conventions and Recommendations at the national level, through the examination of the reports which all Member States are obliged to submit to the ILO on the fulfilment of their obligations under the Conventions they have ratified and on legislation and implementation with regard to the Conventions (ratified or not) and Recommendations on which reports have been requested by the Governing Body.
- The examination of the Global Report prepared by the International Labour Office under the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work.
- The general discussion of social and labor issues.
- The adoption of resolutions providing guidance for the general policy and future activities of the ILO.
- The approval and adoption of the ILO biennial programme and budget, financed by Member States.
- The election of the delegates of the Governing Body every 3 years.

## Regulation

The functioning of the Conference is governed by its Rules of Procedure, which can be found at the following link: <http://www.ilo.org/ilc/Rulesforthe-conference/lang--en/index.htm>

**More information about the International Labour Conference is available here:**

<https://www.ilo.org/ilc/ILCSessions/108/lang--es/index.htm>

## THE INTERNATIONAL LABOUR OFFICE OF THE ILO

### What is it?

The International Labour Office is the permanent secretariat of the ILO. It is based in Geneva and has about 40 offices in every region of the world. It is at headquarters that the meetings of the Governing Body and the International Labour Conference are held.



## Composition

It is composed of international civil servants, under the direction of the Director-General.

## Functions

The Office supports the tripartite bodies of the ILO by preparing the documents and reports that constitute the background material for discussion at International Labour Conferences and Governing Body meetings. It also provides and manages technical assistance and cooperation programmes to States and social partners at the national level.

## Method

The Office carries out its activities through technical cooperation departments, units, offices, programmes, and projects.

The list of departments and units can be found at the following link:

<https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/lang--en/index.htm>

## International Training Centre (ITC) Turin

The ITC is the training division of the Office. The ITC has more than 60 years of experience in the field of education and training of decision makers, managers, specialists, and trainers from the three ILO constituents (government, workers', and employers' organizations). Training activities are carried out on the campus in Turin, in the field in the regions, or through distance education. ITC courses can be found here:

<https://www.itcilo.org/es/courses>

## Bureau for Workers' Activities (ACTRAV)

ACTRAV is the main link between the Office and the trade unions. ACTRAV's main role is to assist trade unions in defending and promoting workers' rights and to ensure that their concerns are considered in the development of the Office's policies and activities. The ACTRAV team of specialists is distributed between the Office's headquarters, the regional and subregional offices, and the International Training Centre. The composition and distribution of ACTRAV staff can be found at the following link:

<https://www.ilo.org/actrav/about/lang--en/index.htm>

## Resources of the Office

The Office offers many resources that trade unions can use to carry out their work, including: **a)** technical assistance; **b)** direct contact missions; **c)** publications; **d)** databases; etc.

## Regional Office

The Office has a Regional Office for Latin America and the Caribbean (based in Lima) and subregional and country offices. The distribution of the offices in the region can be found at this link: <https://www.ilo.org/americas/oficinas-en-la-regi%C3%B3n/lang-es/index.htm>

## 5. How do unions participate in the structures of the ILO?

### 5.1. Participation of unions in the Governing Body of the ILO

#### 5.1.1. Workers' group of the Governing Body of the ILO

The tripartite structure of the ILO – the only UN agency with this structure – means that trade unions are one of the "constituents" of the ILO, i.e. they have the power to discuss and decide (together with government and employers' representatives) on the policy and normative orientation and action of the ILO. This is reflected in their participation in the ILO Governing Body.

Trade unions participate in the Governing Body through the Workers' group. This group was created at the birth of the ILO and is an essential component of tripartism.

The Workers' group of the Governing Body is composed of 14 trade union delegates that are full members of the Council and the 19 trade union delegates that are deputy members.

The 33 delegates of the Workers' group are elected by secret ballot every three years by the Workers' Delegates to the International Labour Conference. The composition of the Group represents regional and gender balance, and brings together developed and developing countries.

In carrying out their responsibilities, members of the Workers' group are supported by a secretariat outside the ILO (the ITUC Office in Geneva) and, within the International Labour Office, by the Bureau for Workers' Activities (ACTRAV).

The Workers' group often issues statements of solidarity to express concern about certain events affecting workers or on important international dates. Here are some examples:

- **ILO Workers' group Message of Solidarity on the occasion of the 1st of May 2020**  
[https://www.ilo.org/actrav/media-center/speeches/WCMS\\_743361/lang-en/index.htm](https://www.ilo.org/actrav/media-center/speeches/WCMS_743361/lang-en/index.htm)

- **ILO Workers' group Declaration of Solidarity with the Workers of Paraguay**  
[https://www.ilo.org/actrav/workers-group-gb/WCMS\\_424702/lang--es/index.htm](https://www.ilo.org/actrav/workers-group-gb/WCMS_424702/lang--es/index.htm)
- **Declaration of Solidarity of the Workers' group with Workers that are the descendants of Migrants in the Dominican Republic**  
[https://www.ilo.org/actrav/media-center/speeches/WCMS\\_228562/lang--es/index.htm](https://www.ilo.org/actrav/media-center/speeches/WCMS_228562/lang--es/index.htm)

More information on the Workers' group (composition, news, speeches, and key resources) can be found at the following link:

<https://www.ilo.org/actrav/workers-group-gb/lang--en/index.htm>

Trade unions, through the Workers' group, can influence the Governing Body on the following procedures of the ILO's standards and supervisory system:

The procedure for the preparation and adoption of new standards by the Management Board

The procedure for the review of international labor standards, including the review of existing international labor standards and the review of the methods of ILO supervisory bodies

The procedure for the regular supervision of non-ratified Conventions and Recommendations, in accordance with Article 19 of the ILO Constitution, which is the basis for the preparation of General Surveys by the Committee of Experts on the Application of Conventions and Recommendations

The special control procedure under Article 24 of the Constitution: Representations of non-observance of Conventions

The special control procedure under Article 26 of the Constitution: Complaints of non-observance

The special control procedure of the complaint before the Committee on Freedom of Association

The following table includes the Workers' group on these information on the impact of procedures.

PARTICIPATION OF THE WORKERS' GROUP IN THE GOVERNING BODY	
Procedure for drafting and adopting standards	<ul style="list-style-type: none"> <li>● Influences the tripartite discussion and decision on issues that will be included on the agenda of the International Labour Conference and that will be proposed for the adoption of new international labor standards (based on simple or double discussion procedures). The Workers' group may also decide to submit the issue to a preparatory technical conference.</li> </ul>
Review of existing international labor standards	<ul style="list-style-type: none"> <li>● Influences the tripartite discussion and decision on the recommendations of the Tripartite Working Group of the Standards Review Mechanism on:               <ul style="list-style-type: none"> <li>● The status of the standards under review (including updated standards, standards in need of revision, standards that have been superseded, and other possible classifications);</li> <li>● Identification of gaps in coverage, including those requiring the adoption of new standards;</li> <li>● Practical follow-up actions with time frames, where appropriate.</li> </ul> </li> </ul>
General Surveys to be prepared by the Committee of Experts on the Application of Conventions and Recommendations	<ul style="list-style-type: none"> <li>● Influences the tripartite discussion and decision on the objects of General Surveys in order to evaluate:               <ul style="list-style-type: none"> <li>● The status of issues addressed by non-ratified Conventions and Recommendations;</li> <li>● The difficulties of States in ratifying unratified Conventions;</li> </ul> </li> <li>● Influences the tripartite discussion and decisions on the non-ratified Conventions and Recommendations that will be monitored through the regular control procedure under Article 19 of the Constitution.</li> </ul>
Special control procedure under Article 24 of the Constitution: Representations of non-observance of Conventions	<ul style="list-style-type: none"> <li>● Influences the tripartite discussion and decision on:               <ul style="list-style-type: none"> <li>● The admissibility of a complaint;</li> <li>● The constitution of the tripartite commission that will examine the issues alleged by the complainants and the responses of the State against which the complaint has been presented. This tripartite commission is composed of delegates from the Governing Body itself, in the same ratio (1:1:1);</li> </ul> </li> <li>● Influences the discussion and tripartite adoption of the report with the conclusions and recommendations of the tripartite commission.</li> </ul>

Special control procedure under Article 26 of the Constitution: Complaints of non-observance	<ul style="list-style-type: none"><li>● Influences the tripartite discussion and decision on:<ul style="list-style-type: none"><li>● The admissibility of the complaint;</li><li>● The constitution of the commission of inquiry that will examine the issues alleged by the complainants and the responses of the State against which the complaint has been presented. It establishes the composition of this commission by independent persons, usually jurists or judges with recognized international experience;</li><li>● Whether to submit the complaint to the International Court of Justice.</li></ul></li><li>● Influences the discussion and tripartite adoption of the report with the conclusions and recommendations of the commission of inquiry.</li></ul>
The special control procedure of the complaint before the Committee on Freedom of Association	<ul style="list-style-type: none"><li>● The workers' delegates taking part in the Committee on Freedom of Association influence the discussion and adoption of the report with the conclusions and recommendations to be presented to the Governing Body for adoption. The Committee on Freedom of Association is composed in a tripartite manner by independent persons.</li></ul>

## 5.2. Participation of unions in the International Labour Conference

Trade unions participate in the various committees and forums and in the plenary of the International Labour Conference as workers' delegates who are part of the official delegation of each Member State. Trade unions also participate in the Conference through the international trade union organizations that attend as observers.

As stated in the document *International Labour Conference. Standing Orders at a Glance* (ILO, 2019),<sup>9</sup> virtually all the substantive work of the International Labour Conference is done in committees that the Conference establishes on its opening day. At the end of their

work, the committees submit their reports to the Conference, but none of the texts resulting from their work (whether instruments, resolutions, conclusions, or decisions) is valid until it has been adopted by the Conference (and, where necessary, put to a vote). The adoption of commission reports and the adoption of international instruments and other texts generally takes place during the last two days of the Conference.

There are two types of committees: standing committees and technical committees. The following table details information on the standing committees.

9. [https://www.ilo.org/ilc/ILCSessions/108/WCMS\\_709518/lang-en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/WCMS_709518/lang-en/index.htm)

## STANDING COMMITTEES OF THE INTERNATIONAL LABOUR CONFERENCE

### Selection Committee (Article 4 of the Standing Orders)

The traditional responsibilities of the Selection Committee (for example, arranging the programme of the Conference or fixing the time and agenda for plenary sittings) are now dealt with by the Conference during its opening session. The Selection Committee is convened mainly to address specific substantive matters that the Conference may decide to refer to it, which typically include proposed abrogation and withdrawal of standards, approval of amendments to the Code of the Maritime Labour Convention, or requests for admission to ILO membership.

### Credentials Committee (Articles 5 and 26 of the Standing Orders)

Consists of one Government delegate, one Employers' delegate, and one Workers' delegate. Examines the credentials of delegates and their advisers and any objections or complaints that may be made to them regarding non-payment of lodging or travel expenses or any act or omission by a government preventing an accredited delegate or adviser from attending the Conference, as well as monitoring cases.

### Committee on the Application of Conventions and Recommendations (Article 7 of the Standing Orders)

Tripartite body that considers the measures taken by Member States to give effect to the provisions of ratified Conventions and to their constitutional obligations relating to Conventions and Recommendations.

### Finance Committee of Government Representatives (Article 7 bis of the Standing Orders)

Consists of one Government delegate from each Member State represented at the Conference. Examines the programme and budget, the allocation of expenses among Member States, the audited financial statements, requests for permission to vote by Members in arrears, and other financial and administrative matters.

**Source:** *International Labour Conference: The Standing Orders at a Glance*. ILO. 2019.

The rights of people participating in the Conference are detailed in the following table.

RIGHTS OF PERSONS ATTENDING THE CONFERENCE (IN ACCORDANCE WITH THE PROVISIONS OF THE ILO CONSTITUTION AND THE STANDING ORDERS OF THE CONFERENCE)			
Delegates (articles 12.3, 14.1 and 14.3)	Right to speak	Right to move amendments	
	Yes, but not more than once in the general discussion, or on the same motion, resolution or amendment.	Yes	
		Right to vote	
		Yes, granted to the four delegates of each Member State (two Government delegates, one Employers' delegate, one Workers' delegate) unless right to vote suspended or incomplete delegation (see below).	
Substitutes (articles 1.2 and 1.3)	Same rights as delegates when authorized to substitute for them.		
		Right to move amendments	Right to vote
Advisers not appointed to be substitutes (Constitution, Article 3.6)	Only when authorized to do so by delegate and by President.	No	No
Ministers attending the conference who are not delegates or advisers (articles 12.3,14.8)	Yes	No	No
Members of the governing body who are not delegates or advisers (Article 14.8)	Yes	No	No
Representatives of intergovernmental organizations (IGOs) (Article 14.9)	Yes	No	No
Observers from non-member states (Article 14.11)	Yes, with the permission of the President.	No	No
Representatives of nongovernmental organizations (NGOs) (Article 14.10)	Only with the permission of the Officers.	No	No
Representatives of national liberation movements (Article 14.12)	Yes, with the permission of the President.	No	No

## RIGHTS OF PERSONS PARTICIPATING IN THE WORK OF COMMITTEES OF THE CONFERENCE (IN ACCORDANCE WITH ARTICLE 56 OF THE STANDING ORDERS OF THE CONFERENCE)

	Right to Speak	Right to move amendments	Right to vote
Regular Members	Yes	Yes	Yes, unless right to vote suspended
Deputy members (Article 56.5)	Yes	Yes	Only in replacement of a regular member
Substitute members (Article 56.3)	Same rights as members for whom they substitute		
Delegates or advisers not members of committee (Article 56.6)	Yes	Yes	No
Representatives of intergovernmental organizations (IGOs) (Article 56.7)	Yes	No	No
Observers from non-member states (Article 56.8.a)	Only with the permission of the President.	No	No
Representatives of nongovernmental organizations (NGOs) (Article 56.9)	Only with the permission of the Officers.	No	No
Representatives of national liberation movements (Article 56.10)	Yes	No	No

**Source::** *International Labour Conference: The Standing Orders at a Glance*. ILO. 2019<sup>10</sup>

In order to examine the technical items on its agenda, the International Labour Conference sets up several technical committees. Delegates from the

workers' side participate in all of them. Technical items are examined for the purposes of:

- Adopting an instrument (convention and/or recommendation and/or protocol) (standard-setting committee)
- Conducting a recurrent discussion (recurrent discussion committee)
- Conducting a general discussion (general discussion committee)

<sup>10</sup>. [https://www.ilo.org/ilc/sessions/108/WCMS\\_709518/lang--en/index.htm](https://www.ilo.org/ilc/sessions/108/WCMS_709518/lang--en/index.htm)



The following describes how trade unions participate in the Committee on the Application of Conventions and Recommendations (standing

committee) and the technical committees of the International Conference of the ILO.

### 5.2.1. Committee on the Application of Standards

The Committee on the Application of Standards is a permanent tripartite committee of the International Labour Conference of the ILO whose main function is to examine the measures taken by the Member States of the

ILO to give effect to the international labor standards of the ILO.

Its mandate derives from Article 23.1 of the ILO Constitution and is regulated by Article 7 of the Conference's Standing Orders.

#### **Article 23 of the ILO Constitution.**

##### **Examination and communication of reports**

1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of articles 19 and 22.

#### **Article 7 of Standing Orders of the International Labour Conference** **Committee on the Application of Conventions and Recommendations**

1. The Conference shall, as soon as possible, appoint a Committee to consider:
  - a) The measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
  - b) The information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution, except for information requested under paragraph 5 (e) of that article where the Governing Body has decided upon a different procedure for its consideration;
  - c) The measures taken by Members in accordance with article 35 of the Constitution.
2. The Committee shall submit a report to the Conference.

For unions to advocate before the Committee of Experts it is important to:

- Actively participate in the regular monitoring procedure of Conventions (ratified and non-ratified) and Recommendations by sending comments on the issues raised in the report of the Conventions. This procedure is explained in [Unit 4](#);
- Analyze the Annual Report of the Committee of Experts (usually published in March) and prepare for the examination of the list of cases on the application of ratified Conventions ("short list").

Following the independent and technical examination of the reports of Governments by the ILO Committee of Experts, the Committee on the Application of Standards provides an opportunity for a tripartite review of how States are meeting their obligations under the Conventions and Recommendations adopted by the ILO.

Specifically, worker delegates can:

- Influence the discussion of the content of the Annual Report of the Committee of Experts;
- Influence the examination of individual cases of application of ratified Conventions ("short list");
- Influence Commission conclusions that will be incorporated in its final report.

Below is information on the content of the Annual Report of the ILO Committee of Experts and the report

of the Committee on the Application of Standards and some examples of trade union use of this Committee.

### CONTENTS OF THE ANNUAL REPORT OF THE ILO COMMITTEE OF EXPERTS

- **Part I. General Report:**
  - Describes the manner in which the Committee of Experts undertakes its work;
  - The extent to which Member States have fulfilled their constitutional obligations in relation to international labor standards (obligation to submit instruments to the competent authorities, obligation to send regular reports and obligation to implement ratified conventions);
  - Draws attention to issues of general interest arising out of the Committee's work.

- **Part II.** The above-mentioned observations of certain countries on the application of ratified international labor conventions and on the obligation to submit the instruments to the competent authorities (this is the information on which the "short list" is based).
- **Part III.** A General Survey in which the Committee of Experts examines the state of law and practice on a specific subject covered by certain Conventions and Recommendations. This examination concerns all Member States, whether or not they have ratified the Conventions in question. It is published in a separate volume. The discussion of the General Survey usually takes place in the early days of the Committee on the Application of Standards.
- **List of Annual Reports of the ILO Committee of Experts:**
  - Annual reports (Part I and II): <https://www.ilo.org/public/libdoc/ilo/P/09661/>
  - General Surveys since 1985: [https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_164145/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm)

## REPORT OF THE CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

- **Content:**

The report of the Committee on the Application of Standards describes the work of the committee and the speeches and conclusions of the general discussion and examination of specific cases.
- **Conclusions of the examination of specific cases ("short list"):**

Taking into account the tripartite discussion on each case, the Committee urges the government concerned to take steps to overcome the difficulties analyzed and discussed in tripartite meetings, and to use ILO technical assistance. The Commission may also invite the government to accept a direct contact mission by the ILO.

The 2019 report of the Committee on the Application of Standards can be found here: [https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS\\_711293/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS_711293/lang--en/index.htm)
- **Presentation to the Conference**

The Commission's report is presented to the Conference and discussed in plenary, thus giving delegates the opportunity to highlight certain aspects of the Commission's work. The report is published separately in the Proceedings of the Conference.

The list of Reports of the Conference Committee on the Application of Standards can be found at this link:

[https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_190528/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_190528/lang--en/index.htm)

## EXAMPLES OF TRADE UNION USE OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

### Violation of trade union rights in the public sector

The Ecuadorian unions and Public Services International used this control mechanism to denounce the violation of trade union rights in the public sector in Ecuador. At the 105th International Labour Conference (2016), Ecuador was included on the short list of the Committee on the Application of Standards for noncompliance with Convention 98 on the right to organize and collective bargaining. In the commission, the trade unions denounced the repression and arrests of union leaders, legislation contrary to trade union rights in the public sector, and in particular the denial of the right to collective bargaining, the figure of "compulsory voluntary resignations", the abusive powers of the Ministry of Labour to control collective agreements in the public sector, and the failure to comply with the repeated comments of the supervisory bodies and the recommendations made by the ILO technical mission of January 2015.<sup>11</sup> Ecuador was again included on the short list of the commission in 2017. In the conclusions, the Government was asked to ensure full respect for the right of public officials to form organizations of their own choosing for the collective defense of their interests.<sup>12</sup>

### Violations of labor rights as a result of austerity policies

Trade unions in Spain and Italy used this ILO monitoring mechanism to denounce violations of labor rights arising from austerity policies and deregulatory labor reforms imposed in their countries. In 2015, the States of Spain and Italy were denounced at the international level before the Committee on the Application of Standards of the 104th International Labour Conference of the ILO for noncompliance with International Convention 122 on employment policy, given the very serious situation of unemployment and the increase in precariousness and poverty. Both countries were included on the committee's short list. The Spanish workers' delegates pointed out, "that three years after the most aggressive labour reform that took place in Spain since the return of democracy, the unemployment situation in the country is dramatic. There are more than 5.5 million unemployed, which is equivalent to 24 percent of the population. Of this figure, 782,000 are under 25 years of age."<sup>13</sup>

### Violations of rights as a result of unprotective labor reforms

Trade unions in Brazil used the Committee on the Application of Standards to denounce the violation of rights resulting from the regressive deregulatory

11. Information and reports on the application of Conventions and Recommendations (Part Two) (pages 90-95): [https://www.ilo.org/ilc/ILCSessions/previous-sessions/105/reports/provisional-records/WCMS\\_489124/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/105/reports/provisional-records/WCMS_489124/lang--en/index.htm)

12. The conclusions of the Committee on the Application of Standards are available here: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_558658.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_558658.pdf)

13. Report of the Committee on the Application of Standards (Part Two): [https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/reports/provisional-records/WCMS\\_375764/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/reports/provisional-records/WCMS_375764/lang--en/index.htm)

labor reform of 2017, carried out without any social dialogue with the representative national trade union organizations. The reform altered more than 100 provisions of the country's labor code, the 'Consolidation of Labor Laws', weakening the legal guarantees to minimum labor rights, the exercise of trade union freedom, and access to justice. Among these provisions is the possibility of derogations that reduce labor rights through collective bargaining. At the 2018 Conference, the Committee on the Application of Standards<sup>14</sup> revised the observation issued by the Committee of Experts in its 2018 Report,<sup>15</sup> where the radical nature of Brazil's labor reform was noted and where it was pointed out that generally allowing the protections established by the legislation to derogate from the rights set out in the law by means of collective bargaining is contrary to the principle of free and voluntary negotiation provided for in Convention 98. In its 2019 Annual Report,<sup>16</sup> the Committee of Experts followed up on Brazil's reforms and reaffirmed the incompatibility of Convention 98 with the possibility of derogating rights set out in the labor law by means of collective bargaining. The Brazilian State was included twice in a row in the short list of the Committee on the Application of Standards and is currently subject to the tracking of the ILO Committee of Experts.

### 5.2.2. Standard Setting Committee

The Standard Setting Committee is the tripartite committee of the Conference where new international labor standards are prepared, within the framework of the double or single discussion procedure, with a view to the adoption of a Convention and/or a Recommendation and/or a Protocol.

Trade union work in the Conference's Standard Setting Committee is connected to several stages of the drafting of new standards in which trade unions can have an impact:

#### (1) Governing Body:

Trade unions can participate in the discussion and decision on the registration of the Conference agenda item with a view to the adoption of a new standard-setting instrument through the Workers' group of the Governing Body.

#### (2) Comments on the reports of the International Labour Office

National trade unions may submit comments on the issues indicated in the reports prepared by the Office under the double or single

14. The proceedings of the 2018 Conference Committee on the Application of Standards are available here: [https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/WCMS\\_643937/lang--en/index.htm](https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/WCMS_643937/lang--en/index.htm)

15. Commission of Experts. Annual Report 2018. Available in this link: [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2018-107-A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2018-107-A).pdf)

16. Commission of Experts. Annual Report 2019. Available in this link: [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_670146.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_670146.pdf)

discussion procedure. In the first stage of the procedure, the Office prepares a first report (white paper) presenting information on the legislation and practice of different countries in the field under study with a view to the adoption of an instrument, accompanied by a questionnaire. This report is sent to the governments of all Member States, which in turn transmit their comments to the Office, prepared after consultation with national employers' and workers' organizations. On the basis of these comments, the Office prepares a second report (yellow paper), which analyzes the replies received and proposes conclusions.

### **(3) At the International Labour Conference:**

Workers' delegates can participate with the right to speak and vote in the normative Commission that will carry out the first discussion on the new standard (in the case of the double discussion procedure). The discussion in the Standards Committee is based on the conclusions proposed in the Office's second report. In order to influence the Conference, it is important that trade unions prepare themselves in advance in order to have a coordinated participation.

### **(4) Comments on the reports of the International Labour Office**

Immediately after the completion of the first discussion at the Conference, the Office prepares a third report (brown paper), containing the draft of one or more instruments based on the conclusions adopted in the first

discussion. This report is sent to the governments of all Member States, which in turn transmit their comments on the draft instrument(s), after consultation with national employers' and workers' organizations. On the basis of these comments, the Office prepares a fourth report (blue paper), which reproduces the revised draft instrument(s) taking submitted comments into account.

### **(5) At the International Labour Conference**

Again, it is important that unions prepare themselves prior to the Conference in order to have a coordinated participation. Trade union delegates participate in the Conference with the right to speak and vote in the Standards Committee, which will conduct the second discussion on the basis of the Office's fourth report. At the end of its discussions, the Standards Committee prepares a report summarizing its work and how the draft instrument(s) was(were) modified during the discussion and transmits it to the Conference for discussion and adoption in the plenary session.

### **(6) Plenary vote at the Conference.**

The rules of procedure are set out in **Unit 4**.

The following is an example of how trade unions were involved in the distinct stages of the standard-setting procedure in the case of Convention 190 on violence and harassment, which was adopted at the 2019 International Labour Conference.

## EXAMPLE OF TRADE UNION PARTICIPATION IN THE PROCESS OF ELABORATION AND ADOPTION OF ILO STANDARDS

### Violence and Harassment Convention (ILO, 2019)

#### 1) Decision to place on the agenda of the Conference

At its 325th Session (October-November 2015), the Governing Body decided to place a standard-setting item on “Violence against women and men in the world of work” with a view to developing the double discussion procedure on the agenda of the 107th Session (May-June 2018) of the International Labour Conference.

The tripartite discussion in the Governing Body on which the decision was based is contained in document GB.325/PV (Minutes of the 325th Session of the Governing Body), which includes the speeches of the delegates of the Workers' group. This document can be found here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_450050.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_450050.pdf)

The ILO organized a Tripartite Meeting of Experts on Violence against Women and Men in the World of Work, which took place from 3 to 6 October 2016 in Geneva, with the aim of “ensuring that different unacceptable behaviors are understood and adequately addressed.” At this meeting, it was proposed to replace the term “violence” with “violence and harassment”.

The outcome of this Tripartite Meeting of Experts can be found here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_533534.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_533534.pdf)

**Source:** ILO. Report V (1) Ending violence and harassment in the world of work.

#### 2) Comments on the Office's reports (double discussion procedure)

In accordance with Rule 39.1 of the Conference Rules, the International Labour Office prepared a preliminary report setting out the law and practice in different countries with regard to the issue of violence and harassment in the world of work.

This previous report (Ending violence and harassment against women and men in the world of work, Report V (1), 2018) is available here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_553577.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf)

This preliminary report, which contained a questionnaire, was transmitted to Member States in May 2017. Governments were invited to send their replies by 22 September 2017, after consultation with the most representative employers' and workers' organizations.

On the basis of the replies received, the Office prepared a second report (Ending violence and harassment in the world of work, Report V(2), 2018).

The list of trade union organizations that sent responses is given on page 3 of this report. This second report was subsequently transmitted to Member States. The report is available here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_619730.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_619730.pdf)



Both reports served as the basis for the first discussion of the topic by the Conference, which took place at its 107th session (May-June 2018).

### 3) First discussion at the Conference (double discussion procedure)

On 8 June 2018, the Standards Committee of the International Labour Conference (Geneva, 107th Session) examined both previous reports and prepared its own report containing a summary of its work and conclusions for adoption by the Conference. The Conference adopted the Report of the Policy Committee and decided to place on the agenda of the next ordinary session of the Conference an item entitled "Violence and harassment in the world of work" for its second discussion with a view to the adoption of a Convention supplemented by a Recommendation. The Report of the Policy Commission with the summary of its work and its conclusions can be found here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_631807.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631807.pdf)

The resolution of the Conference by which it adopted this Report and decided to place the item on the agenda of the 2019 Conference for its second discussion can be found here:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_631787.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631787.pdf)

### 4) Comments on the Office's reports (double discussion procedure)

In the light of that resolution and in accordance with Rule 39.6 of the Rules for the Conference, the Office prepared a report (Report V (1)) containing the texts of a draft convention and a draft recommendation, based on the conclusions of the first discussion held in the Standards Committee of the Conference in 2018, which took into account the replies received to the questionnaire contained in the previous report. In accordance with the Rules for the Conference, this report was sent to governments in time to reach them no later than two months after the closure of the 107th Session of the Conference and they were requested to communicate to the Office, within three months of the date of publication of the report, and after consultation with the most representative organizations of employers and workers, any amendments or observations they wished to make, so that their replies could be received no later than 8 November 2018.

The Report with the texts of the draft Conventions and Recommendations can be found here:

[https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS\\_637108/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS_637108/lang--en/index.htm)

Governments were also requested to inform the Office, within the same time frame, whether they considered the proposed texts to be a satisfactory basis for the second discussion at the 108th Session of the Conference (June 2019), and to indicate with which employers' and workers' organizations they had held consultations.

Under Article 5, paragraph 1, a) of Convention 144 on Tripartite Consultation



(International Labour Standards) (ILO, 1976), these consultations are mandatory for those countries that have ratified this Convention. The results of the consultations should be reflected in the governments' responses.

Most governments indicated that they had formulated their responses after consultations with employers' and workers' organizations. Some of them incorporated into their replies the views expressed by these organizations on certain points, while others transmitted their comments separately. In some cases, responses were received directly from employers' and workers' organizations. The International Trade Union Confederation (ITUC) and the International Organization of Employers (IOE) also replied to the questionnaire and submitted their responses.

In accordance with Rule 39bis of the Rules of Procedure of the Conference concerning consultation with the United Nations and other specialized agencies, the United Nations Working Group on Discrimination against Women in Law and Practice (WGDaw) sent a response expressing support for the process and making proposals.

In order to ensure that Governments received the texts of the draft convention and the draft recommendation within the time limit set out in rule 39.7 of the Rules of Procedure of the Conference, the report (Report V (2)) was published in two volumes (Report V (2A) and Report V (2B)).

- Volume V (2A) was prepared based on replies received from Governments and employers' and workers' organizations and contains the main points of their comments. It is divided into three sections: the first contains comments of a general nature; the second, comments on the draft convention; and the third, comments on the draft recommendation. This report mentions that many employers' and workers' organizations, including the IOE and ITUC, have collaborated in providing comments on the provisions of the proposed texts. This volume is available here:  
Report V (2A): [https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS\\_675567/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS_675567/lang--en/index.htm)  
Report V (2A) (Add.): [https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS\\_696407/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS_696407/lang--en/index.htm)
- Report V (2B) contains the texts of the draft Convention and the draft Recommendation, which have been amended in the light of the replies received and modified also for the reasons set out in the Office's comments contained in Volume V (2A). Some minor drafting changes were also made, in particular to ensure full consistency between the English, French, and Spanish versions of the draft instruments. This volume is available here: [https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS\\_673728/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS_673728/lang--en/index.htm)

These texts have been prepared for the Conference to serve as a basis for the second discussion at its 108th Session (June 2019) with a view to the adoption of a Convention supplemented by a Recommendation on the elimination of violence and harassment in the world of work.

## 5) Second Conference discussion (double discussion procedure)

### Procedure for consideration of the draft standard at the Conference

At its first session, on June 10th, 2019, the International Labour Conference established the Standard Setting Committee on Violence and Harassment in the World of Work (second discussion).

This Committee examined Reports V (2A) and V (2B), both entitled "Ending violence and harassment in the world of work", prepared by the International Labour Office for the fifth item on the agenda: "Violence and harassment in the world of work" (standard setting, double discussion procedure).

The summary of the work of this Committee is contained in document "Provisional Record 7B(Rev.)", which includes: **a)** opening statements and interventions by government, employer and worker delegates; **b)** consideration of amendments to the draft Convention; **c)** consideration of amendments to the draft Recommendation; and **d)** consideration of the draft resolution. This document can be found here: [https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS\\_711386/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS_711386/lang--en/index.htm)

The Standard Setting Committee drew up a report containing the text of the Convention, Recommendation, and Resolution submitted for adoption by the Conference so that, if adopted, the Convention and Recommendation would be submitted to a final vote in accordance with Article 19.2 of the ILO Constitution.

- A.** Convention on the Elimination of Violence and Harassment in the World of Work
- B.** Recommendation on the elimination of violence and harassment in the world of work
- C.** Resolution on the elimination of violence and harassment in the world of work

This report can be found here: [https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS\\_711242/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS_711242/lang--en/index.htm)

## 6) Voting in plenary of the Conference (double discussion procedure)

### Procedure for the adoption of a new international labor standard

The report of the Standard Setting Committee on Violence and Harassment in the World of Work was presented to the plenary session of the Conference for discussion and adoption of the Convention, the Recommendation, and the resolution. The interventions of the presentation and the discussion are contained in the document "Provisional Minutes 7C", which can be found in the following link: [https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS\\_713907/lang--es/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS_713907/lang--es/index.htm)

Following the plenary presentation and discussion of the outcome of the work of the Standard Setting Committee on Violence and Harassment in the World of Work (second discussion), the Conference adopted the draft Convention, the draft Recommendation, and the draft resolution.

The voting results on the instruments were as follows:

- **Result of the final voting on the adoption of the Convention on the elimination of Violence and Harassment in the World of Work:**
  - 439 votes in favor, 7 against, and 30 abstentions
  - Whereas the quorum was 321 and the required majority of two-thirds of the total votes cast, including abstentions, was reached, i.e. 298, the Conference adopted the Convention on the elimination of violence and harassment in the world of work.
  - The delegates who voted against the adoption of the Convention were 6 employers' delegates from Costa Rica, the Dominican Republic, El Salvador, Guatemala, Malaysia, and Singapore, and 1 workers' delegate from Malaysia.
  - The delegates who abstained from voting were 19 employers' delegates (Argentina, Bolivia, Brazil, Chile, Colombia, Denmark, Germany, Honduras, Japan, Kyrgyzstan, Mexico, Panama, Peru, Sri Lanka, Sweden, Switzerland, Thailand, Uruguay) and 11 Government delegates (El Salvador (2), Kyrgyzstan (1), Malaysia (2), Paraguay (2), Russia (2), Singapore (2)).
  
- **Result of the final voting on the adoption of the Recommendation on the elimination of Violence and Harassment in the World of Work:**
  - 397 votes in favor, 12 against, and 44 abstentions
  - Whereas the quorum was 321 and the required majority of two-thirds of the total votes cast, including abstentions, was reached, i.e. 273, the Conference adopted the Recommendation on the elimination of violence and harassment in the world of work.
  - The delegates who voted against the adoption of the Convention were 12 employers' delegates from Austria, Bangladesh, the Czech Republic, Denmark, El Salvador, Finland, Germany, Malaysia, Portugal, Singapore, Sudan, and Sweden.
  - The delegates who abstained from voting were 30 employer delegates (Argentina, Australia, Bolivia, Brazil, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, France, Germany, Guatemala, Honduras, Iceland, Indonesia, Ireland, Italy, Japan, Luxembourg, Mexico, Myanmar, Panama, Paraguay, Peru, Spain, Sri Lanka, Thailand, the United Kingdom, the United States, and Uruguay) and 14 government delegates (Brazil (2), Colombia (2), El Salvador (2), Guatemala (1), Kyrgyzstan (1), Paraguay (2), Russia (2), the United States (2)).

The results of the final voting on the adoption of the Convention, the Recommendation and the Resolution are contained in the document "Provisional Minutes 7C" which can be found here: [https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS\\_713904/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/reports/provisional-records/WCMS_713904/lang--en/index.htm)

**Source:** ILO. Provisional Record 7B(Rev.). Reports of the Standard Setting Committee on Violence and Harassment in the World of Work: Summary of Proceedings; Provisional Record 7C;

**Source:** ILO. Report V (2A) Ending violence and harassment in the world of work.

### 5.2.3. General Discussion Committee

The General Discussion Commission is the technical commission where the items on the agenda of the Conference are examined by the Governing Body for general discussion.

The procedure of this Technical Commission and the Recurrent Discussion Committee is governed by Article 11ter of the General Standing Orders of the International Labour Conference.

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#### Rules for the International Labour Conference

##### ***Article 11ter. Procedure for the consideration of items placed on the agenda for general discussion***

1. When a question has been placed on the agenda for general discussion, the International Labour Office shall send a report on that question to the governments, so as to reach them not less than two months before the opening of the session of the Conference at which the question is to be discussed.
2. The question shall be referred by the Conference to a committee for reporting.

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The general discussion provides an opportunity for ILO constituents to formulate orientations and guidelines

on the theme that is the subject of the Commission, with a view to:

- *Supporting their commitment to respond to the issues discussed;*
- *Strengthening the capacity of governments, as well as employers' and workers' organizations, to inform policy formulation and implementation; and*
- *Strengthening the work and impact of the ILO in this area.*

The usual procedure of this technical commission is described in the document *International Labour Con-*

*ference. The Standing Orders at a Glance* (ILO, 2019):

- *Holding of a general exchange of views on the question and on the Office report;*
- *Appointment of a small tripartite working party/drafting group to prepare draft conclusions (or a draft resolution) on the question with the help of the Office;*
- *Adoption of the text proposed by the working party/drafting group (after considering any amendments that may have been made to it by members of the committee) and referral to the Conference for final adoption.*

The Conference adopts resolutions and conclusions emanating from a general discussion by simple major-

ity or consensus, i.e. no final voting is required.

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## Example of trade union use of the General Discussion Committee

### *Guidelines and policy directives on the transition from the informal to the formal economy*

Trade unions actively participated and strategically influenced the General Discussion Committee on the Informal Economy at the 2002 International Labour Conference. As a result of this work, several of the trade union demands were included in the Commission's Report that was finally submitted to the Conference for adoption. The result was the adoption of the Resolution concerning decent work and the informal economy.<sup>17</sup> The guidelines of this Resolution helped to support the adoption of Recommendation 204 on the transition from the informal economy to the formal economy, adopted at the Conference in 2015. The Preamble to Recommendation 204 makes specific reference to the 2002 Resolution concerning Decent Work and the Informal Economy and its Conclusions.

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#### 5.2.4. Recurrent Discussion Committee

The Recurrent Discussion Committee is the technical committee of the Conference that is responsible for following up on the ILO Declaration on Social Justice for a Fair Globalization (ILO, 2008) on the strategic objectives of decent work, namely freedom of association and the right to collective bargaining; the effective

prohibition of all forms of forced labor; the elimination of child labor; and the elimination of discrimination in respect of employment and occupation.

The procedure of this technical commission is also regulated by Article 11ter of the General Standing Orders of the International Labour Conference.

The Office prepares a report as a basis for discussion that:

- *Analyzes global trends in law and practice in each of the four categories of principles and rights;*
- *Provides an overview of the progress made and the remaining challenges in selected areas of thematic concern and in the ratification of core conventions; and*
- *Highlights good practices that constituents have adopted to promote fundamental principles and rights at work and to ensure their respect and implementation.*

The objectives of the recurrent discussion are to:

- *Improve understanding of the evolution, realities, and needs of Member States with respect to each of the four principles;*
- *Reflect on the results and impact of the activities undertaken by the Office and the constituents to promote fundamental principles and rights at work and to ensure their respect and application, in particular in relation to ILO action plans;*

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17. [https://www.ilo.org/global/docs/WCMS\\_080105/lang--en/index.htm](https://www.ilo.org/global/docs/WCMS_080105/lang--en/index.htm)

- *Possibly develop and adopt a resolution establishing priorities and guidance for the development of ILO action plans.*

Recurrent discussions were introduced following the adoption of the Declaration on Social Justice for a Fair Globalization (ILO, 2008). These discussions are held according to a cycle decided by the Governing Body.

As stated in the document International Labour Conference.

The Standing Orders at a Glance (ILO, 2019), the Rules of Procedure of the Conference do not contain any provisions governing the working methods of a recurrent discussion committee. According to current practice, recurrent discussions usually follow the procedures for general discussions.

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### **Example of trade union use of the Recurrent Discussion Committee**

#### ***Social Protection Policy Guidelines and Directives***

Trade unions had a strategic impact on the Recurrent Discussion Committee on Social Protection (Social Security) at the 2011 International Labour Conference. Thanks to this work, several of the trade union demands were included in the Commission's Report that was finally submitted to the Conference for adoption. The result was the adoption of the Resolution concerning the recurrent discussion on social protection (social security).<sup>18</sup> A text with key elements for a possible recommendation on Social Protection Floor was annexed to this Resolution. Finally, the following year, in 2012, the Conference adopted Recommendation 202 on social protection floors.

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<sup>18</sup>. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_162049.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf)

## UNIT 3.

# OFFICE RESOURCES FOR UNION WORK

### 6. What resources does the International Labour Office offer for the work of unions?

Trade unions use various resources and tools made available by the International Labour Office that can be very useful for trade union work, including:

- a) technical assistance activities;
- b) advisory services;

c) requests for comments on the conformity of draft legislation with international labor standards;

d) requests for technical concepts;

e) direct contact missions;

f) publications; and

g) databases.

#### 6.1. Technical Assistance

One of the resources offered by the International Labour Office that can be useful to the work of trade unions is the technical assistance it offers. As outlined in the document *12 International Labour Standards. Tools to strengthen national labour legislation*,<sup>19</sup> trade unions are sometimes confronted with legislative processes that, because of their size or complex technical content, require expertise and experience that they do not necessarily have. In these cases, trade unions can resort to the technical assistance of the ILO.

This assistance can take different forms, such as seminars or round tables, missions of officials with the necessary technical skills, technical support through external consultants, preparation of studies, etc. As far as possible, such requests for technical assistance should be channeled through the ACTRAV Office.

ACTRAV's contact details can be found at this link:

[https://www.ilo.org/actrav/about/WCMS\\_609271/lang--en/index.htm](https://www.ilo.org/actrav/about/WCMS_609271/lang--en/index.htm)

<sup>19</sup>. TUCA. *12 International labour standards: Tools to strengthen National Labour Legislation*. [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-lima/documents/genericdocument/wcms\\_571375.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-lima/documents/genericdocument/wcms_571375.pdf)



## 6.2. Advisory services on the system of labor standards and the control system

In accordance with the ILO Manual of Procedures,<sup>20</sup> the Office's International Standards Department in Geneva cooperates closely with the regional and subregional offices, in particular with international labor standards specialists, to provide all types of training, explanations, advice, and assistance on the various standard-setting and supervisory issues of the ILO. These advisory services are provided in response to specific requests and also through regular advisory missions and discussions organized by the Office. These advisory services may relate to:

- a) questions about items on the agenda of the Conference;

- b) comments by supervisory bodies and subsequent action;
- c) preparation of new legislation, reports by governments, and various documents for submission to the competent authorities;
- d) organization of consultations between governments and employers' and workers' organizations on labor standards and ILO activities; and
- e) full participation by these organizations in the standards and supervisory system procedures.

The contact details of the Standards Department can be found at this link: <https://www.ilo.org/global/standards/lang-es/index.htm>

## 6.3. Request for comments on the conformity of a draft law with ILO international standards and request for a technical concept

As indicated in the document *12 International Labour Standards. Tools to strengthen National Labour Legislation*,<sup>21</sup> trade unions can ask the ILO to comment on the conformity of draft legislation with international labor standards. Trade unions can also request a technical concept with respect to questions related to the exercise of rights. The Office's work is not limited to ratified conventions, but can also consider unratified conventions, recommendations, and principles and decisions adopted by ILO's supervisory bodies.

The request for comments on the

conformity of a draft law with ILO standards can be even broader by asking for a review of the draft in the light of comparative law, legislative trends in the area it is intended to regulate, and from the point of view of legislative practice. In this case, when a given area is not regulated by international labor standards or when the ILO Governing Body has considered that these are no longer relevant, the Office, in its comments, will refer to the legislation of various countries considered to be more advanced in the matter.

The Office may also comment

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20. ILO. *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, p. 53. [https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_697949/lang-en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_697949/lang-en/index.htm)

21. TUCA. Guía N° 12 *Normas internacionales de trabajo. Herramientas para fortalecer la Legislación Laboral Nacional*. CSA-CSI (with the support of ACTRAV). Available at: [https://www.ilo.org/actrav/info/pubs/WCMS\\_430607/lang-es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_430607/lang-es/index.htm)



on the provisions of a draft law and its conformity with unratified Conventions. These comments, if taken into account by the government concerned, may contribute to better protection of rights, as well as serve to facilitate the ratification of ILO Conventions in the future. The request can be addressed by e-mail directly to the International

Labour Standards Department of the ILO at its headquarters. It is recommended that the request be brought to the attention of ACTRAV. It should be duly signed and if possible, include a brief and clear explanation of the context in which the legislation is being drafted or revised, mention the timing of the legislative process, and be accompanied by the latest version of the draft legislation.

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**Contact details of the International Labour Standards Department**

Telephone: +41 (0) 22 799 7249  
Email: [normes@ilo.org](mailto:normes@ilo.org)

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**Contact details of ACTRAV**

[https://www.ilo.org/actrav/about/WCMS\\_609271/lang--en/index.htm](https://www.ilo.org/actrav/about/WCMS_609271/lang--en/index.htm)

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The Office formulates its comments through a Technical Memorandum that is transmitted to both the union that made the request and the respective government. The Office will indicate in its Memorandum that the comments prepared in the framework of this process are submitted without prejudice to what the ILO supervisory bodies may say about the same legislation, once the

bill is adopted or when it is formally submitted to them for consideration. In the case of the technical concept, the Office responds to the questions raised by considering and quoting the pronouncements of the relevant supervisory bodies.

The following are some examples of the use of these tools by trade unions.

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**Example of trade union use of request for comments on the conformity of draft legislation with ILO international standards and request for a technical concept**

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**Regressive labor reforms**

Brazilian trade unions used this resource to consult on the conformity of draft law PLC 38/2017 with the ILO Conventions ratified by Brazil. The following are Office responses that may be useful to trade unions in other countries:

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### **On the obligation to consult prior to a labor reform**

- Several ILO Conventions ratified by Brazil, in whose scope of application Bill 38/2017 is included, require that the measures taken to implement them must be preceded by consultations with workers' and employers' organizations.
- In the area of collective bargaining, Convention 154 states that "measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations."
- The Committee on Freedom of Association has considered on numerous occasions that "it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers" (Digest of decisions and principles, 2006, para. 1075).
- The Committee also stressed "the importance that any changes concerning the scope and exercise of trade union rights be the subject of in-depth consultations with the most representative organizations in order to reach the greatest possible extent of shared solutions" (376th Report of the Committee on Freedom of Association, Case No. 3101 (Paraguay), para. 857).

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### **On the legal invalidity of the reduction of protection of ILO Conventions**

- ILO Member States have an obligation to ensure, both in law and in practice, the effective implementation of ratified Conventions, which is why the protections afforded by ILO Conventions ratified and in force in a given country cannot be legitimately reduced through collective or individual agreements.

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### **On the derogation from labor laws through collective bargaining**

- The Committee of Experts on the Application of Conventions and Recommendations recalled that the general objective of Conventions 98, 151, and 154 is the promotion of collective bargaining to find agreement on terms and conditions of work that are more favorable than those provided for in the laws.
- The Committee of Experts has stressed that, while specific legislative provisions concerning specific aspects of working conditions could provide, in a limited and reasoned manner, for derogation through collective bargaining, a provision instituting general derogation from labor legislation through collective bargaining would be contrary to the objective of promoting free and voluntary collective bargaining as envisaged by the Convention.

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### **On collective bargaining in the public sector**

- Under Conventions 98, 151, and 154, public sector workers, including civil servants, must be able to collectively negotiate their terms of employment, including remuneration. This does not preclude, in accordance with Article 1(3) of Convention 154, the possibility of

providing for modalities of negotiation that take due account of the special characteristics and issues raised by wage setting in the public service.

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### **The right to strike in air transport**

The Colombian Trade Union Central, with support from the Trade Union Confederation of the Americas (TUCA) and the International Transport Workers' Federation, used the technical concept to ask questions related to the exercise of the right to strike in air transport. The Office's answers are available here: <http://ail.ens.org.co/wp-content/uploads/sites/3/2018/11/Concepto-tecnico-OIT-sobre-huelga-de-Acdac.pdf>

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## **6.4. Direct contact mission**

Direct contact missions support the procedures of the bodies of the ILO supervisory system (ILO Committee of Experts, Committee on the Application of Standards, Committee on Freedom of Association, and ad hoc committees set up under Article 24 of the ILO Constitution).

Direct contacts missions are a resource that can have important political impacts with a view to opening up channels of dialogue and negotiation. They can be requested by trade unions, for example in the tripartite discussions in the framework of the examination of individual cases ("short list") at the Committee on the Application of Standards.

According to the ILO Manual of Procedures,<sup>22</sup> these missions consist of sending a representative of the Director-General of the ILO to a country that is the subject of a supervisory procedure in order to seek solutions to difficulties encountered in the application of conventions that have been ratified or in the implementation

of the recommendations of the supervisory bodies. When the difficulties are of a practical nature, the direct contacts mission focuses particularly on analyzing the situation in practice. Direct contacts missions have also been sent to countries to provide technical assistance, which can take the form of advice on the type of measures to be taken and assistance in drafting amendments to national legislation, or in establishing procedures to facilitate the implementation of obligations.

The representative of the Director-General may be an ILO official or an independent person appointed by the Director-General (supreme court judge, a university professor, a member of the ILO Committee of Experts, etc.) whose mission is to clarify facts and examine the possibilities of resolving the problems raised.

The representative of the Director-General and the members of the mission must provide all the necessary guarantees of objectivity

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<sup>22</sup>. *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, pp. 98-103.

and impartiality and, at the end of the mission, a report must be submitted to the relevant supervisory body. Direct contacts may be established only at the invitation of the governments concerned or, at least, with their consent. They may be requested directly by the Government or proposed by the monitoring bodies. The representative of the Director-General must be able to meet freely with all the parties concerned in order to be fully and objectively informed of all aspects of the case

or situation in question. The main interlocutors of the mission are normally the Ministry of Labour and the confederations of employers and workers, although on a regular basis, and depending on the nature of the problems raised, the mission may meet with legislative authorities, judicial authorities, or even the Head of State. National employers' and workers' organizations are also involved in these missions by participating in interviews with the mission and in tripartite meetings.

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### **Example of a direct contact mission**

In May 2019, a direct contact mission was carried out in Honduras, in the framework of the procedures of the ILO supervisory system concerning Convention 87 on freedom of association, in particular the regular control of the ILO Committee of Experts and the Conference Committee on the Application of Standards. Honduras was included in the short list by the latter committee. The result of this direct contact mission was the signing of the "Tripartite Agreement to seek mechanisms for the correct and effective application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)",<sup>23</sup> with the presence of members of the ILO Office, the employer sector and the trade union centers of Honduras.

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## **6.5. Emergency Intervention of the ILO Director-General**

In the case of serious violations of labor or trade union rights, or legislative reforms with significant consequences for workers that are carried out without proper consultation with trade unions, workers may request an emergency intervention of the Director-General of the Office.

This rapid procedure, in which the ILO supervisory bodies do not formally intervene and which is not publicized, requires a letter from the union to the Director-General requesting his/her intervention

in order to prevent a serious and imminent violation of ILO Conventions or principles.

In the event of intervention, the Director-General or a senior official of the Office may contact representatives of the government concerned to draw attention to relevant principles, for example the principle of early consultation in the context of legislative reforms, and, where appropriate, suggest measures to reverse the situation.

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<sup>23</sup>. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:4000073](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4000073)

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## Example of trade union use of the ILO Director-General's emergency intervention

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### ***Violation of trade union autonomy and arbitrary dissolution of trade unions***

The trade unions of Ecuador and Public Services International (PSI), in conjunction with the Trade Union Confederation of the Americas (TUCA), used this resource made available by the International Labour Office to request an emergency intervention of the Director-General of the ILO before the government of Ecuador, due to the arbitrary dissolution of the National Union of Educators of Ecuador (UNE), executed through Resolution 0498, of 18 August 2016, by the Under-Secretary of Education of the Metropolitan District of Quito. UNE was the representative organization of Ecuadorian teachers. In the letter of request, PSI and TUCA informed the Director-General of the ILO that on 25 August 2016, the organizations that had signed this request for intervention had submitted a letter to the Minister of Education of Ecuador requesting the establishment of a dialogue commission to resolve the conflict that arose from the issuance of Resolution 0498, with the participation of UNE, the international trade union organizations, and the technical advice of the ILO, the suspension of said resolution and the study of the harmonization of the internal norms to conventions 87 and 98 of the ILO, in compliance with the observations and recommendations of the normative control bodies. Despite this, the Ecuadorian National Police raided and seized the union headquarters of UNE in the cities of Guayaquil and Quito on 29 August 2016, with the aim of initiating the process of liquidating UNE's assets.

The urgent intervention was accepted and the Director-General of the ILO, Guy Ryder, sent an official communication to the then Government of Ecuador in which he highlighted the complaints made by PSI and TUCA and pointed out that the ILO supervisory bodies had recommended to the Government that the new UNE registration be recognized. It indicated that the administrative dissolution of trade union organizations is contrary to Convention 87 and that the inviolability of trade union premises and property is one of the civil liberties essential to the full exercise of trade union rights. It requested the Government of Ecuador to communicate its observations on the allegations of PSI and TUCA as a matter of urgency.

The PSI press release can be found here:

<https://www.world-psi.org/es/oit-insta-al-gobierno-del-ecuador-revertir-la-disolucion-de-la-une>

<https://publicservices.international/resources/news/isp-y-csa-solicitan-la-intervencion-de-la-oit-en-ecuador-para-revertir-la-disolucion-de-la-unin-nacional-de-educadores?id=7528&lang=es>

The case of the arbitrary dissolution of the UNE was the subject of a tripartite discussion in the Committee on the Application of Standards at the 2016 Conference. Ecuador was included in the "short list" of this commission, which includes about 24-25 cases that are considered the most serious worldwide. In the conclusions of this tripartite commission, the Government was asked to revoke the decision to dissolve UNE and allow the free functioning of the trade union organization. The report of this commission can be found at the following link: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_558658.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_558658.pdf)

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## 6.6. Publications and databases

Other resources that may be useful for the work of trade unions are publications (guides, handbooks, reports, etc.) and ILO databases.

The following are some sources of bibliographical information and ILO databases.

ILO PUBLICATIONS AND DATABASES	
International Labour Office Research and Documentation Centre	<p>The Office's Research and Documentation Centre publishes works and specialized journals on the world of work. Among the resources it offers are "Research Guides". It is a virtual space with guides organized by subject (key ILO documents, ILO Library resources, international labour standards, statistics and links of interest).</p> <p><a href="https://www.ilo.org/inform/online-information-resources/research-guides/lang--en/index.htm">https://www.ilo.org/inform/online-information-resources/research-guides/lang--en/index.htm</a></p>
Search engines for ILO publications and working papers and other documents on the world of work	<p><b>LABORDOC</b> – Search engine for books, articles, conference and meeting reports, working papers, and other ILO publications.</p> <p><a href="https://ilo.primo.exlibrisgroup.com/discovery/search?sortby=rank&amp;vid=41ILO_INST:41ILO_V2&amp;lang=en">https://ilo.primo.exlibrisgroup.com/discovery/search?sortby=rank&amp;vid=41ILO_INST:41ILO_V2&amp;lang=en</a></p> <p><b>LabourDiscovery</b> – Search for books, articles, reports on the world of work.</p> <p><a href="https://ilo.primo.exlibrisgroup.com/discovery/search?sortby=rank&amp;vid=41ILO_INST:41ILO_V1&amp;lang=en">https://ilo.primo.exlibrisgroup.com/discovery/search?sortby=rank&amp;vid=41ILO_INST:41ILO_V1&amp;lang=en</a></p>
Database of information on international labour standards and the pronouncements of the supervisory bodies	<p><b>NORMLEX</b> – System providing information on international labor standards and compliance by States</p> <ul style="list-style-type: none"> <li>• Texts of international labor standards and other basic documents</li> <li>• Ratifications</li> <li>• Information on compliance with the obligation to submit</li> <li>• Information on regular reports to be submitted by States for the control of ratified Conventions, non-ratified Conventions, and Recommendations</li> <li>• Comments by the ILO supervisory bodies</li> <li>• Information on cases subject to special control procedures (Committee on Freedom of Association, Complaints)</li> </ul> <p><a href="https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::">https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::</a></p>
Database on Labour, Social Security and Human Rights Legislation	<p><b>NATLEX</b> – Database on national labor, social security and human rights legislation</p> <p><a href="https://www.ilo.org/dyn/natlex/natlex4.home">https://www.ilo.org/dyn/natlex/natlex4.home</a></p> <p><b>Guide to labour legislation</b></p> <p><a href="https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/main.htm">https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/main.htm</a></p>
Employment Protection Legislation Database	<p><b>EPLex</b> – Database of Employment Protection Legislation.</p> <p><a href="https://www.ilo.org/dyn/epl/termmain.home?p_lang=en">https://www.ilo.org/dyn/epl/termmain.home?p_lang=en</a></p>

AIDS Legislation and Policy Database	Database on national legislation and policies on HIV/AIDS and the world of work <a href="https://www.ilo.org/aids/legislation/lang--en/index.htm">https://www.ilo.org/aids/legislation/lang--en/index.htm</a>
Database on occupational health and safety	<b>LEGOSH</b> – Database on occupational health and safety legislation <a href="https://www.ilo.org/dyn/legosh/en/f?p=LEGPOL:1000">https://www.ilo.org/dyn/legosh/en/f?p=LEGPOL:1000</a>
Database on legislation on the right of association and others	<b>IRLEX</b> – Database on the legal framework governing labor relations, with emphasis on aspects of the regulatory framework for freedom of association. <a href="https://www.ilo.org/dyn/irlex/en/f?p=14100:1:0::NO:::#">https://www.ilo.org/dyn/irlex/en/f?p=14100:1:0::NO:::#</a>
Working Conditions Legislation Database	Database on legislation on working and employment conditions <a href="https://www.ilo.org/dyn/travail/travmain.home?p_lang=en">https://www.ilo.org/dyn/travail/travmain.home?p_lang=en</a>
Labour Statistics Database	<b>ILOSTAT</b> – Database of Labour Statistics <a href="https://ilostat.ilo.org/">https://ilostat.ilo.org/</a>

### 6.7. Publications of the Bureau for Workers' Activities (ACTRAV)

ACTRAV contributes to the development of research documents, briefing notes, guides, handbooks, and training materials in order to provide resources to trade union organizations

for the defense and promotion of workers' rights. ACTRAV's publications are available here:

<https://www.ilo.org/actrav/info/pubs/lang--en/index.htm>

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#### ACTRAV Resources (Publications)

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- Trade Union Reference Manual on the 2030 Agenda for Sustainable Development  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_553141/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_553141/lang--en/index.htm)
- COVID-19 and R205: what role for workers' organizations?  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_739546/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_739546/lang--en/index.htm)
- Organizing Informal Workers into Trade Unions - A trade union guide  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_711040/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_711040/lang--en/index.htm)



- Workers' Guide to Employment and Decent Work for Peace and Resilience Recommendation (No. 205)  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_716841/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_716841/lang--en/index.htm)

- Recommendation No. 205 on Employment and Decent Work for Peace and Resilience: What Role for Trade Unions?  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_646852/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_646852/lang--en/index.htm)

- Just Transition Towards Environmentally Sustainable Economies and Societies for All  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_647648/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_647648/lang--en/index.htm)

- In search of decent work. Migrant workers' rights: A manual for trade unionists  
[https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_120113/lang--en/index.htm](https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_120113/lang--en/index.htm)

The ILO MNE Declaration: What's in it for Workers?

- [https://www.ilo.org/actrav/info/pubs/WCMS\\_627351/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_627351/lang--en/index.htm)

Violence and Harassment against Women and Men in the World of Work-

- Trade Union Perspective and Action  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_546645/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_546645/lang--en/index.htm)

Trade Unions and Child Labour: A tool for action

- [https://www.ilo.org/actrav/info/pubs/WCMS\\_463161/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_463161/lang--en/index.htm)

Partnerships between Unions and Indigenous Peoples

- [https://www.ilo.org/actrav/info/pubs/WCMS\\_437655/lang--es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_437655/lang--es/index.htm)

Guide to the prevention and identification of forced labour. Aimed at workers' organizations

- [https://www.ilo.org/lima/publicaciones/WCMS\\_429713/lang--es/index.htm](https://www.ilo.org/lima/publicaciones/WCMS_429713/lang--es/index.htm)

Trade Union Manual on Export Processing Zones

- [https://www.ilo.org/actrav/info/pubs/WCMS\\_324632/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_324632/lang--en/index.htm)

Trade Union Rights in the Public Sector in Latin America

- [https://www.ilo.org/actrav/info/pubs/WCMS\\_571885/lang--es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_571885/lang--es/index.htm)

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### **Joint ACTRAV publications with trade union organizations**

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- Collective Bargaining and the Promotion of Gender Equality in Latin America  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_713187/lang--es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_713187/lang--es/index.htm)
- Gender Equality: A Guide to Collective Bargaining (Six booklets)  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_113700/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_113700/lang--en/index.htm)



- Labour Standards Overview  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_537018/lang--es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_537018/lang--es/index.htm)
- Continental Campaign for Trade Union Freedom, Collective Bargaining and Renewal  
[https://www.ilo.org/actrav/info/pubs/WCMS\\_430607/lang--es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_430607/lang--es/index.htm)
- Trade Union Training. Development Platform of the Americas on Social Security  
<https://www.social-protection.org/gimi/gess/RessourceDownload.action?id=54836>

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A resource promoted by ACTRAV is the International Journal of Labour Research, through which recent multidisciplinary, world-of-work studies by trade union researchers and experts are disseminated. More

information on the Journal can be found at the following link:

[https://www.ilo.org/actrav/info/pubs/WCMS\\_158769/lang--en/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_158769/lang--en/index.htm).

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## 6.8. Courses at the International Training Centre of the ILO

The International Training Centre (ITC) of the ILO, located in Turin, Italy, is mandated to provide training, learning, and capacity-building services to governments, employers', and workers' organizations, and other national and international actors in support of decent work and sustainable development.<sup>24</sup>

Founded in 1964, the ITC has extensive experience in training and learning for decision-makers, managers, specialists, and trainers from the three ILO constituents and development partners. The ITC has a tripartite Council, composed of 24 members appointed by the ILO Governing Body (12 government representatives;

6 employer representatives and 6 worker representatives), which approves the broad lines of the Centre's programme and budget. It meets once a year (October–November) and the report of its meeting is submitted to the Governing Body.

Training activities are carried out on campus in Turin, in the field in the regions, or remotely via online platforms.

The ITC courses can be found here:  
<https://www.itcilo.org/courses>

The ITC organizes its training activities in programmes.

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<sup>24</sup> ILO. *Rules of the Game: An introduction to the standards-related work of the International Labour Organization (Centenary edition 2019)*. Geneva, ILO, 2019, p. 119. Available at: [https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_672554/lang--es/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_672554/lang--es/index.htm)

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## Programmes of the International Training Centre

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- Social Protection, Governance and Tripartism  
<https://www.itcilo.org/teams/social-protection-governance-and-tripartism>
  - International Labour Standards, Rights at Work and Gender Equality  
<https://www.itcilo.org/teams/international-labour-standards-rights-work-and-gender-equality>
  - Workers' Activities  
<https://www.itcilo.org/teams/workers-activities>
  - Employers' Activities  
<https://www.itcilo.org/teams/employers-activities>
  - Jobs for Peace and Resilience  
<https://www.itcilo.org/teams/jobs-peace-and-resilience>
  - Employment Policy and Analysis Programme  
<https://www.itcilo.org/teams/employment-policy-and-analysis-programme>
  - Enterprise, Microfinance and Local Development  
<https://www.itcilo.org/teams/enterprise-microfinance-and-local-development>
  - Learning Innovation Programme  
<https://www.itcilo.org/teams/learning-innovation-programme>
  - Sustainable Development Programme  
<https://www.itcilo.org/teams/sustainable-development-programme>
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The training section of ACTRAV is called the ACTRAV-Turin Programme. The ACTRAV-Turin Programme is the specialized training body of ACTRAV, part of the International Training Centre in Turin (Italy) and is the largest international trade union training programme in the world.

The Programme responds to the training needs of trade union organizations worldwide through advanced training courses, the development of training materials, the organization of educational projects, and consultation services.

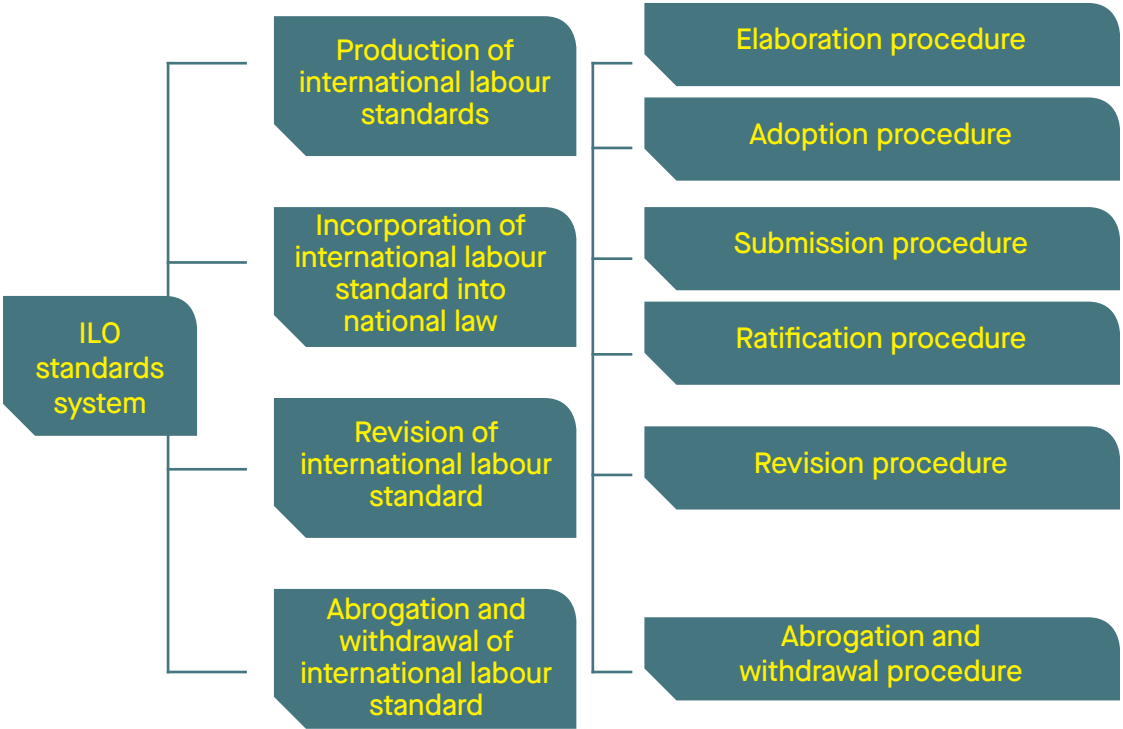
UNIT 4.

UNION PARTICIPATION IN THE ILO REGULATORY SYSTEM

7. What is the ILO standards system?

The ILO is the main source of normative production of international human rights instruments in the social field specialized in the world of work. The ILO's standards setting system coordinates tripartite bodies with a high level of representativeness and institutional legitimacy, the Governing Body and the International Labour Conference, with the national participation of Member States and workers' and employers' organizations, and the specialized support of the

International Labour Office. This structure and characteristics of the ILO's standards setting system are unique at the international level and accord special political and legal support to the international instruments that the ILO adopts. Trade unions participate in each of the procedures in the ILO's standard setting system. These procedures are regulated by the ILO Constitution and the Rules of Procedure of the International Labour Conference and are as follows:



7.1. What are the characteristics of the international instruments of the ILO?

The *raison d'être* and structure of the ILO are reflected in the nature and special characteristics of the labor standards instruments that the ILO adopts, including their tripartite nature, their universality, their protec-

tive nature (minimum floor of protection), and their flexibility.

The following table presents some comments on these special characteristics of ILO instruments.

CHARACTERISTICS OF THE INTERNATIONAL INSTRUMENTS OF THE ILO

Tripartite nature	Tripartism is the main source of the content of ILO international instruments. These instruments are endowed with a special political value and legal nature that gives far-reaching legitimacy to the content of the rights of individuals and protected groups and to the scope of States' obligations. The <a href="#">ILO Declaration on Social Justice for a Fair Globalization</a> states that the promotion of tripartism is a strategic axis of decent work and the <a href="#">ILO Centenary Declaration for the Future of Work, 2019</a> has reaffirmed that tripartism is the essential foundation of all ILO activities.
Universality	<p>The universality of its instruments reflects the ILO's structure. The creation of the ILO is the result of the political conviction that unjust working conditions, the miseries and deprivations of the working class, and social discontent constitute "a threat to universal peace and harmony" and that "if any nation failed to adopt a truly humane system of labour, that failure would constitute an obstacle to the efforts of other nations which desire to improve the lot of workers in their own countries."</p> <p>This universality underpins the promotion of the universal ratification of international labor standards and the need to take into account, in their elaboration, the special circumstances of countries (Article 19.3 of the Constitution). In view of the social consequences of economic globalization, the <a href="#">Declaration on Fundamental Principles and Rights at Work</a> (1998) affirms the urgency of promoting the universal application of fundamental principles and rights at work and the commitment of all Member States, derived from their membership to the ILO, to respect, promote, and implement the Conventions where such principles have been expressed, even if they have not ratified them.</p>

Minimum protection floors	This feature reflects the protective nature of ILO instruments. National legislation may go beyond what is established by international labor standards, provided that it is in favor of the rights of individuals and groups protected by its provisions. Article 19.8 of the ILO Constitution states that “In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.”
Flexibility	Another special feature of international labor standards is their flexibility. In the light of the universal application of ILO's standard-setting instruments, which implies their acceptance or ratification by economically, socially, and culturally diverse countries, the ILO Conference has resorted to various means to give flexibility to the scope, methods of application, or substantive obligations of international standards. Any kind of flexibility requires explicit declaration.

7.2. What are the international instruments of the ILO?

The ILO has international instruments of a diverse nature and scope: the Constitution, Declarations, international labor standards, and resolutions.

**Constitution**  
The ILO Constitution is the basic international instrument of the ILO and contains several functions:

ILO CONSTITUTION	
Treaty establishing an international organization	This is the constituent treaty of the ILO. It was an integral part of the Treaty of Versailles, adopted in 1919, and ending the First World War.
Instrument that establishes fundamental principles and values	<p>It is an instrument that establishes the fundamental principles and values of the ILO that serve as guidelines for the production of new international labor standards and guide the interpretation of existing ones.</p> <ul style="list-style-type: none"><li>• Universal and permanent peace can only be based on social justice.</li><li>• Work should not be considered simply as a commodity.</li><li>• The promotion of a truly humane labor system and the recognition of the principle of freedom of association.</li></ul>

Instrument establishing fundamental rights	It is an instrument that establishes fundamental rights that Member States, by virtue of their mere membership of the ILO, must respect, promote and implement, regardless of whether they have ratified the Conventions where they have been declared and developed. For example, the rights to freedom of association and equal pay for work of equal value.
Instrument regulating the procedures for the adoption of new standards and their submission	<p>It is an instrumental standard in that it regulates the normative production system of the ILO by identifying which entities and procedures can produce international labor standards and the procedure for their submission.</p> <ul style="list-style-type: none"><li>• It regulates the procedure for the elaboration and adoption of international labor standards.</li><li>• Regulates the procedure for the obligation to submit new international standards (Article 19, paragraphs 5, 6, and 7).</li></ul>
Instrument regulating procedures for monitoring compliance with existing standards	<p>It is an instrumental standard in that it regulates the procedures for carrying out the monitoring of effective compliance with international labor standards.</p> <ul style="list-style-type: none"><li>• Regulates the procedure for the obligation of States to submit reports on ratified Conventions (Article 22).</li><li>• Regulates the procedure for the obligation of States to submit reports on non-ratified Conventions and Recommendations (articles 19.5.e, 19.6.d and 19.7.b).</li></ul>
Instrument governing the relationship between ILO standards and national laws	<p>It is an instrumental standard in that it regulates the relationship of complementarity and supplementation between international labor standards and national laws.</p> <ul style="list-style-type: none"><li>• In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation (Article 19.8).</li></ul>

Declarations

Declarations are resolutions of the highest political level that the ILO adopts in order to make a formal and authoritative statement and to reaffirm the importance that ILO constituents attach to certain principles and values. Although not subject to ratification, the Declarations are

intended to be widely applied and contain the political commitments of ILO Member States.

Although technically not binding, the Declarations "may be perceived as an expression of customary international law or *jus cogens*, i.e. international public order".<sup>25</sup>

25. BEADONNET, Xavier (Editor). *Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho*. Turin: ILO, 2010, p. 49.

DECLARATION OF PHILADELPHIA (1944)

Reaffirms the principles on which the ILO is based	Permanent peace can only be based on social justice
<p>a) Labour is not a commodity.</p> <p>b) Freedom of expression and of association are essential to sustained progress.</p> <p>c) Poverty anywhere constitutes a danger to prosperity everywhere.</p> <p>d) The war against want requires to be waged with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision-making with a view to promoting the common welfare.</p>	<p>The central purpose of all national and international policies must be the achievement of conditions in which all human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security, and equal opportunity.</p> <p>Any policy or measure of a national or international nature should be judged from this point of view and accepted only where it is conducive to, and does not impede, the fulfilment of this fundamental objective.</p>

Fundamental obligation of the ILO

**The Conference recognizes the solemn obligation of the International Labour Organization to further programmes among the nations of the world to achieve:**

- a) Full employment and the raising of standards of living;
- b) The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- c) The provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labor, including migration for employment and settlement;
- d) Policies in regard to wages and earnings, hours, and other working conditions calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- e) The effective recognition of the right to collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- f) The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- g) Adequate protection for the life and health of workers in all occupations;
- h) Provision for child welfare and maternity protection;
- i) The provision of adequate nutrition, housing, and facilities for recreation and culture;
- j) The assurance of equality of educational and vocational opportunity.

The following table presents relevant elements of the ILO Declarations.

ILO DECLARATIONS	
Declaration concerning the Policy of "Apartheid" of the Republic of South Africa (1964)	<ul style="list-style-type: none"><li>• In 1964, the International Labour Conference condemned the apartheid policy of the South African government as contrary to the principles of the ILO Constitution and the Declaration of Philadelphia, including the principle of equal opportunity for all human beings regardless of race.</li><li>• The Conference unanimously adopted this Declaration, as well as an ILO programme for the elimination of apartheid in the framework of its work in the Republic of South Africa, which was maintained until the end of the apartheid regime.</li></ul>
Declaration on Equality of Opportunity and Treatment for Women Workers (1975)	<ul style="list-style-type: none"><li>• It establishes principles that States must observe so that women workers enjoy the same opportunities and treatment as men workers.</li><li>• It states that any form of discrimination against women that denies or limits this equality is unacceptable and must be eliminated. Women workers shall not be discriminated against on the basis of their married status, age, or family responsibilities, nor shall positive special treatment be considered discriminatory during a transitional period in order to achieve effective equality.</li></ul>
Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977)	<ul style="list-style-type: none"><li>• It sets out a number of principles that the parties referred to in the Declaration, primarily multinational enterprises, should observe, including respect for national laws and regulations, applicable international labor standards, the Universal Declaration of Human Rights and the International Covenants on Human Rights, the ILO Constitution and its principles.</li><li>• A useful reference is the ACTRAV ILO document The ILO Declaration on Multinational Enterprises: What's in it for Workers?<sup>26</sup></li></ul>

26. Available at : [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_627351.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_627351.pdf)



Declaration on Fundamental Principles and Rights at Work (1998)	<ul style="list-style-type: none"><li>• Reaffirmed that, in joining the ILO, States had accepted the principles and rights set out in the Constitution and the Declaration of Philadelphia, and that those principles and rights had been expressed and developed in conventions.</li><li>• Declares that all Member States, even if they have not ratified these conventions, are committed to respecting, promoting, and realizing the principles relating to the fundamental rights that are the subject of these conventions: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.</li></ul>
ILO Declaration on Social Justice for a Fair Globalization (2008)	<ul style="list-style-type: none"><li>• Reinforces that the mandate of the ILO, the principles and values contained in its Constitution and the Declaration of Philadelphia, remain fully relevant in the twenty-first century and highlights the key role of freedom of association for decent work.</li><li>• Institutionalizes the concept of decent work and affirms that all Member States should promote policies based on four strategic objectives: employment, fundamental principles and rights at work, social protection, and social dialogue. It emphasizes that these objectives are "inseparable, interrelated and mutually supportive" and that gender equality and non-discrimination are cross-cutting issues.</li><li>• States that full productive employment and decent work should be a central element of economic policy.</li><li>• Highlights the importance of the governance conventions (81, 121, 122, and 144).</li></ul>
ILO Centenary Declaration for the Future of Work (2019)	<ul style="list-style-type: none"><li>• Provides guidance for addressing the challenges and opportunities most relevant to the future of work, such as technological innovations and climate change, with a people-centered approach.</li><li>• The ILO website where the text of the Declaration, the summary of its recommendations, and further information are located is: <a href="https://www.ilo.org/global/about-the-ilo/mission-and-objectives/centenary-declaration/lang-en/index.htm">https://www.ilo.org/global/about-the-ilo/mission-and-objectives/centenary-declaration/lang-en/index.htm</a></li></ul>

International labor standards

The international instruments used by the ILO to set international labor standards are the International Labour Conventions, Recommenda-

tions, and Protocols. The following table provides information on the characteristics of each of these instruments.

INTERNATIONAL LABOR STANDARDS	
International Labour Conventions	<ul style="list-style-type: none"><li>• International Labour Conventions are instruments adopted on a tripartite basis by the International Labour Conference in order to create legal obligations for Member States upon ratification.</li><li>• In accordance with the particular characteristics of ILO instruments, the Conventions are international treaties of a universal nature and constitute minimum levels of protection.</li><li>• Once ratified, States cannot reduce the level of protection provided by the provisions of ILO Conventions. Thus, if a law adopted by the national parliament reduces the level of protection of the ratified Convention, this constitutes a breach of international obligations by the State.</li><li>• These are international treaties adopted within the framework of an international organization and therefore the provisions of the 1969 Vienna Convention on the Law of Treaties apply to it (Article 5).</li><li>• They are international human rights treaties and therefore the special rules of application and interpretation of international human rights law apply to them.</li><li>• The list of Conventions can be found at this link: <a href="https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::">https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::</a></li></ul>
International Labour Recommendations	<ul style="list-style-type: none"><li>• The International Labour Recommendations are instruments adopted on a tripartite basis by the International Labour Conference to provide guidance on policy, legislation, and practice for Member States.</li><li>• They are not binding legal instruments and are therefore not put to ratification.</li><li>• Depending on the case, the Recommendations are used by the Conference to:<ul style="list-style-type: none"><li>• Accompany the adoption of a Convention and complement its provisions.</li><li>• Address, on an autonomous basis, a subject which has not been the subject of a Convention.</li></ul></li><li>• In the case of the joint adoption of a Convention and a Recommendation, the Recommendation may, for example,<ul style="list-style-type: none"><li>• Promote measures to put into practice the principles set out in the Convention.</li><li>• Propose that the protection provided for workers in the relevant Convention be extended or strengthened.</li></ul></li></ul>

	<ul style="list-style-type: none"><li>• The Recommendations can serve as a reference for:<ul style="list-style-type: none"><li>• The interpretation of domestic law provisions.</li><li>• Source of inspiration for filling gaps in national legislation.</li><li>• Drafting of legislation and promotion of labor reforms.</li><li>• Reference for the design, adoption, and monitoring of public policies.</li></ul></li><li>• The list of Recommendations can be found at this link: <a href="https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12010:0::NO::">https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12010:0::NO::</a></li></ul>
International Labour Protocols	<ul style="list-style-type: none"><li>• The International Labour Protocols are the instruments by which the ILO revises or partially modifies existing Conventions.</li><li>• Legally, the Protocols enjoy the same nature and value as the Conventions. They are therefore binding only on the States Parties.</li><li>• The list of Protocols adopted by the ILO can be found here: <a href="https://www.ilo.org/dyn/normlex/es/f?p=1000:12005::NO::">https://www.ilo.org/dyn/normlex/es/f?p=1000:12005::NO::</a></li></ul>

**Conference Resolutions**

Resolutions are instruments adopted by the International Labour Conference. They are not legally binding instruments. They are instruments that enable the Conference to express its views on a wide range of important issues and to set policy guidelines and directives that can lead to new international standards. When they refer to subjects covered by Conventions, they can constitute an interpretative tool of their contents.<sup>27</sup> A key instrument for trade unions is the Resolution on Trade Union Rights and their Relationship to Civil Liberties, adopted at the 1970 Conference, by which the Conference reaffirmed the interdependent relationship between trade union rights and civil liberties. This Resolution is a central reference as an international instrument of tripartite character that emphasizes and reaffirms the interdependence between trade union freedom

and other human rights. Another fundamental resolution is the Resolution entitled "Global Jobs Pact" (2009),<sup>28</sup> which focused its proposals in response to the 2008 crisis on the need to generate greater protection for workers, place full employment and decent work at the center of economic policies, and strengthen the role of the State in the economy (through execution of public works and investment in infrastructure, promotion of public services, and regulation of the economy).

The list of Resolutions adopted by the ILO Conference can be found at: [https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/WCMS\\_428590/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/jur/legal-instruments/WCMS_428590/lang--en/index.htm)

The following table presents some Resolutions, organized by theme.

27. BEADONNET, Xavier. *International labour law and domestic law. Training Manual for Judges, Lawyers and Teachers of Law*. Turin: ILO, 2010, p. 50..

28. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_113004.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_113004.pdf)

## RESOLUTIONS ADOPTED BY THE CONFERENCE

### Social Protection

- Resolution on the recurrent discussion on social protection (ILO, 2011) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_162049.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf)
- Resolution concerning the recurrent discussion on social protection (labour protection) (ILO, 2015) [https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS\\_380781/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS_380781/lang--en/index.htm)

### Employment

- Resolution concerning the recurrent discussion on employment (2010) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_143164.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143164.pdf)

### Youths

- Resolution concerning youth employment (ILO, 2005) [https://www.ilo.org/youthmakingithappen/PDF/resolutions\\_en.pdf](https://www.ilo.org/youthmakingithappen/PDF/resolutions_en.pdf)
- Resolution concerning the youth employment crisis: A call for action (2012) [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_194631.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_194631.pdf)

### Informal Economy

- Resolution concerning efforts to facilitate the transition from the informal to the formal economy (2015) [https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS\\_380780/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS_380780/lang--en/index.htm)

### Small and medium enterprises, cooperatives

- Resolution concerning small and medium-sized enterprises and decent and productive employment creation (2015) [https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS\\_380779/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS_380779/lang--en/index.htm)

### Sustainable Development

- Resolution concerning sustainable development, decent work and green jobs (2013) [https://www.ilo.org/ilc/ILCSessions/previous-sessions/102/texts-adopted/WCMS\\_223785/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/102/texts-adopted/WCMS_223785/lang--en/index.htm)

### Rural Workers

- Resolution concerning promotion of rural employment for poverty reduction (2008) [https://www.ilo.org/ilc/ILCSessions/previous-sessions/97thSession/texts/WCMS\\_098017/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/97thSession/texts/WCMS_098017/lang--en/index.htm)

## 8. How does the regulatory system work and how can unions participate?

The following points will describe the functioning of each of the procedures of the ILO standards

system and will mention the participation of trade unions in each of them.

### 8.1. Procedure for the preparation and adoption of international labor standards

#### PROCEDURE FOR THE PREPARATION AND ADOPTION OF INTERNATIONAL LABOR STANDARDS

##### Which body decides what issue will be the subject of a new international labor standard?

- Ideas and initiatives about what issues can be the subject of new international labor standards can come from various sources, such as the general discussion committees of the ILO's International Labour Conferences or the tripartite or high-level meetings of experts that the ILO organizes to analyze and discuss various issues in the world of work.
- According to the ILO Constitution, it is the tripartite bodies of the ILO structure, the Governing Body and the International Labour Conference, which have the constitutional power to decide and place an item on the agenda of the International Labour Conference for the elaboration and adoption of new international labor standards.
- Article 14.1 of the ILO Constitution states that "The agenda for all meetings of the Conference will be settled by the Governing Body, which shall consider any suggestion as to the agenda that may be made by the government of any of the Members or by any representative organization recognized for the purpose of Article 3, or by any public international organization."
- Article 16.3 provides that when the International Labour Conference decides, by a two-thirds majority, that a question should be discussed (and there are no objections to the agenda), the question shall be placed on the agenda of the next session of the Conference.

##### What options does the Governing Body have when it decides to place an item on the agenda of the Conference?

When the Governing Body wants to place an item on the agenda of the International Labour Conference, there are three options within the framework of the procedure for the elaboration and adoption of new standards:

- a) If special circumstances so warrant, the Governing Body may refer the matter referred to in that item to a preparatory technical conference which shall report to the Governing Body before the matter is placed on the agenda. Similarly, the Governing Body may convene a preparatory technical conference when placing a question on the agenda (articles 34.3 and

36 of the Rules for the Conference). Article 14.2 of the ILO Constitution provides that the Governing Body shall make rules to ensure thorough technical preparation and adequate consultation of the Members primarily concerned, by means of a preparatory conference or otherwise, prior to the adoption of a Convention or Recommendation by the Conference.

**b)** In cases of particular urgency or where other special circumstances so warrant (such as when a draft protocol is to be considered), the Governing Body may, by a majority of three-fifths of the votes cast, decide that a question shall be submitted to the Conference for single discussion (Article 34.5 of the Rules for the Conference), i.e. at a single session of the International Labour Conference.

**c)** Unless otherwise decided by the Governing Body, a question placed on the agenda of the Conference shall be considered as submitted for double discussion, i.e. dealt with by two sessions of the Conference (Article 34.4 of the Rules for the Conference).

### What is the double discussion procedure?

- The double discussion procedure consists of the elaboration and adoption of a new international labor standard under a procedure involving two sessions of the ILO Conference.

- Phases of the preparatory stage of the double discussion procedure:

#### **1) Send a report and a questionnaire prepared by the Office to Governments (Article 39.1 of the Rules for the Conference)**

- The International Labour Office prepares a report on legislation and practice in individual countries, together with a questionnaire.
- Where an issue is to be dealt with under the double discussion procedure, the International Labour Office will prepare a preliminary report setting out the law and practice in the different countries as soon as possible, together with any other useful information, and a questionnaire.
- The report and the questionnaire shall be sent by the Office so that governments receive them at least 18 months before the opening of the session of the Conference at which the matter is to be discussed.
- Governments are requested to consult the most representative employers' and workers' organizations before completing their responses and to give reasons for their responses.

#### **2) Government responses to the questionnaire (Article 39.2 of the Rules for the Conference)**

- Replies from governments should reach the Office as soon as possible, at least eleven months before the opening of the session of the Conference at which the matter is to be discussed.
- In the case of federated countries or countries where it is necessary to translate the questionnaires into the national language, the seven-month period allowed for the preparation of replies will be extended to eight months, if requested by the government concerned.

### **3) Sending a report to governments (Article 39.3 of the Rules for the Conference)**

- The Office shall prepare a further report on the basis of the replies received indicating the principal questions which require consideration by the Conference.
- This report shall be communicated by the Office to the governments as soon as possible and every effort shall be made to secure that the report shall reach them not less than four months before the opening of the session of the Conference at which the question is to be discussed.

### **4) Consideration of reports by the Conference (Article 39.4 of the Rules for the Conference)**

- These reports shall be submitted to a discussion by the Conference either in a plenary session or in a committee (usually in a committee).
- If the Conference decides that the matter is suitable to form the subject of Conventions or Recommendations, it shall adopt such conclusions as it sees fit and may either:
  - a) Decide that the question shall be included in the agenda of the following session in accordance with Article 16, paragraph 3, of the Constitution (Registration by the Conference of a new item on the agenda); or
  - b) Ask the Governing Body to include the question in the agenda of a later session.

### **5) Preparation of the draft international standard and its submission to governments (Article 39.6 of the Rules for the Conference)**

- On the basis of the replies received to the questionnaire referred to in paragraph 1 and on the basis of the first discussion by the Conference, the Office may prepare one or more Conventions or Recommendations.
- Communicate them to the governments so as to reach them not later than two months from the closing of the session of the Conference.
- Ask governments to state within three months, after consulting the most representative organizations of employers and workers, whether they have any amendments to suggest or comments to make.

#### **Consultation of the United Nations and other specialized agencies (Article 39bis of the Rules for the Conference)**

- Where items are placed on the agenda of the Conference with a view to the adoption of a Convention or a Recommendation, the International Labour Office shall, at the same time as it is requesting governments for their comments on the proposed Convention or Recommendation, consult the United Nations and other specialized agencies in respect of any provision of the proposed Convention or Recommendation which affects the activities of such organization or organizations.
- The comments of such organization or organizations shall be brought before the Conference, together with the comments received from governments.



## **6) Drafting of the final report with the text of the new international standard (Article 39.7 of the Rules for the Conference)**

- On the basis of the replies received, the Office shall draw up a final report containing the text of Conventions or Recommendations with any necessary amendments.
- This report shall be communicated by the Office to the governments so as to reach them not less than three months before the opening of the session of the Conference at which the question is to be discussed.

## **What is the simple discussion procedure?**

The preparatory stages of the single discussion procedure are as follows:

### **1) A report and questionnaire prepared by the Office is sent to Governments (Article 38.1 of the Rules for the Conference)**

- The Office shall communicate to the governments, so as to reach them not less than 18 months before the opening of the session of the Conference at which the question is to be discussed, a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a questionnaire drawn up with a view to the preparation of Conventions or Recommendations (or protocols).
- This questionnaire shall request governments to consult the most representative organizations of employers and workers before finalizing their replies and to give reasons for their replies.

### **2) Government replies to questionnaire (Article 38.1 of the Rules for the Conference)**

- Replies should reach the Office as soon as possible and not less than 11 months before the opening of the session of the Conference at which the question is to be discussed.
- In the case of federal countries and countries where it is necessary to translate questionnaires into the national language, the period of seven months allowed for the preparation of replies shall be extended to eight months if the government concerned so requests.

### **3) Sending a new report to governments (Article 38.2 of the Rules for the Conference)**

- On the basis of the replies received the Office shall draw up a final report which may contain one or more Conventions or Recommendations (or protocols).
- This report shall be communicated by the Office to the governments as soon as possible and every effort shall be made to secure that the report shall reach them not less than four months before the opening of the session of the Conference at which the question is to be discussed.



### Consultation of the United Nations and other specialized agencies (Article 39bis of the Rules for the Conference)

- Where items are placed on the agenda of the Conference with a view to the adoption of a Convention or a Recommendation, the International Labour Office shall, at the same time as it is requesting governments for their comments on the proposed Convention or Recommendation, consult the United Nations and other specialized agencies in respect of any provision of the proposed Convention or Recommendation which affects the activities of such organization or organizations.
- The comments of such organization or organizations shall be brought before the Conference, together with the comments received from governments.

### 4) If the issue has been studied by a preparatory technical conference

- If a question on the agenda has been examined by a preparatory technical conference, the Office may, depending on the decision taken by the Governing Body (Article 38.4 of the Rules for the Conference):
  - a) Communicate to the governments a summary report and a questionnaire as provided for in paragraph 1 above; or
  - b) To draw up directly, on the basis of the work of the preparatory technical conference, the final report on the draft convention or recommendation (or protocol).

### 5) Consideration and final adoption of the draft standard

The consideration and final adoption of draft conventions and recommendations (or protocols) by the Conference follows the same procedure of the double discussion procedure.

### Are governments obliged to consult with trade unions before responding to ILO reports?

- The provisions of the Rules of Procedure of the Conference (Articles 38 and 39) require governments to consult with representative employers' and workers' organizations before completing their replies to the reports and questionnaires sent out by the Office.
- In addition to these provisions, Convention 144 on Tripartite Consultation (International Labour Standards)<sup>29</sup> establishes the obligation of States parties to implement procedures to ensure effective consultation between representatives of governments, employers, and workers on matters relating to the activities of the ILO, including replies by governments to questionnaires concerning items on the agenda of the Conference and comments by governments on draft texts to be discussed by the Conference (Articles 2 and 5.1.a).
- Recommendation 152 on tripartite consultation (activities of the International Labour Organization)<sup>30</sup> provides that ILO Member States should put in

29. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312289](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312289)

30. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312490](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312490)

place procedures to ensure effective consultation between government, employers', and workers' representatives on matters relating to ILO activities, including on governments' replies to questionnaires concerning items on the agenda of the Conference and government comments on draft texts to be discussed by the Conference (paragraph 5.a).

### How does the procedure for examining the texts of new standards work?

- Once the Conference receives the final report prepared by the Office containing the texts of the Conventions or Recommendations, the procedure for the examination of the texts at the Conference is initiated. This procedure is regulated in Article 40 of the Rules for the Conference.
- The Conference will decide:
  - Whether to take as a basis for discussion the text of Conventions or Recommendations prepared by the International Labour Office; and
  - Whether such conventions or recommendations are to be considered in plenary or sent to a committee for reporting (usually in committee).
  - These decisions may be preceded in a plenary meeting of the Conference by a discussion of the general principles contained in the draft conventions or recommendations.
- Where the Conference has referred to a committee the text of a single recommendation, a decision by the committee to propose a convention to the Conference for adoption (in place of, or in addition to, the recommendation) shall require a two-thirds majority of the total votes cast.
- The procedure for review depends on whether the text of the new standard is considered in the plenary of the Conference or in a special committee of the Conference:
  - If the convention or recommendation is to be discussed in plenary, each clause shall be submitted to the Conference for adoption. During the discussion and until a decision has been taken on each clause of the Convention or Recommendation, the Conference may consider only motions for amendment of one of these clauses or points of order.
  - If the Convention or Recommendation has been referred to a committee, the Conference shall, after considering the report of the committee, proceed to discuss the Convention or Recommendation in accordance with the rules provided for in the preceding paragraph. This discussion shall not take place before the day following that on which the text of the report has been distributed to the delegates.
- If the Conference should decide against a convention contained in the report of a committee, any delegate may propose that the Conference decide immediately whether the convention should be referred back to the committee concerned for consideration of its conversion into a recommendation.

- If the Conference decides in favor of such referral, the committee shall submit a further report to the Conference for approval before the end of the session.
- The provisions of a convention or recommendation, as adopted by the Conference, shall be submitted to its Drafting Committee for the preparation of the final text, which shall be circulated to the delegates.
- No amendment to this text shall be permitted. However, the President, after consultation with the three Vice-Presidents, may submit to the Conference amendments which have been submitted to the Secretariat before the final vote takes place.
- Upon receipt of the text submitted by the Drafting Committee and after discussion of the amendments referred to in the preceding paragraph, if any, the Conference shall proceed to a final vote on the adoption of the Convention or Recommendation, in accordance with the provisions of Article 19 of the ILO Constitution.

### **How does the procedure for adopting an international labour standard work?**

- The International Labour Conference is the ILO body with the power to adopt international labor standards. The procedure for the adoption of a new international labor standard is regulated by Article 19 of the ILO Constitution.
- Article 19.1 provides that “When the Conference decides in favour of the adoption of proposals relating to an item on the agenda, it shall determine whether these proposals shall take the form of (a) an international convention or (b) a recommendation, if the question at issue, or any aspect thereof, does not at that time lend itself to the adoption of a convention.” Article 19.2 states that, in both cases, a two-thirds majority of the votes cast by the delegates present is required for the Conference to adopt the new rule by a final vote.
- In accordance with Article 41 of the Rules of Procedure of the Conference, if a Convention does not obtain in the final vote the two-thirds majority of the votes required for its adoption, but only a simple majority, the Conference shall immediately decide whether the Convention shall be referred back to the Drafting Committee for conversion into a Recommendation. If the Conference is in favor of the referral back to the Drafting Committee, the proposals contained in the Convention shall again be submitted to the Conference for approval, in the form of a Recommendation, before the end of the session.

**Timetable for the adoption of conventions and recommendations**  
(Double discussion procedure, simplified in case of simple discussion)

Period	ILO action	Action by national administrations
November (year 1) and March (year 2)	ILO Governing Body considers and decides agenda of ILO Conference in year 4.	
November–December (year 2)	ILO circulates report on law and practice, with questionnaire on content of possible new instrument.	Consult employers' and workers' organizations on replies (Articles 38 and 39 of Conference Standing Orders and – for States parties to it – C.144).
By 30 June (year 3)		Prepare replies to questionnaire and send to the ILO by 30 June (year 3), at the latest.
January–February (year 4)	ILO circulates report analyzing replies, with proposed conclusions.	Prepare position for Conference discussion.
June (year 4)	International Labour Conference – first discussion of item.	Participate in work of technical committee, as appropriate.
August–September (year 4)	ILO circulates draft texts on basis of first Discussion.	Consult employers' and workers' organizations on comments (articles 38 and 39 of the Conference Standing Orders and – for States parties to it – C.144).
By 30 November (year 4)		Send any comments to the ILO by 30 November (year 4), at the latest.
February–March (year 5)	ILO circulates revised texts, in light of comments received.	Prepare position for Conference discussion.
June (year 5)	International Labour Conference – second discussion and adoption.	Participate in work of technical committee, as appropriate.

**Source:** Handbook of procedures relating to international labour Conventions and Recommendations. ILO. 2019.

## STATUS OF RATIFICATION OF CONVENTION 144 Dominican Republic

SIGNATORY COUNTRIES	Convention 144 (1976)	SIGNATORY COUNTRIES	Convention 144 (1976)	SIGNATORY COUNTRIES	Convention 144 (1976)
 Antigua and Barbuda	16-09-2002	 Dominica	29-04-2002	 Panama	15-06-2015
 Argentina	13-04-1987	 Ecuador	23-11-1979	 Paraguay	
 Bahamas	16-08-1979	 El Salvador	15-06-1995	 Peru	08-11-2004
 Barbados	06-04-1983	 United States	15-06-1988	 Dominican Republic	15-06-1999
 Belize	06-03-2000	 Grenada	25-10-1994	 Saint Kitts and Nevis	12-10-2000
 Bolivia		 Guatemala	13-06-1989	 Saint Lucia	
 Brazil	27-09-1994	 Guyana	10-01-1983	 Saint Vincent and the Grenadines	09-11-2010
 Canada	13-06-2011	 Haiti		 Suriname	16-11-1979
 Chile	09-11-1999	 Honduras	12-06-2012	 Tobago	07-06-1995
 Colombia	16-11-1976	 Jamaica	23-10-1996	 Uruguay	22-05-1987
 Costa Rica	21-07-1981	 Mexico	28-06-1978	 Venezuela	
 Cuba		 Nicaragua	01-10-1981		

Source: NORMLEX

## 8.2. Procedure for the submission of international labor standards

To facilitate a uniform presentation of the information to be provided by Governments on the measures they have taken to comply with the submission obligation, the Governing Body adopted a Memorandum

concerning the obligation to submit conventions and recommendations to the competent authorities.

The answers to the following questions are based on the ILO Constitution and the Memorandum.

### PROCEDURE FOR THE SUBMISSION OF INTERNATIONAL LABOR STANDARDS

#### What is the obligation of submission of international labor standards?

- Consists of the obligation of all ILO Member States to submit recently adopted international labor standards (Conventions, Recommendations or Protocols) to the relevant authority at the national level for the purpose of discussing and determining measures for their application.
- This obligation is regulated in Article 19 of the ILO Constitution.
- The procedure for federal states is regulated in Article 19.7 of the Constitution.

#### What is the purpose of submission?

- The main purpose of the submission is to encourage action at the national level for the implementation of the conventions and recommendations. In the case of Conventions, the procedure also aims at promoting their ratification.
- Governments are entirely free to propose the action they consider should be taken on the conventions and recommendations. The purpose of the submission is mainly to promote a prompt and considered decision by each Member State on the instruments adopted by the Conference.
- The obligation of submission constitutes a fundamental element of the ILO's standard-setting system. One of its purposes has been and still is to bring the instruments adopted by the Conference to the attention of public opinion through their submission to a body of a parliamentary nature.

#### Which international instruments of the ILO are subject to submission?

- The provisions of Article 19 of the Constitution establish the obligation to submit to the competent authorities in all cases the instruments adopted by the Conference, without exception and without distinction between Conventions and Recommendations. It refers to the Recommendations

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31. [https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_088472/lang--es/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_088472/lang--es/index.htm)

adopted by the International Labour Conference as international standards. It does not refer to the recommendations of the ILO supervisory bodies.

### **What is the ILO's method of working on the submission?**

- Immediately after the adoption by the Conference of an international labor standard (Convention, Recommendation, Protocol), the texts of the standards are communicated to governments, by letter or e-mail, reminding them of their obligations under Article 19 of the Constitution to submit these instruments to the competent authorities. The Memorandum of the Governing Body is attached to the communication. Copies of these documents are also sent to the most representative organizations of employers and workers.
- One year after the closure of the Conference session at which the instruments were adopted, a reminder is sent to all Governments that have not provided the requested information. At the end of the 18-month period following the closure of the Conference meeting at which the instruments were adopted, a further reminder is sent if the information is still not received.
- In response to the request of the ILO Committee of Experts, the Office, upon receipt of the information concerning the submission of instruments to the competent authorities, verifies whether the information and documents requested in the Governing Body's Memorandum have been provided, including responses to any observations or direct requests from the Committee of Experts or observations made by the Committee on the Application of Standards. If not, the Office requests the government, as an automatic administrative step, to provide the requested information. The competent control bodies then proceed to examine the information provided.

### **Which is the competent authority to make the submission?**

- The competent authority for submission is that which has the power to legislate or take any other action to give effect to the conventions and recommendations. It should normally be the legislative authority.
- Even in cases where, under the Constitution of an ILO Member State, legislative powers are held by the executive, it corresponds to the spirit of Article 19 of the ILO Constitution and to practice to allow a deliberative body, if it exists, to examine the instruments adopted by the Conference.
- The discussion held in a deliberating assembly – or at least the information from it – can be an important factor in the full consideration of the issue and in the possible improvement of measures taken at the national level to follow up the instruments adopted by the Conference.
- In the case of conventions, it could possibly lead to a decision to proceed with their ratification.
- In the absence of a parliamentary body, information to an advisory body may allow a full examination of the issues dealt with by the Conference. The

information provided in this way ensures wide public dissemination, which is also an aim of the submission obligation.

### **What are the essential points of submission?**

- Since the purpose of Article 19 of the Constitution is clearly to obtain a decision by the competent authorities, the submission of conventions and recommendations to those authorities should always be accompanied or followed by a statement or proposals expressing the government's views on the action to be taken on these texts.
- The essential points to be taken into account are:
  - That governments, when submitting conventions and recommendations to the legislative authorities, should accompany these texts or subsequently send indications as to the steps which might be taken to give effect to these instruments, or a proposal that no action be taken or that any decision be deferred until a later date; and
  - That the legislative authority has the possibility to engage in a debate on the matter.

### **What is the deadline for submission?**

- In order that the competent national bodies may be informed of the rules adopted at the international level which may require action by each State to give effect to them at the national level, submission should take place as soon as possible and in any event within the time limits determined by Article 19 of the Constitution:
  - Within one year of the closure of the Conference;
  - Or, where exceptional circumstances do not permit this within one year, as soon as possible, but not later than eighteen months after the closure of the session of the Conference.

### **Are governments obliged to communicate reports on submission to trade unions?**

- In accordance with the provisions of Article 23, paragraph 2, of the ILO Constitution, information sent to the Director-General concerning submission to the competent authorities must be communicated to the representative organizations of employers and workers.
- In addition, point VI of the questionnaire at the end of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities of the Governing Body requests Governments to inform the Office to which organizations copies of the information have been sent and to indicate whether employers' or workers' organizations have made any observations on the extent to which the instrument has been or is proposed to be implemented.
- This duty is intended to enable representative organizations of employers



and workers to make their own observations on the action taken or to be taken on the instruments submitted.

### **Are governments obliged to hold tripartite consultations in this procedure?**

- Convention 144 on Tripartite Consultation (International Labour Standards) (ILO, 1976) establishes the obligation of States parties to implement procedures that ensure effective consultation between representatives of government, employers, and workers on matters relating to ILO activities, including proposals to be submitted to the competent authority or authorities concerning the submission of conventions and recommendations, in accordance with Article 19 of the ILO Constitution (articles 2 and 5.1.b).
- Recommendation 152 on Tripartite Consultation (Activities of the International Labour Organization) (ILO, 1976), complementary to Convention 144, provides that ILO Member States should put in place procedures to ensure effective consultation between representatives of the government, employers and workers on matters relating to ILO activities, including proposals to be submitted to the competent authority or authorities concerning the submission of Conventions and Recommendations, in accordance with Article 19 of the ILO Constitution (paragraph 5.b).
- The representative organizations of employers and workers must be consulted beforehand. Effective consultation implies that the representatives of employers and workers have, in good time, all the elements necessary to form an opinion before the government takes a final decision. The representative organizations of employers and workers will be invited to make their views known on the action to be taken on the new instruments, on an autonomous basis.
- Point V of the questionnaire at the end of the Memorandum on the obligation to submit Conventions and Recommendations to the competent authorities asks the Governments concerned to indicate whether prior tripartite consultations have taken place, and if so, the nature and extent of such consultations.

### **How is compliance with the submission obligation monitored?**

- The Committee of Experts on the Application of Conventions and Recommendations examines information on the measures taken by ILO Member States to submit to the competent authorities the instruments adopted by the International Labour Conference. As noted in its last Annual Report for 2020,<sup>32</sup> the Committee of Experts is mandated to examine the information communicated by Governments on the action taken by them to submit to the competent authorities the instruments adopted by the Conference from June 1970 (54th session) to June 2017 (106th session)

32. [https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS\\_736204/lang--en/inn dex.htm](https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS_736204/lang--en/inn dex.htm)

(Conventions Nos. 131-189, Recommendations Nos. 135-205 and Protocols) and from June 1970 (54th session) to June 2017 (106th session) (Conventions Nos. 131-189, Recommendations Nos. 135-205 and Protocols).

- The Annual Report of the Committee of Experts has annexes where it is shown:
  - A summary of the latest information received on the competent authorities to which certain international labor standards (Conventions, Recommendations, Protocols) have been submitted;
  - A statement of the situation of each Member State concerning its constitutional obligation of submission;
  - An overview of the situation regarding the submission of each of the instruments adopted since the 54th session (June 1970) of the Conference.
- The Annual Report of the ILO Committee of Experts identifies cases of progress by States which have succeeded in overcoming problems which delayed submission and also mentions special problems. Among the serious cases are those governments which have not submitted to the competent authorities the instruments adopted by the Conference for at least seven meetings. These special problems are referred to as cases of "serious failure to submit".
- The Committee of Experts invites Governments to indicate the reasons for delays in submission at a special meeting of the Conference Commission. In addition, in its comments on cases of "non-submission", the Commission also provides information concerning Governments that have not submitted to the competent authorities the instruments adopted at the last six meetings of the Conference.
- In its Annual Report for 2020, the ILO Committee of Experts has noted that at the close of its 90th session, on 7 December 2019, the following 36 Member States were in the category of "serious failure to submit": Albania, Bahamas, Bahrain, Belize, Brunei Darussalam, Chile, Comoros, Congo, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Grenada, Guinea-Bissau, Haiti, Kazakhstan, Kyrgyzstan, Kiribati, Kuwait, Liberia, Libya, Malaysia, Malta, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, and Vanuatu.
- Examination of the information on the submission is discussed in the Committee on the Application of Standards of the ILO Conference. The attention of the Governments concerned is drawn to enable them to take appropriate measures immediately and as a matter of urgency to remedy the backlog. It also recalls that, upon request, governments may benefit from the technical assistance that the ILO Office can provide in order to support them in taking the necessary steps for the prompt submission of pending instruments to their legislative bodies

**Timetable of actions for the submission of international labor standards**  
 (Submission procedure)

Period	ILO action	Action by national administrations
August	ILO circulates newly adopted standards, with Governing Body Memorandum on submission to the competent authorities.	Study instruments and compare national legislation and practice. States parties to C.144: consult employers' and workers' organizations on the proposals to be made. Prepare document summarizing the position and proposals for further national action (if appropriate) and on possible ratification of Conventions.
By June (or, exceptionally, December) of following year		Submit to the competent legislative authorities by June (or, exceptionally, December) of following year. Report to the ILO, in accordance with questionnaire in Governing Body Memorandum, on measures taken to submit the instruments to the competent authorities. Send copies to employers' and workers' organizations.

**Source:** Handbook of procedures relating to international labor Conventions and Recommendations. ILO. 2019.

### 8.3. Procedure for the ratification of international labor standards<sup>33</sup>

#### PROCEDURE FOR THE RATIFICATION OF INTERNATIONAL LABOR STANDARDS

##### What is ratification?

- It consists of the expression of acceptance by the Member State of the ILO, through the competent authority, of the international labor convention (or international labor protocol) in its domestic legal system.
- The procedure is regulated by Article 19. 5. d) of the ILO Constitution
  - d)** If the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention.

##### How is ratification communicated?

- There are no specific provisions in the ILO Constitution regarding the manner of reporting ratifications, which may vary according to the constitutional laws and practice of each State. In order to be registered, the instrument of ratification must:
  - Clearly specify the convention or conventions being ratified;
  - Be an original document (and not a facsimile or a photocopy), signed by a person with authority to act on behalf of the State (for example, the Head of State, the Prime Minister, the Minister of Foreign Affairs or the Minister of Labour);
  - Clearly indicate the intention of the Government that the State will be bound by the Convention concerned and its commitment to fulfil the obligations of the Convention, preferably with a specific reference to Article 19(5)(d) of the ILO Constitution.
- Instruments of ratification should always be communicated to the Director-General of the ILO in order to make ratification effective under international law. If this is not the case, the State may consider that the Convention has been "ratified" in its domestic legal system, but it will not have effect in the international legal order.
- The instrument of ratification could include the following declaration: "The Government of ... hereby ratifies the ...Convention and undertakes, in accordance with Article 19, para. 5(d), of the Constitution of the ILO, to fulfil its obligations in this respect."

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<sup>33</sup>. This section is based on information in *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, pp. 16-21.

### Are reservations admissible when ratifying international labor standards?

- The reservation is a mechanism by which a State seeks the modification (modifying reservation) or exclusion (excluding reservation) of the application of certain clauses of the international treaty.<sup>34</sup>
- Conventions contain various provisions ensuring flexibility, including some specifically enabling ratifying States to limit or qualify the obligations assumed on ratification (paragraphs 21–24). However, no limitations on the obligations of a Convention other than those specifically provided for (i.e. no reservations) are possible.

### What are the "declarations" to be included in the instrument of ratification?

- In light of the universal application of ILO's standard-setting instruments, which implies their acceptance or ratification by economically, socially, or culturally diverse countries, the ILO Conference has resorted to various means to give flexibility to the scope, methods of application, or substantive obligations of international standards. Any kind of flexibility requires express declaration.
- Certain ILO Conventions provide for the possibility of the inclusion of "declarations".
- There are three types of declarations:
  - Mandatory declarations to be included in the instrument of ratification or in an accompanying document;
  - Optional declarations to be included in the instrument of ratification or in an accompanying document; and
  - Optional declarations on the scope of a convention.

### How does the procedure for ratification of Protocols work?

- A Protocol is an instrument that partially revises a Convention. It is open to ratification by a State that is already bound by the Convention, or if it ratifies it simultaneously, it is also bound by the Convention.
- Two Protocols adopted so far by the Conference effectively introduce more flexibility into the two Conventions concerned and provide for the extension of the obligation. These are:
  - **P089** – Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948;
  - **P110** – Protocol of 1982 to the Plantations Convention, 1958.
- Four other protocols extend obligations under the terms of the relevant conventions:
  - **P081** – Protocol of 1995 to the Labour Inspection Convention, 1947;

34. SALMÓN, Elizabeth. *Curso de derecho internacional público*. Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú, 2014, pp. 200-202.

- **P147** – Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976;
- **P155** – Protocol of 2002 to the Occupational Safety and Health Convention, 1981;
- **P029** – Protocol of 2014 to the Forced Labour Convention, 1930.

### How does the procedure for registering ratifications work?

- The final provisions of all the Conventions contain Articles concerning the registration of ratifications by the Director-General and his notification of them to all Member States, as well as their communication to the Secretary-General of the United Nations, for the registration of Conventions in accordance with Article 102 of the Charter of the United Nations.
- All ratifications are communicated to the Governing Body, and Member States are notified by publication in the Official Gazette. The same applies to declarations and other documents accepting or modifying obligations.
- An example is Convention 151 on Labour Relations in the Public Service. In its final provisions, it sets out the procedure for registration of ratification as follows:

#### **C151 - Labour Relations (Public Service) Convention, 1978**

##### **Part VII. Final Provisions**

##### **Article 10**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

##### **Article 11**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

##### **Article 13**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

##### **Article 14**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

## When do international labor standards come into force?

- The entry into force is the moment when the International Labour Convention (or the Protocol) begins to unfold its legal effects.
- There are two moments:
  - **The entry into force of the Convention itself.** The condition for the entry into force of a Convention is generally a certain number of ratifications.
  - **The entry into force of the Convention** in respect of each State which ratifies it. Only once the Convention enters into force do the States that have ratified it become parties to it.
- Until it enters into force, a Convention cannot have effect in international law.
- All ILO Conventions contain provisions concerning their entry into force (usually in the "final provisions").
- Since 1928, it has been established as a general rule that the entry into force of Conventions takes place 12 months after the registration of the second ratification and subsequently, in respect of each ratifying State, 12 months after the registration of its ratification.
- There are different provisions in certain Conventions. For example, for the Maritime Labour Convention, 2006 (MLC, 2006) to enter into force it had to be ratified by at least 30 Member States which together had at least 33 per cent of the world's gross tonnage of ships.
- In the case of Convention 151 on labour relations in the public service, the entry into force of the Convention follows the general rule:

## C151 - Labour Relations (Public Service) Convention, 1978

### Part VII. Final Provisions

#### Article 11

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

## What obligations arise from the ratification of international labor standards?

- When ratifying an International Labour Convention (or a Protocol), the following obligations arise:
  - Obligation to communicate formal ratification to the Director-General of the ILO.
  - Obligation to take the necessary measures to give effect to the provisions of the ratified Convention (Art. 19, para. 5, d, ILO Constitution).
  - Obligation to send periodic reports to the ILO on the level of compliance with the provisions of the ratified Convention (Art. 22).

## 8.4. Procedure for the review of international labor standards<sup>35</sup>

### PROCEDURE FOR THE REVIEW OF INTERNATIONAL LABOR STANDARDS

#### What is the review of international labor standards?

- According to the Manual of Procedures (ILO, 2015), an effective (even "partial") revision of a Convention, or sometimes of several Conventions, leads in most cases to the adoption of a new Convention. The Conference may also proceed with the partial revision of a Convention by the adoption of a Protocol or of provisions in a new Convention, acceptance of which terminates the obligations resulting from the provisions of a previous Convention. Certain Conventions provide for specific procedures for the amendment of the Annexes. The updating of certain scientific or technical data has been provided for in certain Conventions by means of a technique for consulting the most recent data published in the field, without this constituting a formal revision.
- The procedure for the revision of Conventions and Recommendations is regulated by the Rules of Procedure of the International Labour Conference and includes the following procedures:
  - Procedure for recording the question at the Conference (Rule 43 of the Rules of Procedure);
  - Procedure in case of revision of a Convention (Article 44);
  - Procedure in case of revision of a recommendation (Article 45).
- The revision of one Recommendation, or sometimes several, has in almost all cases resulted in the adoption of a new Recommendation. A Recommendation that revises one or more previous Recommendations replaces the previous instrument(s).
- The list of revised Conventions and Recommendations can be found at the following link:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::>

#### When is a Convention considered to revise a previous Convention?

- A Convention is considered to be revising a previous instrument only when it states, explicitly or implicitly, in its title, preamble, or operative part, the intention to revise that instrument.
- Conventions 1 to 26 do not contain any provision concerning the consequences of the adoption or ratification of a revising Convention. The adoption by the Conference of a revising Convention does not prevent further ratifications of the previous one and does not imply its automatic denunciation.

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<sup>35</sup> This section is based on information in *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, p. 6 and pp. 43-44.



- Conventions 27 and following have a final Article which, unless the new revising Convention provides otherwise, specifies the following consequences of the ratification and entry into force of a subsequent revising Convention:
  - 1)** The ratification by a Member State of the revising Convention entails the automatic denunciation by that State of the previous Convention as from the date when the revising Convention enters into force;
  - 2)** As from the date when the new revising Convention comes into force the previous Convention is no longer open to ratification;
  - 3)** The previous convention remains in force without any change for those States which have ratified it but which have not ratified the revising convention.
- There are different provisions in certain Conventions so it is appropriate to refer to the final Articles of each Convention to see whether or not the above applies.

### What is the Cartier Working Party?

- With the aim of improving the relevance and impact of international labor standards, the ILO generally undertakes the examination of standards on a case-by-case basis through the adoption of new standards or the revision of existing instruments.
- Starting in the 1980s, consideration began to be given to the need to consolidate the ILO's standard-setting activities by applying a comprehensive and coherent approach to its standards system, which has gradually come to be known as the ILO's standard-setting policy.
- Until 2015 (when the tripartite working group of the standards review mechanism (SRM) was established, which will be discussed below), the ILO's normative corpus had been reviewed by three different working groups:
  - a)** The Working Party on International Labour Standards, established in 1977, which completed its work in 1979;
  - b)** The Working Party on International Labour Standards, established in 1984, which completed its work in 1987;
  - c)** And the Working Party on Policy regarding the Revision of International Labour Standards ("Cartier Working Party")
- The Cartier Working Party was established in 1995. Over the course of seven years it conducted a case-by-case review of instruments adopted before 1985 (with the exception of the fundamental and governance conventions) and concluded its work in March 2002.
- Following the recommendations of the Cartier Working Party, the Governing Body decided that 22 conventions and 15 recommendations should be revised, that 71 conventions and 71 recommendations should be promoted and that 60 conventions and 68 recommendations should be regarded as obsolete.
- The conclusions and decisions on the Conventions and Recommendations of the Cartier Working Party can be found at the following link:  
[https://www.ilo.org/global/standards/international-labour-standards-policy/WCMS\\_125644/lang--en/index.htm](https://www.ilo.org/global/standards/international-labour-standards-policy/WCMS_125644/lang--en/index.htm)

## What is the standards review mechanism (SRM)?<sup>36</sup>

- At its 312th session (November 2011), the Governing Body addressed the issue of the establishment of a standards review mechanism (SRM) within the overall framework of the Declaration on Social Justice for a Fair Globalization and the ILO's standard-setting policy. At the International Labour Conference, 102nd Session (Geneva, 2013), the Director-General of the ILO presented his Report "Towards the ILO centenary: realities, renewal and tripartite commitment",<sup>37</sup> where seven initiatives were proposed for the ILO's centenary. The second of these initiatives is a standards-related initiative to:
  - a) Consolidate a tripartite consensus on a recognized monitoring system; and
  - b) Increase the relevance of international labor standards through the standards review mechanism.
- The standards review mechanism (SRM) is then one of the two pillars of the standards initiative proposed by the ILO in 2013. The SRM takes into account the tripartite discussions of the Governing Body on standards policy and, in particular, on the development of international labor standards and consideration of review mechanisms to keep the ILO's body of standards up to date.
- The tripartite consultations agreed that the ILO's standard-setting policy consisted of the following key elements:
  - Determining the best means of keeping the body of rules up to date;
  - The determination of standards that require revision or other measures;
  - The determination of updated standards, and their promotion;
  - Identifying new topics and approaches for standard-setting activities; and
  - The preparation and adoption of standards.

## What is the Tripartite Working Group on the Standards Review Mechanism?<sup>38</sup>

- The tripartite discussions in the Governing Body highlighted the need for a mechanism to complement the analysis and conclusions of recurrent discussions on standards issues as a means of reviewing the status of ILO standards and identifying new issues that could be the subject of standard-setting action. It was concluded that it is necessary, for each strategic objective, to have an overview of the standards to be promoted, revised, consolidated, or supplemented and of the possible need to adopt standards on new subjects.

36. Official ILO documents have been taken as a source, including *Background information note - Tripartite consultations on the terms of reference of the Standards Review Mechanism tripartite working group* (Oct. 2015): [https://www.ilo.org/global/standards/international-labour-standards-policy/WCMS\\_450473/lang--en/index.htm](https://www.ilo.org/global/standards/international-labour-standards-policy/WCMS_450473/lang--en/index.htm)

37. [https://www.ilo.org/ilc/ILCSessions/previous-sessions/102/reports/reports-submitted/WCMS\\_213836/lang-en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/102/reports/reports-submitted/WCMS_213836/lang-en/index.htm)

38. This section is based on information in *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, p. 6 and pp. 43-44.

- During these discussions, it was agreed that the Declaration on Social Justice should be the general framework for the standards-setting policy and the SRM, and that there was a need to identify a set of general principles to guide standards-setting policy discussions, including the SRM.
- In March 2015, the Governing Body completed these discussions by establishing a "Tripartite SRM Working Group" within the framework of the SRM.
- The Tripartite SRM Working Group is a specialized body appointed by the Governing Body, with a mandate to examine international labor standards to ensure that the body of standards is both strong and responsive to the constantly evolving world of work.

### **What is the composition of the tripartite working group of the SRM?**

#### **Its composition is as follows:**

- One Chairperson and 32 members: 16 government representatives, 8 employer representatives and 8 worker representatives.
- These members do not have to be members of the Governing Body.
- The Chairperson is appointed by the Governing Body on the proposal of the Government Group.
- The Employers' and Workers' groups each designate a Vice-Chairperson from among their representatives on the tripartite working party.
- The members of the Tripartite Working Party of the SRM are appointed by their respective groups.
- The Chairperson and the members of the Tripartite Working Group of the SRM are appointed for a period coinciding with the duration of the mandate of the Governing Body.
- The members of this group may be replaced by alternates at any of their meetings and the respective groups (Government, Employers' and Workers') shall inform the Office accordingly.

### **What are the functions of the SRM Tripartite Working Group?**

- Under its terms of reference, the Tripartite Working Group of the SRM is responsible for reviewing the standards with a view to making recommendations to the Governing Body on:
  - a)** The status of the standards reviewed, including updated standards, standards in need of revision, standards that have been superseded, and other possible classifications;
  - b)** The identification of gaps in coverage, including those requiring the adoption of new standards;
  - c)** Practical follow-up actions with defined deadlines, where appropriate.

### What is the working method of the tripartite SRM Working Group?

- The decisions of this Group are taken by consensus and its consensus recommendations are submitted to the Governing Body for decision and follow-up action.
- At its first meeting (held in February 2016 at ILO headquarters in Geneva), the SRM Tripartite Working Group produced a report setting out the division of international labor standards into 20 thematic clusters, grouped by strategic objectives of decent work (strategic objectives: employment, social protection, social dialogue and tripartism, fundamental principles and rights at work; and cross-cutting and sectoral objectives).
- The reports of the SRM Tripartite Working Group are available at the following link:  
<https://www.ilo.org/global/standards/international-labour-standards-policy/lang--en/index.htm>

## 8.5. Procedure for the repeal or withdrawal of international labor standards<sup>39</sup>

### PROCEDURE FOR THE REPEAL OR WITHDRAWAL OF INTERNATIONAL LABOR STANDARDS

#### What is the repeal and withdrawal of international labor standards?

- The repeal or withdrawal of an international labor standard removes that standard from the international legal order when it is considered "obsolete".
- A Convention or Recommendation is considered to be obsolete "if it is considered that it has lost its purpose or that it no longer makes a useful contribution to the achievement of the objectives of the Organization" (Article 19, paragraph 9, of the Constitution).
- The procedure for repeal applies to Conventions in force.
- The withdrawal procedure applies to Conventions not in force or to Recommendations.
- The same procedural guarantees apply to derogation and withdrawal, which have the same legal effect as a deletion of the standard concerned from the body of international labor standards.

<sup>39</sup>. This section is based on information in *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, 2019, p. 6-7.

- The International Labour Conference adopted at its 85th Session (June 1997) amendments to the Constitution of the Organization by including paragraph 9 in Article 19 and to the Rules of Procedure of the Conference (new rule 11 and new rule 45bis of the Rules).

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### **ILO Constitution**

#### ***Procedure for the Repeal of Obsolete Conventions***

**Article 19.9:** “Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this Article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation.”

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#### **Which international labor standards have been repealed?**

- Updated information on the international labor standards that have been repealed can be found at this link:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::>

- The following is a list of international labor standards that have been repealed:
  - **R001** – Unemployment Recommendation, 1919 (No. 1))
  - **C004** – Night Work (Women) Convention, 1919 (No. 4)
  - **C015** – Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
  - **C021** – Inspection of Emigrants Convention, 1926 (No. 21)
  - **C028** – Protection against Accidents (Dockers) Convention, 1929 (No. 28)
  - **C031** – Hours of Work (Coal Mines) Convention, 1931 (No. 31)
  - **C041** – Night Work (Women) Convention (Revised), 1934 (No. 41)
  - **C046** – Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)
  - **C050** – Recruiting of Indigenous Workers Convention, 1936 (No. 50))
  - **C051** – Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)
  - **R054** – Inspection (Building) Recommendation, 1937 (No. 54)
  - **R056** – Vocational Education (Building) Recommendation, 1937 (No. 56)
  - **C060** – Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
  - **C061** – Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)
  - **R063** – Control Books (Road Transport) Recommendation, 1939 (No. 63)
  - **R064** – Night Work (Road Transport) Recommendation, 1939 (No. 64)
  - **R065** – Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65)
  - **R066** – Rest Periods (Private Chauffeurs) Recommendation, 1939 (No. 66)
  - **C067** – Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)

- **R070** – Social Policy in Dependent Territories Recommendation, 1944 (No. 70)
- **R072** – Employment Service Recommendation, 1944 (No. 72)
- **R073** – Public Works (National Planning) Recommendation, 1944 (No. 73)
- **R074** – Social Policy in Dependent Territories (Supplementary Provisions) Recommendation, 1945 (No. 74)
- **R096** – Minimum Age (Coal Mines) Recommendation, 1953 (No. 96)

### Which international labor standards have been withdrawn?

- Updated information on the international labor standards that have been withdrawn can be found at this link:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::>

- The following is the list of international labor standards that have been withdrawn:
  - **R002** – Reciprocity of Treatment Recommendation, 1919 (No. 2)
  - **R007** – Hours of Work (Fishing) Recommendation, 1920 (No. 7)
  - **R011** – Unemployment (Agriculture) Recommendation, 1921 (No. 11)
  - **R012** – Maternity Protection (Agriculture) Recommendation, 1921 (No. 12)
  - **R015** – Vocational Education (Agriculture) Recommendation, 1921 (No. 15)
  - **R016** – Living-in Conditions (Agriculture) Recommendation, 1921 (No. 16)
  - **R018** – Weekly Rest (Commerce) Recommendation, 1921 (No. 18)
  - **R021** – Utilisation of Spare Time Recommendation, 1924 (No. 21)
  - **R026** – Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26)
  - **R032** – Power-driven Machinery Recommendation, 1929 (No. 32)
  - **R033** – Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33)
  - **R037** – Hours of Work (Hotels, etc.) Recommendation, 1930 (No. 37)
  - **R038** – Hours of Work (Theatres, etc.) Recommendation, 1930 (No. 38)
  - **R039** – Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39)
  - **R042** – Employment Agencies Recommendation, 1933 (No. 42)
  - **R043** – Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43)
  - **R045** – Unemployment (Young Persons) Recommendation, 1935 (No. 45)
  - **R046** – Elimination of Recruiting Recommendation, 1936 (No. 46)
  - **R050** – Public Works (International Co-operation) Recommendation, 1937 (No. 50)
  - **R051** – Public Works (National Planning) Recommendation, 1937 (No. 51)

- **R058** – Contracts of Employment (Indigenous Workers) Recommendation, 1939 (No. 58)
- **R059** – Labour Inspectorates (Indigenous Workers) Recommendation, 1939 (No. 59)
- **R061** – Migration for Employment Recommendation, 1939 (No. 61)
- **R062** – Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62)
- **C064** – Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)
- **C065** – Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)
- **C066** – Migration for Employment Convention, 1939 (No. 66)
- **C086** – Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)
- **C104** – Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)

## UNIT 5.

# UNION ACTION IN THE ILO SUPERVISORY SYSTEM

### 9. What is the ILO supervisory system?

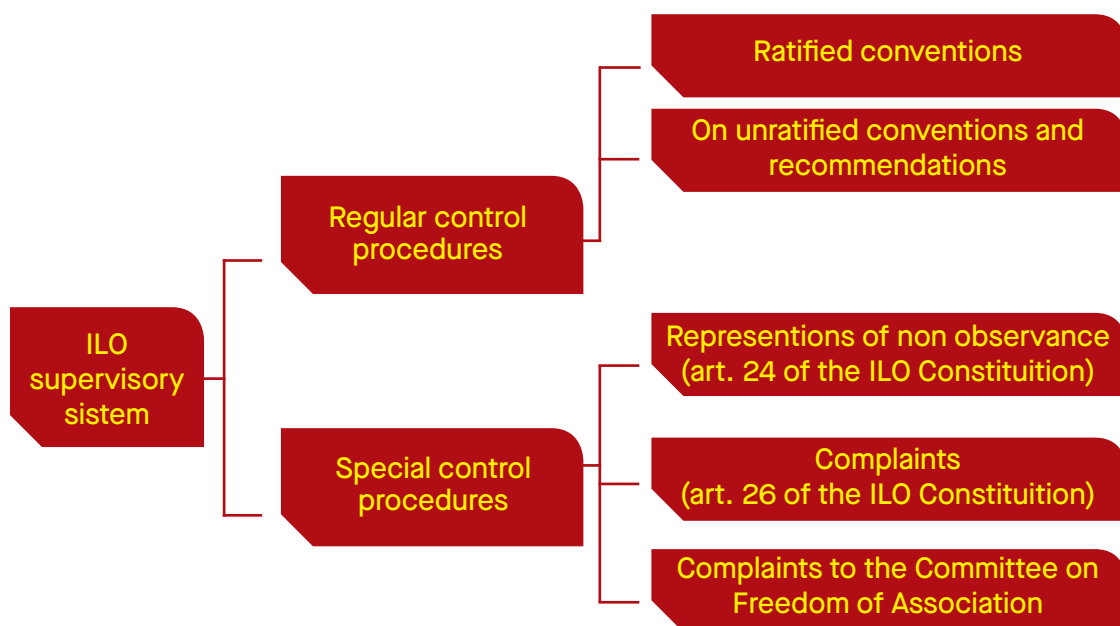
The ILO supervisory system is one of the international systems for the protection of human rights (together with the universal system of the United Nations and the Inter-American, European, and African regional systems) that can be used by trade unions to defend and promote the rights of workers.

It comprises a set of monitoring bodies, mechanisms, and procedures, both independent and technical and tripartite, as well as regular and special. The system coordinates bodies with a high level of technical-legal expertise, impartiality, and international composition (Committee of Experts on

the Application of Conventions and Recommendations; Commissions of Inquiry) with high-level tripartite bodies vested with representativeness and institutional and political legitimacy (Committee on Freedom of Association, Committee on the Application of Standards, *ad hoc* tripartite committees). Therefore, the interpretation of the legal scope of the ILO's international instruments by its supervisory bodies has legal, institutional, and political support at the highest level and, in accordance with the ILO Constitution, is effective and valid for all ILO Member States.

As shown in the following diagram, the ILO's control system comprises regular control procedures and special control procedures.





An important element to emphasize is that the ILO's supervisory bodies, as well as the various procedures of the supervisory system, are closely related, complementary, and mutually reinforcing.<sup>40</sup> The complementary relationship between the technical monitoring by the Committee of Experts on the Application of Conventions and Recommendations and the subsequent tripartite monitoring by the Committee on the Application of Standards makes it possible to maintain

a balance in the examination of cases. The Committee of Experts also follows up the recommendations issued by both the Conference Committee on the Application of Standards and the bodies of the special monitoring procedures, the Committee on Freedom of Association, the tripartite committees set up to consider representations of non-observance and the commissions of inquiry set up to consider complaints (Article 26 of the Constitution).

## 10. How do supervisory system monitoring procedures work and how can unions leverage them?

The regular supervisory procedure consists of the examination by certain ILO supervisory bodies of the level of application of compliance with international labor standards on the basis of periodic reports that States are obliged to send to the ILO.

The two regular supervisory bodies are the Committee of Experts on the Application of Conventions

and Recommendations and the Committee on the Application of Standards of the International Labour Conference. Both supervisory bodies were established at the 1926 International Labour Conference in order to respond to the increase in the volume of reports submitted by Member States and the complexity of their technical content.

The regular supervisory procedure

<sup>40</sup> ILO. Monitoring compliance with international labour standards: *The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations*. Geneva: ILO, 2019.: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_730866.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_730866.pdf)

involves a combination of, on the one hand, a technical, impartial and independent review by the Committee of Experts on the Application of Conventions and Recommendations and, on the other hand, a tripartite political review by the ILO Conference Committee on the Application of

Standards. This combination of technical and political review is one of the fundamental particularities of the ILO supervisory system and makes it one of the most elaborate systems of human rights protection at the international level.

The following is information on the regular supervisory bodies of the ILO.

## ILO REGULAR SUPERVISORY BODIES

### Committee of Experts on the Application of Conventions and Recommendations

- **Composition:** The Committee of Experts is composed of 20 members appointed by the Governing Body on the proposal of the Director-General for renewable periods of three years. Appointments are made in a personal capacity among completely impartial persons of technical competence and independent standing. They are drawn from all parts of the world, in order that the Committee may enjoy first-hand experience of different legal, economic, and social systems.
- **Principles of operation:** The Committee's fundamental principles are those of independence, impartiality, and objectivity in noting the extent to which the position in each State appears to conform to the terms of the Conventions and the obligations accepted under the ILO Constitution.
- **Functions:** The Committee is called on to examine:
  - I) The annual reports under Article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information provided by Members concerning the results of inspections;
  - II) The information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;
  - III) Information and reports on the measures taken by Members in accordance with Article 35 of the Constitution (application of Conventions to non-metropolitan territories).

### Committee on the Application of Standards of the International Labour Conference

- **Composition:** The Committee is set up under Article 7 of the Standing Orders of the Conference. It is tripartite, consisting of representatives of governments, employers, and workers. The Committee elects a Chairperson and two Vice-Chairpersons, chosen from each of the Groups, as well as a rapporteur.

- **Functions:** The Committee has to consider:
  - I) The measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
  - II) The information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;
  - III) The measures taken by Members in accordance with Article 35 of the Constitution (application of Conventions to non-metropolitan territories).

**Source:** Handbook of procedures relating to international labour Conventions and Recommendations. ILO. 2019.

The control system has two regular control procedures:	control of non-ratified Conventions and Recommendations.
<div><div></div>The procedure for regular control of ratified Conventions; and</div>	Information on how regular monitoring procedures work and on how trade unions can use these procedures is provided below.
<div><div></div>The procedure for the regular</div>	

### 10.1. Regular supervisory process for ratified Conventions<sup>41</sup>

#### REGULAR SUPERVISORY PROCESS FOR RATIFIED CONVENTIONS

##### What is the procedure for the regular control of ratified Conventions?

- The procedure for the regular control of ratified Conventions is regulated by Article 22 of the ILO Constitution.

**ILO Constitution**

**Article 22:** “Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.”

- The obligation under Article 22 of the ILO Constitution is distinct from other obligations under different Conventions, which require the regular provision of information (e.g. statistics or labor inspection reports) to the International Labour Office. The obligations under specific Conventions are independent and are not affected by changes to the reporting system under Article 22.

<sup>41</sup> ILO. *Handbook of procedures relating to international labour Conventions and Recommendations*. 2019, pp. 22-30; ILO. *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*. Centenary edition. 2019, pp. 106-107.

## What are regular reports?

- Regular reports are the information which ILO Member States are required to submit to the ILO in fulfilment of the obligation under Article 22 of the Constitution, in accordance with the matters set out in forms drawn up by the International Labour Office on behalf of the ILO Governing Body.
- There are two types of reports: detailed reports and simplified reports.
- **Detailed reports.** A detailed report should be submitted in the form approved by the Governing Body for each Convention in the following circumstances:
  - In the case of the first report requested in the year following the entry into force of a convention for a given country;
  - On the own initiative of Member States if there have been significant changes in the application of a ratified Convention (e.g. the adoption of substantial new legislation or other changes affecting the application of the Convention); and
  - At the express request of the monitoring bodies, in particular the Committee of Experts on the Application of Conventions and Recommendations (by means of a footnote in the context of a direct observation or request) or the Conference Committee on the Application of Standards (when adopting its conclusions).
- The detailed report form reproduces the substantive provisions of the Convention and indicates the data to be provided on the Convention.
- There are specific questions on some of the substantive provisions, in order to facilitate the collection of information that will enable the monitoring bodies to assess how the Convention is being implemented.
- For each Convention there should be a detailed report in the form approved by the Governing Body. Detailed report forms can be found at this link:  
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO:::>
- **Simplified reports.** Except in cases where a detailed report is requested, simplified reports can be sent using the report form adopted for this purpose by the Governing Body.
  - In November 2018, the Governing Body adopted a new reporting form for simplified reports.
  - The format of the simplified reporting form is contained in Annex II to document GB.334/INS/5 at:  
[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_649972.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_649972.pdf)

## What is the regular reporting cycle?

- In the framework of the regular control procedure of ratified Conventions, the regular reporting cycle depends on the type of Convention. As recalled, there are three categories of Conventions: Fundamental Conventions, Governance Conventions, and Technical Conventions.

- The reports are requested every three years for the Conventions that are considered as Fundamental and Governance Conventions:

#### **Fundamental Conventions:**

- C029** – Forced Labour Convention, 1930 (No. 29)
- P029** – Protocol of 2014 to the Forced Labour Convention, 1930
- C087** – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- C098** – Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- C100** – Equal Remuneration Convention, 1951 (No. 100)
- C105** – Abolition of Forced Labour Convention, 1957 (No. 105)
- C111** – Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- C138** – Minimum Age Convention, 1973 (No. 138)
- C182** – Worst Forms of Child Labour Convention, 1999 (No. 182)

#### **Governance Conventions:**

- C081** – Labour Inspection Convention, 1947 (No. 81)
- P081** – Protocol of 1995 to the Labour Inspection Convention, 1947
- C122** – Employment Policy Convention, 1964 (No. 122)
- C129** – Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- C144** – Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

- Simplified reports are requested every six years for the other agreements, considered as Technical Agreements, in accordance with the grouping of agreements by subject:
  - **Freedom of association (agriculture, non-metropolitan territories):** Conventions 11, 84, and 141.
  - **Professional relations:** Conventions 135, 151, and 154.
  - **Protection of minors and adolescents:** Conventions 5, 6, 10, 33, 59, 77, 78, 79, 90, 123, and 124.
  - **Promotion of employment:** Conventions 2, 88, 96, 159 and 181.
  - **Vocational guidance and training (professional skills):** Conventions 140 and 142.
  - **Employment Security:** Convention 158.
  - **Social policy:** Conventions 82, 94, and 117.
  - **Wages:** Conventions 26, 95, 99, 131, and 173.
  - **Working time:** Conventions 1, 14, 30, 47, 52, 89, 101, 106, 132, 153, 171, and 175.
  - **Workers with Family Responsibilities:** Convention 156.
  - **Migrant workers:** Conventions 97 and 143.
  - **Occupational Safety and Health:** Conventions 13, 45, 62, 115, 119, 120, 127, 136, 139, 148, 155, 161, 162, 167, 170, 174, 176, 184, and 187.

- **Social security:** Conventions 12, 17, 18, 19, 24, 25, 42, 102, 118, 121, 128, 130, 157, and 168.
- **Maternity protection:** Conventions 3, 103, and 183.
- **Labour administration:** Conventions 63, 85, 150, and 160.
- **Seafarers:** Conventions 7, 8, 9, 16, 22, 23, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 134, 145, 146, 147, 163, 164, 165, 166, 178, 179, 180, 185 and MLC, 2006.
- **Fishermen:** Conventions 112, 113, 114, 125, 126, and 188.
- **Dock workers:** Conventions 27, 32, 137, and 152.
- **Indigenous and Tribal Peoples:** Conventions 107 and 169.
- **Other special categories of workers:** Conventions 110, 149, 172, 177, and 189.

### Is it possible to send reports outside the regular cycle?

- Yes, it is appropriate to send reports on the implementation of a ratified convention outside the regular reporting cycle when:
  - The Committee of Experts (by means of a footnote in the framework of a direct observation or request) or the Conference Committee on the Application of Standards (when adopting its conclusions) requests it;
  - The Governing Body requests it, within the framework of representations of non-observance of Conventions (Article 24 of the Constitution) or of complaints of non-observance of Conventions (Article 26 of the Constitution), or before the Committee on Freedom of Association;
  - No report is sent or no response is given to the comments made by the supervisory bodies. The Committee of Experts and the Conference Committee on the Application of Standards are responsible for verifying compliance with reporting obligations. Even if no reports or information are submitted, the supervisory bodies can proceed with the review of the implementation of ratified conventions;
  - In the first report after the year of entry into force of a Convention and when;
  - There are serious allegations of serious acts of noncompliance with a particular convention or in the context of major legislative changes or proposals that would have a fundamental impact on the implementation of the convention (where their early consideration could be useful to the Government at the legislative drafting stage).

### Which conventions are no longer subject to reporting?

- The following categories of Conventions are not subject to reporting under Article 22 of the ILO Constitution:
  - Repealed Conventions (Conventions 4, 15, 21, 41, 50, 64, 65, 67, 86, and 104)
  - Withdrawn Conventions (Conventions 31, 46, 51, 61, and 66)

- Conventions that have not entered into force (Conventions 54, 57, 70, 72, 75, 76, 93, and 109)
- Conventions on the Final Articles (Conventions 80 and 116)
- In addition, subject to the conditions and guarantees established by the Governing Body, reports on certain agreements are not requested, in particular with regard to agreements that have been set aside. The Conventions currently considered in this category are 20, 28, 34, 35, 36, 37, 38, 39, 40, 43, 44, 48, 49, 60, and 91. The fact that some Conventions have been set aside has no impact on the effects of these Conventions on the legal systems of the Member States that have ratified them.

### How are countries divided in the regular reporting cycle?

- For the regular reporting cycle, ILO Member States have been divided into 3 groups, according to the English alphabetical order:
  - **First group:** The first group comprises States whose names begin with letters between A and F.
  - **Second group:** The second group comprises the names of States between the letters G and N.
  - **Third group:** The last group comprises the names between O and Z.

### How are the agreement groups distributed in the regular three-year cycle?

- Knowing the programming of the regular cycle is important insofar as it allows the trade union to plan its work prior to participating in this procedure, as well as knowing beforehand what the priorities and opportunities will be for each year.
- The distribution of the groups of conventions for the purposes of reporting in the three-year cycle (for the Fundamental and Governance Conventions) and in the six-year cycle (for the Technical Conventions) is contained in Annex II of the Manual on procedures in the field of international labor conventions and recommendations (ILO, 2019), available at the following link:  
[https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_697949/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_697949/lang--en/index.htm)

### What is the procedure of the Office for requesting the reports?

- At the beginning of the year (usually February or March), the Office sends a communication to all governments requesting their reports on the implementation of ratified conventions for the year in question, clearly indicating whether detailed or simplified reports are to be sent. Copies of requests for reports are also sent to national employers' and workers' organizations.



- Detailed reports should be submitted using the report form corresponding to the convention in question. The report forms for each convention can be found at this link:  
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO::>
- In November 2018, the Governing Body adopted a new form for simplified reports. The simplified report form can be found here:  
[https://www.ilo.org/global/standards/WCMS\\_665186/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_665186/lang--en/index.htm)
- In accordance with a decision of the Governing Body, the reports are requested by 1st June or, at the latest, 1st September each year.
- Governments can transmit all their reports simultaneously or in stages.
- The reports must cover the relevant period up to the date of transmission.
- Appropriate reminders are sent to Governments which have not transmitted their reports by that time.
- ILO field offices and standards specialists in the field may also be requested to assist by contacting Governments.
- With a view to consolidating the deadline for the receipt of reports under Article 22, the Committee of Experts decided to make a clearer distinction between reports under Article 22 which are received after the deadline of 1 September and whose consideration could be postponed because of their late arrival, and reports which have been received within the deadline but whose consideration could be postponed for various other reasons (for example, the need to translate them into the working languages of the ILO).
- Government reports should be sent to: [NORM\\_REPORT@ilo.org](mailto:NORM_REPORT@ilo.org)
- Upon receipt of the reports from Governments, the Office checks whether the reports are accompanied by copies of the legislative texts and other necessary information and, if this is not the case and it is not possible to have them otherwise, it requests Governments to send such documentation. The same applies if the names of the employers' and workers' organizations to which copies of the reports have been communicated, pursuant to Article 23, paragraph 2, of the Constitution, have not been indicated.
- The Committee of Experts examines the substantive content of the report.

### **Are States obliged to communicate the reports to workers' organizations?**

- Under Article 23.2 of the ILO Constitution, copies of all reports on the application of ratified Conventions must be communicated to representative organizations of employers and workers. This can be done either before the report is completed, by requesting comments that can still be taken into account, or when it is sent to the ILO. In any case, when sending their reports to the ILO, governments should indicate the organizations to which they have been transmitted. These organizations may comment on the application of ratified conventions.



- When a government receives observations from employers' and workers' organizations on the application of a ratified convention, the government's report should give full details of the case – normally including a copy of the observations – together with any response from the government.

### Are States obliged to conduct tripartite consultations?

- States that have ratified Convention 144 on Tripartite Consultation (International Labour Standards) are required to establish consultations on matters that may arise from reports to be communicated to the International Labour Office under Article 22 of the ILO Constitution (Article 5.1.d).
- The status of ratifications of Convention 144 can be found at this link: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312289](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11300:0::NO::P11300_INSTRUMENT_ID:312289)
- Recommendation 152 on Tripartite Consultation (ILO Activities), complementary to Convention 144, provides for consultation with representative organizations of employers and workers on matters arising from reports on ratified Conventions (paragraph 5.e).

### Can trade unions send comments on the reports directly to the ILO?

- Yes. Workers' organizations, as well as employers' organizations, may send their comments and observations directly to the Office for submission to the Committee of Experts.
- The Office will acknowledge receipt and at the same time send a copy to the relevant government so that it can respond.
- The General Report of the Committee of Experts contains detailed information on the action taken on the observations of employers' and workers' organizations received directly by the Office.
- The deadline for the submission of comments by workers' organizations is 1st September.
- The list of comments from workers' organizations is contained in one of the annexes to the Annual Report of the Committee of Experts. For example, see Annex III of the 2020 Annual Report (pages 720-730), which can be found at the following link: [https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS\\_736204/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS_736204/lang--en/index.htm)
- Trade unions wishing to send their comments directly to the Office may use the following address: [ORGS-CEACR@ilo.org](mailto:ORGS-CEACR@ilo.org)

### How do you know which reports are to be submitted by the State each year?

- The information on the regular reports that each State is required to submit each year can be found in the NORMLEX database. The link is as follows:  
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>
- Once you have entered the NORMLEX website there is a menu on the left with the option "regular reporting". Once you have entered this option, you will see the list of ILO member states. The direct link is as follows:  
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11002:0::NO::>
- When you enter a country on the list, you will see information on the reports requested for each year, the conventions, the date of ratification, the type of report (regular or out-of-cycle), comments to be answered, and the report forms for each convention.

### What happens if governments fail to comply with reporting obligations?

- Both the Committee of Experts and the Committee on the Application of Standards monitor the compliance of Member States with their reporting obligations and review cases of noncompliance. In particular, on the basis of the Report of the Committee of Experts, the Committee on the Application of Standards considers:
  - Failure to submit reports on the implementation of ratified conventions for two years or more;
  - Failure to submit the first report on the implementation of ratified conventions;
  - Failure to send information in response to the comments of the Committee of Experts;
  - Failure to submit to the competent authorities the instruments adopted by the Conference in the course of at least seven sessions;
  - Failure to send reports on unratified conventions and recommendations over the previous five years.
- At its 88th (2017) and 89th (2018) sessions, the Committee of Experts examined the measures in place to address serious reporting failures in order to strengthen the control of ratified Conventions. The Committee decided to adopt a new practice of issuing "urgent appeals" when no reports have been submitted for several years. In all cases where no reports have been submitted under Article 22 for three consecutive years, the Committee of Experts will send urgent appeals to the Governments concerned. The repetition of comments previously made will therefore be limited to a maximum of three years; after this period, and on the basis of publicly available information, the Committee will proceed to examine the substance of the question of the application of the convention concerned, even if the government has not sent in a report, which will make it possible to carry out a review of the application of ratified conventions at least once within the regular reporting cycle. The attention of the Committee on the

Application of Standards will focus on cases of serious non-observance of the reporting obligation and on the urgent appeal sent, when it examines the fulfilment of this obligation in June.

### How does the Committee of Experts on the Application of Conventions and Recommendations work?

- It meets on the dates set by the Governing Body (one meeting each year at the end of November/beginning of December).
- It meets behind closed doors. Its deliberations and documents are confidential.
- The Committee assigns to each of its members initial responsibility for a group of agreements or topics. Its preliminary conclusions are then submitted to the full Committee in the form of draft observations or direct requests.
- The Committee may set up working groups to deal with general or particularly complex issues, such as general studies. These groups include specialists from different legal, economic and social systems. The conclusions of these groups are submitted to the full Committee.
- The documentation available to the Committee is as follows:
  - Information supplied by governments in their reports or to the Conference Committee on the Application of Standards;
  - Legislative texts, collective agreements, and court decisions;
  - Information provided by States on the outcome of inspections;
  - Comments made by employers' and workers' organizations;
  - Reports from other ILO bodies (e.g. commissions of inquiry or the Committee on Freedom of Association); and
  - Reports on technical assistance activities.
- The Committee's comments are traditionally adopted by consensus.
- The Director-General of the ILO provides the Committee with the staff needed to carry out its work.

### What is the content of the Annual Report of the Committee of Experts on the Application of Conventions and Recommendations?

- The results of the work of the Committee of Experts are reflected in a report that is published every year in February or March. The report is first submitted to the Governing Body for information (at its March meeting) and then to the International Labour Conference. The final results of the work of the Committee of Experts described in the report take the form of:
  - **A general report:** which reviews the work of the Committee and highlights points of general interest or special problems to be taken into consideration by the Governing Body, the Conference, or the Member States;
  - **Individual comments:** these are generally used in the most serious or persistent cases of noncompliance with obligations and deal with:
    - 1) The application of ratified Conventions within the Member States themselves;

II) compliance with reporting obligations; and

III) the submission of conventions and recommendations to the competent national authorities;

- **Direct requests:** other individual comments sent to governments by the Committee and not included in the Report to the Conference. Direct requests are used by the Committee when: (a) the questions raised are mainly of a technical nature; (b) to clarify certain points, when the information available does not permit a full assessment of the extent to which the obligations are being fulfilled; (c) to examine the first reports submitted by governments on the implementation of the conventions;
- **Responses to issues raised in a direct request that do not give rise to additional comments:** when a government responds to a direct request and no further comments are required;
- **General Survey:** providing an overview of national law and practice in respect of the instruments on which reports have been submitted under Article 19 of the Constitution (reports on unratified conventions and recommendations). It also covers information received under Article 22 from States that have ratified the conventions in question. In addition to reviewing national legislation and practice in each State, the General Survey enables the Committee to examine the difficulties which Governments claim to have encountered in the implementation of the instruments, to specify their scope, and to indicate possible ways of overcoming them.
- **Volumes of the Committee Report:** The general report, individual observations and direct requests are published in a single volume, Report III (Part A). The General Survey is published in a second volume, Report III (Part B).
  - Link to List of Reports III (Part A) (from 1944):  
<https://www.ilo.org/public/libdoc/ilo/P/09661/>
  - Link to the list of General Surveys (Report III (Part B)) (since 1985):  
[https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_164145/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm)

### How does the Committee on the Application of Standards work?

- Following the independent and technical examination of the documentation by the Committee of Experts, the meetings of the Committee on the Application of Standards provide an opportunity for government, employer, and worker representatives to examine in a tripartite manner how States are discharging their obligations under or relating to Conventions and Recommendations.
- The method of work of the Committee on the Application of Standards is as follows:
  - Documents submitted to the Committee. The Committee considers Report III (Parts A and B), which is the report of the Committee of

Experts on the Application of Conventions and Recommendations. It may also receive written information from Governments on the list of cases selected for consideration ("short list"). It also takes into account information received from the Office following the meeting of the Committee of Experts.

- General discussion. The Committee begins its work with a general discussion of the matters dealt with in the General Report of the Committee of Experts, and then proceeds to examine the General Survey published in Report III (Part B).

- Consideration of individual cases ("short list"):

I) The Bureau of the Committee draws up a list of the observations contained in the report of the Committee of Experts on which it considers it appropriate to invite Governments to provide information to the Committee. (Since 2006, a preliminary list of individual cases concerning the application of ratified Conventions that can be discussed in the Committee, also referred to by trade unions as the "long list", has been sent to governments in advance. Since 2015, the preliminary list of cases has been made available thirty days before the opening of the session of the International Labour Conference);

II) The governments concerned have the opportunity to submit written information;

III) The Committee invites the representatives of the Governments concerned to attend one of its meetings to discuss the relevant comments. Governments that are not members of the Committee are informed of its agenda and of the date on which the Committee wishes to hear statements by their representatives through the Daily Bulletin of the Conference.

IV) After hearing the statements of the representatives of Governments, members of the Committee may ask questions or make comments, and the Committee may draw conclusions on the case.

- Cases of serious noncompliance with the obligation to send reports or other obligations related to the rules. The Committee also examines cases of serious noncompliance with reporting or other standards-related obligations. The Committee's discussion, including explanations of the difficulties raised by the Governments concerned, and the conclusions adopted by the Committee for each criterion are set out in the Committee's report.

### **What is the content of the Report and conclusions of the Committee on the Application of Standards?**

- The report of the Committee on the Application of Standards describes the work of the committee and the speeches and conclusions of the general discussion and examination of specific cases.
- In the conclusions of the examination of specific cases ("short list"), taking into account the tripartite discussion around each case, the Committee

on the Application of Standards urges the government concerned to take measures to overcome the difficulties analyzed and discussed in a tripartite manner.

- For example, in the conclusions of the examination of the El Salvador case and Convention 144 on the tripartite consultation, the 2019 Conference Committee on the Application of Standards urged the Salvadoran government to:
  - Refrain from interfering in the constitution of workers' and employers' organizations and facilitate, in accordance with national law, the proper representation of legitimate employers' organizations by issuing appropriate credentials;
  - Draw up, in consultation with the most representative organizations of employers and workers, clear, objective, predictable, and legally binding rules for the reactivation and full operation of the Higher Labour Council (HLC);
  - Reactivate, without delay, the HLC and other tripartite bodies, respecting the autonomy of the most representative organizations of workers and employers and through social dialogue, in order to ensure their full functioning without any interference;
  - Continue to draw on ILO technical assistance without delay;
  - Prepare, in consultation with the most representative organizations of employers and workers, and submit a detailed report on the application of the Convention in law and practice to the Committee of Experts before its next session; and
  - Accept a direct contact mission from the ILO before the 109th Session of the International Labour Conference.

The 2019 report of the Committee on the Application of Standards can be found here:

[https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS\\_711295/lang--es/index.htm](https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS_711295/lang--es/index.htm)

- The Committee's report is presented to the Conference and discussed in plenary, thus giving delegates the opportunity to highlight certain aspects of the Committee's work. The report is published separately in the Proceedings of the Conference.
- The list of Reports of the Committee on the Application of Standards can be found at this link:

[https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_190528/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_190528/lang--en/index.htm)

## 10.2. Regular supervisory process for unratified Conventions and Recommendations<sup>42</sup>

### PROCEDURE FOR THE REGULAR CONTROL OF UNRATIFIED CONVENTIONS

#### What is the procedure for the regular control of unratified Conventions and Recommendations?

- The procedure for the control of unratified Conventions and Recommendations is an obligation of ILO Member States under the Constitution.
- Under Article 19.5.e of the Constitution, in the case of a Convention which has not been ratified by a Member State, the latter has an obligation to “inform the Director-General of the International Labour Office, at such intervals as may be fixed by the Governing Body, of the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention, whether by legislation, administrative action, collective agreement or otherwise, and stating the difficulties which prevent or delay the ratification of the Convention.”
- Under Article 19.5(d) of the Constitution, in the case of a Recommendation, each Member State is required “to inform the Director-General of the International Labour Office, at intervals to be fixed by the Governing Body, of the position of its law and practice in regard to the matters dealt with in the Recommendation and of the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and of such modifications to these provisions as are considered or may be considered necessary for their adoption or implementation.”
- In the case of federal states, this procedure is regulated by Article 19(7)(b) (iv) and (v) of the Constitution.

#### What are General Surveys?

- The reports submitted by Member States under Article 19 serve as a basis for the General Surveys prepared each year by the Committee of Experts on the Application of Conventions and Recommendations and subsequently examined by the Committee on the Application of Standards.
- The General Surveys enable the Committee of Experts to:<sup>43</sup>
  - Carry out a detailed study of the content of the standards analyzed;
  - Take stock of their implementation in the various member countries;

<sup>42</sup>. Source: *Handbook of procedures relating to international labour Conventions and Recommendations* (ILO, 2019), pp. 31-33. Rules of the Game: An introduction to the standards-related work of the International Labour Organization. Centenary edition. 2019, pp. 106-109.

<sup>43</sup>. BEAUDONNET, Xavier. *Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho*. Turin: Centro de Formación Internacional de la OIT, Edición 2010, pp. 76-77. [https://www.ilo.org/public/libdoc/ilo/2009/109B09\\_177\\_span.pdf](https://www.ilo.org/public/libdoc/ilo/2009/109B09_177_span.pdf)



- Highlight the difficulties that have arisen in their implementation;
- Review the solutions that have been found to solve them;
- Analyze the various measures taken by Member States with regard to the content of the standards analyzed. This enables the Committee to decide on the conformity of certain national laws and practices with the conventions analyzed and to suggest more appropriate implementation mechanisms; and
- Express observations on certain practices or situations of recent appearance that could not be considered at the time of the elaboration of the convention, but might be incorporated in its scope of application to be incorporated in its scope of application. In this way, the General Surveys encourage a dynamic reading and application of international labor conventions.

General Surveys are an essential tool for the understanding and interpretation of the content of International Labour Conventions and Recommendations:

- In each General Survey, the Committee of Experts dwells on the various Articles of the instruments analyzed to clarify their meaning and scope.
- When the General Survey deals with convention(s) ratified in a given country, a reading of these clarifications can be very useful in determining whether jurisprudence applies domestic law in a manner consistent with a State's international obligations.
- Even when a General Survey deals with a convention that has not been ratified in a given country, the analysis by the Committee of Experts of the concepts contained in the Convention may constitute a source of inspiration for national judges and legal operators when interpreting their own domestic law.
- The General Surveys and the results of the related review by the Committee on the Application of Standards are useful in many ways as, for example, for:
  - The establishment of an ILO programme of activities;
  - The possible adoption of new or revised standards;
  - To enable the effectiveness and present value of the instruments under control to be assessed; and
  - To give governments and social partners the opportunity to review their policy and to implement other measures in sectors of major interest, and in that case to proceed to further ratifications.

### **How are the instruments that will be the subject of this procedure and the preparation of the General Surveys selected?**

- Each year, the Governing Body selects the instruments for which reports are to be submitted as follows:
  - Since the adoption of the 2008 Declaration on Social Justice for a Fair Globalization and the inclusion of recurrent items on the ILO's strategic objectives in the agenda of the Conference, the Governing Body has sought to reconcile the theme of the General Survey with that of the corresponding recurrent discussion so that the General Surveys and



related discussions in the Committee on the Application of Standards can contribute to the recurrent discussions, as appropriate;

- As part of the standards initiative, the Governing Body has been considering the use of Article 19, paragraphs 5 (e) and 6 (d) of the Constitution. In November 2018, it decided to further consider concrete and practical measures to improve their use, in particular with a view to strengthening the functions of the General Surveys and improving the quality of the discussion and the follow-up.

### **What is the procedure of the Office for requesting the reports?**

- Once the Governing Body has decided on the subject of the General Survey and adopted the corresponding form of report, the Office sends a communication to governments requesting them to submit reports under Article 19.
- Copies of these requests are sent to national employers' and workers' organizations.
- Reminders are sent to Governments that have not submitted their reports by that date.
- Reports should be sent to this address: [NORM\\_REPORT@ilo.org](mailto:NORM_REPORT@ilo.org)

### **What is the deadline for the submission of reports?**

- By decision of the Governing Body, the reports must reach the Office by the end of February of the year in which they are to be examined by the Committee of Experts.

### **Are States obliged to communicate the reports to workers' organizations?**

- Under Article 23.2 of the ILO Constitution, governments are required to communicate copies of their reports on unratified Conventions and Recommendations to representative organizations of employers and workers and to indicate, when sending their reports to the ILO, the organizations to which these copies have been transmitted.
- These organizations, as well as any other employers' and workers' organizations, may make such observations as they deem appropriate on the matters concerned.

### **Are States obliged to conduct tripartite consultations?**

- States that have ratified Convention 144 on Tripartite Consultation (International Labour Standards) are obliged to put in place procedures to ensure effective consultation between government, employers', and workers' representatives on the re-examination at appropriate intervals of unratified Conventions and Recommendations to consider what measures could be taken to promote their implementation and possible ratification.

- The status of ratifications of Convention 144 can be found at this link:  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312289](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11300:0::NO::P11300_INSTRUMENT_ID:312289)
- Recommendation 152 on tripartite consultation (ILO activities), complementary to Convention 144, states that States should put in place procedures to ensure effective tripartite consultation on matters which may arise from reports to be communicated to the Office concerning unratified Conventions and Recommendations (paragraph 5.e) and on the re-examination, at appropriate intervals, of unratified Conventions and Recommendations to consider what measures could be taken to promote their implementation and eventual ratification (paragraph 5.d).

### **Can trade unions send comments directly to the ILO?**

- Yes. Workers' organizations, as well as employers' organizations, may also send their observations directly to the Office for submission to the ILO Committee of Experts.
- In this case, the Office acknowledges receipt and at the same time sends a copy to the government concerned.
- The list of observations by workers' organizations is contained in one of the annexes to the General Survey. For example, see Annex III of the 2020 General Survey (pages 420,421) which can be found at the following link:  
[https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS\\_738283/lang-es/index.htm](https://www.ilo.org/ilc/ILCSessions/109/reports/reports-to-the-conference/WCMS_738283/lang-es/index.htm)

### **How is the discussion of the General Survey conducted in the Committee on the Application of Standards?**

- The working method of the Committee on the Application of Standards is the same as that indicated in the case of reporting obligations for ratified Conventions.
- Following the independent and technical examination of the documentation by the Committee of Experts, the meetings of the Committee on the Application of Standards provide an opportunity for a tripartite review of the content of the General Survey.
- The general discussion of the General Survey takes place in the early days of the work of the Committee on the Application of Standards.

### **What is the content of the Report and conclusions of the Committee on the Application of Standards?**

- The report of the Committee on the Application of Standards includes the general discussion and conclusions of the tripartite review of the General Survey.

- In the conclusions of the examination of specific cases ("short list"), taking into account the tripartite discussion on each case, the Committee on the Application of Standards highlights the needs of ILO Member States on the theme under discussion, underlines common commitments, and signals lines of action for the ILO.

- The report of the 2019 Committee on the Application of Standards can be found here:

[https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS\\_711295/lang-es/index.htm](https://www.ilo.org/ilc/ILCSessions/108/committees/standards/WCMS_711295/lang-es/index.htm)

- The Committee's report is presented to the Conference and discussed in plenary, thus giving delegates the opportunity to highlight certain aspects of the Committee's work.

- The list of Reports of the Committee on the Application of Standards can be found at this link:

[https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_190619/lang-es/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_190619/lang-es/index.htm)

## 11. How do special procedures work and how can unions use them?

The special control procedure consists of the examination of representations and complaints coming especially from workers' or employers' organizations where there is a claim of noncompliance with international labor standards by States.

The control system has three special control procedures:

- The Representation procedure (Article 24 of the ILO Constitution);
- The complaints procedure (Article 26 of the ILO Constitution); and
- The Committee on Freedom of Association (Procedure for the examination of complaints).

### 11.1. Procedure for the examination of representations (Article 24 of the ILO Constitution)<sup>45</sup>

#### REPRESENTATIONS PROCEDURE (ARTICLE 24 OF THE CONSTITUTION)

##### What is a representation?

- The Representations Procedure is a special ILO procedure that can be used by workers' organizations to denounce a State to the ILO for failure to take measures for the satisfactory implementation, within its jurisdiction, of a convention to which that State is a party.

<sup>45</sup>. Sources: *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO*; ILO. *ILO Handbook of procedures relating to international labour Conventions and Recommendations* (ILO, 2019), pp. 47-48. *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*. Centenary edition. 2019, pp. 110-111.

- The representation of non-observance is made against an ILO member state that has ratified the convention(s) to which the failure is alleged. Article 11 of the ILO Rules indicates that a representation made against a State which is no longer a member of the ILO may be examined under Article 1, paragraph 5, of the ILO Constitution, according to which the withdrawal of a member of the ILO shall not affect the validity of all the obligations arising out of or relating to Conventions which it has ratified.
- The normative basis for this procedure is found in Articles 24 and 25 of the ILO Constitution:

**Article 24.** – "In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit."

**Article 25.** – "If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it."

- The procedure of the representation is regulated in a [Special Procedure](#). In November 2004, the Governing Body added an Introductory Note to the Special Regulations, summarizing the different stages of the procedure and indicating the options of the Governing Body in each of them. In November 2018, the Governing Body approved a number of measures relating to the operation of the reparation, including an optional voluntary conciliation procedure. After a trial period of two years (expiring in November 2020), the Governing Body is expected to review these provisions.
- In case you need additional support in the process of filing a representation, the ILO points out that it is possible to contact [ACTRAV \(ACTRAV@ilo.org\)](mailto:ACTRAV@ilo.org)

### Is it necessary to exhaust national procedures or domestic jurisdiction?

- No. The provisions of the procedure for the examination of representations do not require that national redress procedures be exhausted.
- Within the framework of the tripartite discussions in the Governing Body, some delegates have expressed concern about the submission of complaints without due consideration by the applicable national mechanisms (judicial and other, including tripartite).<sup>46</sup> In order to address this concern it has been highlighted that in practice when ad hoc tripartite committees assess the merits of a complaint they take into consideration the national procedures relating to the allegations made and can (and do) request additional information on these procedures and their outcomes.

46. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_618928.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618928.pdf)

- In the online model form for the submission of a complaint, this issue is referred to in point 5:

“5. Please indicate whether the matter has already been examined by the competent national authorities or whether it has been referred to them (inter alia, by national courts, social dialogue mechanisms or ILO dispute settlement mechanisms that may exist in the country), and provide any information at your disposal on the status and outcome of such proceedings. The submission of a complaint is not subject to the exhaustion of domestic remedies. However, in certain cases, the procedure for the examination of the complaint may allow for conciliation or other measures at the national level.”

- Within the framework of this discussion, the importance of preserving all guarantees of access to the control system for organizations that file a complaint has been highlighted.

### Who can file a complaint?

- The representation must come from an employers' or workers' professional organization (Article 2(2)(b) of the Regulation).
- It is possible for the representation to be filed by a single trade union organization or to be filed jointly by two or more trade union organizations.
- Individuals may not file representations directly with the ILO but may communicate relevant information to their professional organization.
- Examples include:
  - Complaint filed by a single national trade union organization: [Complaint alleging noncompliance by the Chilean State with Convention 111 on discrimination \(employment and occupation\)](#), which was filed in 2018 by the Single Central Organization of Workers of Chile (CUT-Chile).
  - Complaint filed jointly by more than two national trade union organizations: [Complaint alleging noncompliance by the Brazilian State with Convention 154 on collective bargaining and Convention 81 on labour inspection](#), which was filed in 2016 by the national Central Organization of Workers of Brazil (CTB), General Confederation of Workers of Brazil (CGT), Single Central Organization of Workers of Brazil (CUT-Brazil), Trade Union Force (Força Sindical), New Central Union of Workers (NCST), General Union of Workers (UGT), and Central Organization of Brazilian Trade Unions (CSB).
  - Complaint submitted jointly by a national trade union organization, a regional trade union organization and an international trade union organization: [Complaint alleging noncompliance by the Peruvian State with Convention 169 on indigenous and tribal peoples](#), which was submitted in 2014 by the Autonomous Workers' Confederation of Peru (ATP), the Trade Union Confederation of the Americas, and the International Trade Union Confederation.

### **What type of union organization can file a complaint?**

- The Introductory Note to the Rules notes that it is sometimes difficult to determine with certainty whether the complainant meets the condition of being a professional organization of workers or employers.
- In view of this, principles have been developed which may guide the Governing Body in this regard.
  - The power to address a complaint to the International Labour Office is a right granted without restriction to any professional organization of employers or workers. The Constitution does not provide for any condition as to the importance or nationality of the professional organization. Any professional organization may lodge a complaint, regardless of the number of members it has and the country in which it is headquartered. It can be a strictly local organization, as well as a national or international organization.
  - It is up to the Governing Body to assess as freely as possible the true nature of the employers' or workers' professional organization submitting the complaint. The criteria applicable in this matter by the Governing Body should be those which have hitherto guided the general policy of the Organization and not those established by the domestic law of States.
  - It is the duty of the Governing Body to examine, objectively, whether the organization making the claim does in fact possess the status of an employers' or workers' professional organization within the meaning of the Constitution and Rules. The role of the Governing Body is in each case to examine, beyond the terminological aspect, whether the organization making the claim, whatever name is imposed on it by the circumstances or chosen by it, is an "employers' or workers' professional organization" in the natural sense of the term. In particular, the Governing Body should not be guided, when considering whether or not an organization has a professional character, by any national definition of the term "professional organization".

### **Principles established by the Committee on Freedom of Association on admissibility as regards the complainant organization**

- The Introductory Note to the Rules states that the Governing Body may also apply *mutatis mutandis* the principles established by the Committee on Freedom of Association regarding admissibility as regards the complainant organization in the case of complaints of violations of the exercise of freedom of association. These principles are formulated in the following terms:
  - The Committee [on Freedom of Association], at its first session in January 1952 (First Report, General Comments, paragraph 28), formulated a principle according to which it is entirely free to decide whether an organization can be considered as an occupational organization from the point of view of the ILO Constitution, and is not considered to be bound by any national definition of that term.

- The Committee has not found a complaint inadmissible simply because the Government concerned has dissolved or intends to dissolve the organization on whose behalf the complaint is made, or because the person or persons from whom the complaint originated have taken refuge abroad.
- The fact that a trade union has not submitted its statutes as may be required by national law would not be sufficient for a complaint to be declared inadmissible, since the principles of freedom of association rightly require that workers be able, without prior authorization, to form whatever professional organizations they deem appropriate. The absence of official recognition of an organization cannot justify the rejection of the allegations when it appears from the complaint that the organization has at least one factual existence.
- In cases where the Committee is required to examine complaints submitted by organizations about which it lacks precise information, the Director-General is authorized to request the organization to provide precise data on the number of its members, on its statutes, on its national and international membership and, in general, to provide any useful information that will make it possible, when the admissibility of the complaint is examined, to better assess the real representative importance of the complainant organization.
- The Committee shall not take cognizance of complaints submitted by individuals who, for fear of reprisals, request that their names or the place of origin of the complaints not be disclosed, unless the Director-General, after consideration of the complaint, informs the Committee that the complaint contains allegations of a certain gravity which have not previously been examined by the Committee. The Committee shall then decide what action to take on the complaint.

### **What is the examination of the admissibility of a complaint?**

- The examination of admissibility is one of the initial stages of the special procedure of the complaint. It consists of the verification of the conditions that must be fulfilled before the Governing Body can proceed to examine the grounds of the claim and make recommendations thereon.
- The examination of admissibility is in the first instance the responsibility of the Bureau of the Governing Body to which the Director-General transmits any complaint received. The proposal of the Bureau of the Governing Body with regard to admissibility is communicated to the Governing Body, which is required to decide on the matter.
- While the Rules of Procedure specify that the Governing Board shall not enter into a discussion on the merits of the claim at this stage, the conclusions of its Bureau regarding admissibility may nevertheless be discussed.
- At the admissibility stage, the Office invites the government concerned to send a representative to take part in its discussions if that government is not represented on the Governing Body (Rule 7.1 of the Rules of Procedure).



### **What are the admissibility criteria for a complaint?**

- The admissibility criteria are listed in Article 2, paragraph 2, of the Regulations and are as follows:
  - 1) The claim must be communicated in writing to the International Labour Office.
  - 2) It must come from a workers' or employers' organization.
  - 3) It must make express reference to Article 24 of the ILO Constitution.
  - 4) It must relate to a Member State of the ILO (or to a former Member State which remains bound by that Convention).
  - 5) It must relate to a convention ratified by the Member State against which it is drawn up.
  - 6) It must indicate in respect of which it is alleged that the Member State against which it is directed does not ensure effective compliance within its jurisdiction with the convention.
- Eligibility criteria (1), (3), (4) and (5) are simple application conditions. Criteria (2) and (6) may require further consideration.
- With respect to admissibility criterion (6), while the Governing Body does not enter into a discussion of the merits of the complaint at this stage, it is important that it be sufficiently precise to enable the Office of the Governing Body to provide a convincing basis for its proposal to the Governing Body.

### **What options does the Governing Body have upon receipt of the report on the admissibility of the complaint?**

- The Governing Body, on the basis of the report of its Office, takes a decision on admissibility, without examining the substance of the case.
- The Governing Body has the following options upon receipt of the report on the admissibility of the complaint:
  - 1) If the Governing Body considers a complaint to be admissible, it shall appoint a tripartite committee for its consideration (Rule 3(1)) following the rules set out in the Claims Rules.
  - 2) If the Governing Body considers a grievance to be admissible and if the grievance concerns a convention dealing with trade union rights, it may decide to refer it to the Committee on Freedom of Association for consideration under Articles 24 and 25 of the Constitution (Rule 3.2).
  - 3) If the Governing Body considers a complaint to be admissible and if the complaint concerns facts and allegations similar to those which were the subject of a previous complaint, it may decide to defer the appointment of the tripartite committee responsible for the examination of the new complaint until the Committee of Experts on the Application of Conventions and Recommendations has been able to examine the action taken on the recommendations adopted by the Governing Body in respect of the previous complaint (Rule 3.2 of the Rules).



- 4) If a complaint does not meet the admissibility criteria, the Governing Body decides not to pursue it.
- The report of the Governing Body on the admissibility of the complaint usually contains a recommendation as to the transmission of the complaint to a tripartite committee.

#### **Is the referral of a complaint concerning the principles of freedom of association to the Committee on Freedom of Association automatic?**

- The referral of a complaint concerning the principles of freedom of association to the Committee on Freedom of Association is a practice adopted by the Governing Body on a systematic basis in order to take advantage of an established and experienced body in the field, to avoid duplication of procedures, and to ensure consistency.
- However, it is useful to stress that referral is an option, not an obligation. As noted in the March 2018 standards initiative report, the Governing Body had already had occasion, in 1955, to examine the adequacy of the examination by the Committee on Freedom of Association of representations under Article 24 of the Constitution of the ILO, following the receipt of the first complaint in respect of a freedom of association convention adopted a few years earlier. On that occasion, the Governing Body decided to refer the complaint to the Committee on Freedom of Association, considering that "it would be inappropriate for these matters to be dealt with by the Governing Body through two parallel procedures". Subsequently, the Governing Body has repeatedly confirmed that the Committee on Freedom of Association is the most appropriate supervisory body to examine compliance with conventions relating to freedom of association or collective bargaining pursuant to the procedure under Article 24 of the ILO Constitution, as it recognized when amending the regulations on the procedure for the examination of complaints.
- The reports on the examination of the complaints by the Committee on Freedom of Association are submitted separately to the Governing Body.

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#### **What is the voluntary conciliation procedure or the application of other measures at the national level?**

- In the framework of the tripartite discussions held in the Governing Body, some delegates proposed the establishment of a mechanism to allow or encourage recourse to conciliation or other measures at the national level, provided that the complainant wishes to do so and the government agrees. In November 2018, the Governing Body adopted provisions to allow for an optional voluntary conciliation procedure or other measures at the national level. These provisions are on a trial basis and will be reviewed on a tripartite basis by the Governing Board in November 2020.

- The application of these procedures leads to the temporary suspension of the examination of the merits of the complaint by the tripartite committee. Currently the temporary suspension is for a maximum period of six months, which will be re-examined by the Governing Body in November 2020. The maximum period would start from the date of the decision of the ad hoc tripartite committee to suspend its consideration.
- This temporary suspension is subject to the agreement of the complainant as expressed in the complaint form and the agreement of the government. The online complaint form includes the possibility that the complaining party may request that the proceedings be resumed before the end of the maximum period of the temporary suspension if conciliation or other measures fail; and the possibility that the tripartite committee may decide to extend the temporary suspension in a limited manner if conciliation or other initial measures require additional time to satisfactorily resolve the issues raised in the complaint.
- It is important to stress that this innovation in the complaint procedures does not constitute any change to the principle that it is not necessary to exhaust national procedures or domestic jurisdiction for the submission of complaints.

### What is the composition of the tripartite commission derived from a complaint?

- The Governing Body appoints the tripartite committee that will examine the complaint, taking into account the conditions set out in Article 3, paragraph 1, of the Rules:
  - The tripartite committee is composed of members of the Governing Body chosen in equal numbers from the Government Group, the Employers' Group, and the Workers' group (1:1:1).
  - No representative or national of the State against which the complaint/representation is brought, nor any person holding an official position in the Employers' or Workers' organization which has brought the Grievance, may be a member of this tripartite committee.
- In November 2018 the Governing Body decided that ratification of the Convention or Conventions alleged in the complaint is a condition for Governments to be able to sit on the tripartite committees, unless no full or deputy Government member of the Governing Body has ratified the Conventions in question.
- Some Government representatives in the Governing Body raised the possibility of modifying the composition of the tripartite committee in relation to the number of members per Group so that the ratio would be 2:1:1 (two members of the Government Group, one member of the Employers' Group and one member of the Workers' group). This proposal was discarded and the composition is maintained in equal proportions for each Group (1:1:1).
- As an example, the tripartite committee appointed in 2015 by the Governing Body to examine the complaint alleging [noncompliance by the Peruvian State with Convention 169 on indigenous and tribal peoples](#) (submitted

in 2014 by the Autonomous Workers' Confederation of Peru (CATP), the Trade Union Confederation of the Americas and the International Trade Union Confederation) was composed of Mr. Carlos Flores (Government member, Bolivarian Republic of Venezuela), Mr. Alberto Echavarría Saldarriaga (Employer member, Colombia) and Ms. Miryam Luz Triana (Worker member, Colombia).

### **What are the functions of the tripartite commission arising from a complaint?**

- The tripartite committee for the consideration of the complaint has a number of functions and powers in order to fulfil the objective of considering the issues raised in the complaint. On the basis of this review, the tripartite committee will present its conclusions and make recommendations as to the decision to be taken by the Governing Body.
- The tripartite committee examines the merits of the allegation made by the complainant that the Member concerned has failed to provide satisfactory assurances regarding compliance with the Convention or Conventions ratified by that Member and referred to in the complaint.
- The powers available to the tripartite committee during the examination of the complaint are listed in Article 4 of the Rules of Procedure.
  - a)** Request the organization which made the complaint to provide additional information within the time limit set by the tripartite committee.
  - b)** To communicate the complaint to the government against which it is directed, without inviting the latter to make a statement on the complaint.
  - c)** Communicate the complaint (including any other information provided by the organization making the complaint) to the government against which the complaint has been made and invite the latter to make a statement within the time limit set by the tripartite committee.
  - d)** Upon receipt of a statement from the government concerned, request the latter to provide additional information within the time limit set by the tripartite committee.
  - e)** To invite a representative of the organization making the complaint to appear before the tripartite committee to provide additional information orally.
- The tripartite committee may extend any time limit set under the provisions of Rule 4, paragraph 1, of the Rules of Procedure, in particular at the request of the organization or the government concerned.
- The tripartite committee may also apply, *mutatis mutandis*, two principles established by the Committee on Freedom of Association:
  - a)** In establishing the facts on which the complaint is based, the Committee may consider that, although no time limit has been set for the examination of the Claims, it would be very difficult, if not impossible, for a Government to respond in detail in relation to events that date from the distant past; and

**b)** In making its recommendations as to the decision to be taken by the Governing Body, the committee may take into account the interest of the organization making the claim in acting on the situation giving rise to the claim. Such an interest exists if the complaint is made by a national organization directly concerned with the matter, by international employers' or workers' organizations having consultative status with the ILO, or by other international employers' or workers' organizations where the complaint concerns matters directly affecting the member organizations of those international organizations.

### **What is the content of the report of the tripartite committee examining the complaint?**

- According to Article 6 of the Rules, when the tripartite committee has completed its examination of the claim on the merits, it shall submit a report to the Governing Body with the following content:
  - The description of the steps it has taken to examine the complaint, including the examination of the allegations made by the complainants and the observations of the government of the State complained of.
  - The presentation of its findings on the issues raised in the complaint.
  - The recommendations made for the purpose of a decision by the Governing Body.
- At this stage the government is invited to be represented to take part in the Board of Directors' deliberations on the matter. And the Governing Body decides whether to publish the complaint and the government's eventual response and notifies the complainant organization and the government concerned.
- As an example, the report of the tripartite committee that examined the complaint alleging the noncompliance of the Peruvian State with Convention 169 on Indigenous and Tribal Peoples can be found at the following link:  
[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_489534.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489534.pdf)

### **What decisions can the Governing Body take in response to the tripartite committee's report?**

- On the basis of the report of the tripartite committee, the Governing Body considers the issues of substance raised in the complaint and the appropriate action to be taken.
- Article 7 of the Regulation specifies the arrangements under which the government concerned may participate in the deliberations.
- The Rules specify the two types of decisions provided for in the Constitution that the Governing Body may take when it considers that a complaint is justified, it being understood that it may freely decide whether or not to adopt such measures:

- a) under the conditions laid down in Article 25 of the ILO Constitution, the Governing Body may make public the complaint received and, where appropriate, the reply sent by the government against which the complaint has been made: in such cases, the Governing Body also determines the form and date of such publication;
  - b) in accordance with Article 26.4 of the ILO Constitution, the Governing Body may, at any time, initiate the procedure for a complaint under Article 26 and the following.
- In addition, the Governing Body may decide to refer to the Committee of Experts on the Application of Conventions and Recommendations matters relating to the action to be taken by the government concerned in connection with the recommendations adopted by the Governing Body.

### How do you follow up on the recommendations arising from a complaint?

- Once the Governing Body refers to the Committee of Experts on the Application of Conventions and Recommendations the follow-up of the recommendations it has adopted in the framework of a complaint, this body will examine the measures taken by the government to comply with the provisions of the conventions in accordance with such recommendations.
- Example. The recommendations of the tripartite committee that examined the complaint alleging noncompliance by the Peruvian State with Convention 169 on indigenous and tribal peoples (submitted in 2014 by the Autonomous Workers' Confederation of Peru (CATP), the Trade Union Confederation of the Americas and the International Trade Union Confederation) are the object of follow-up by the ILO Committee of Experts. In its annual report for 2018, the ILO Committee of Experts adopted observations for the Peruvian State in the framework of the follow-up to these recommendations and urged the Peruvian Government to adopt a series of necessary measures to guarantee that indigenous peoples can fully exercise, in freedom and security, the rights enshrined in Convention 169 and to ensure that no form of force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples.<sup>47</sup>
- In more serious cases, the Governing Body may decide to set up a Commission of Inquiry to deal with a complaint under Article 26 of the ILO Constitution.

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<sup>47</sup> For further information on these observations, log on to: [https://www.ilo.org/dyn/normlex/en/f?p=NORML-EXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3344391,102805,Per%C3%BA,2017](https://www.ilo.org/dyn/normlex/en/f?p=NORML-EXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3344391,102805,Per%C3%BA,2017)

### 11.1.1. How can unions file representations (Article 24 of the ILO Constitution)?

To file representations with the ILO, trade unions can use the online form that the Office has designed on behalf of the Governing Body.

The following links contain the online forms in English, French, and Spanish:

■ Model electronic form in Spanish:  
[https://www.ilo.org/legacy/spanish/normes/form\\_art\\_24\\_2019\\_es.docx](https://www.ilo.org/legacy/spanish/normes/form_art_24_2019_es.docx)

■ Model electronic form in English:  
[https://www.ilo.org/legacy/english/normes/form\\_art\\_24\\_2019\\_en.docx](https://www.ilo.org/legacy/english/normes/form_art_24_2019_en.docx)

■ Model electronic form in French:  
[https://www.ilo.org/legacy/french/normes/form\\_art\\_24\\_2019\\_fr.docx](https://www.ilo.org/legacy/french/normes/form_art_24_2019_fr.docx)

If additional support is needed, unions can contact the Bureau for Workers' Activities (ACTRAV). ACTRAV's contact information is [ACTRAV@ilo.org](mailto:ACTRAV@ilo.org).

Contact details for ACTRAV regional offices can be found here:  
[https://www.ilo.org/actrav/about/WCMS\\_609271/lang--en/index.htm](https://www.ilo.org/actrav/about/WCMS_609271/lang--en/index.htm)

### 11.2. Procedure for the examination of complaints (Article 26 of the ILO Constitution)<sup>48</sup>

#### COMPLAINTS PROCEDURE (ARTICLE 26 OF THE ILO CONSTITUTION)

##### What is a complaint?

- The complaint is a special procedure of the ILO that can be used by trade unions against an ILO member state to denounce the failure to comply with the obligations of a ratified Convention.
- The complaint may lead to the establishment of a special Commission of Inquiry, composed of independent persons (usually recognized jurists and/or judges), to examine the allegations in the complaint and to formulate conclusions and observations.
- The Commission of Inquiry is the highest level investigative procedure of the ILO. In general, a Commission of Inquiry is used when an ILO Member State is accused of committing persistent and serious violations and has repeatedly refused to address them.
- To date, 13 commissions of inquiry have been established. The most recent Commission of Inquiry was established in March 2018 by the Governing Body following a [complaint lodged in 2015 under Article 26 against the Government of the Bolivarian Republic of Venezuela](#).

<sup>48</sup> Source: ILO *Handbook of procedures relating to international labour Conventions and Recommendations* (ILO, 2019), pp. 49-50. Rules of the Game: An introduction to the standards-related work of the International Labour Organization (Centenary edition 2019) ILO pp. 112-113.

## What is the complaint procedure?

- The complaint procedure is governed by Articles 26 to 34 of the ILO Constitution.
- There are currently no regulations governing the procedure of commissions of inquiry. The Governing Body has left it to the Commission of Inquiry itself to determine its procedure, in line with the ILO Constitution and subject only to the general guidance of the Governing Body.
- The reports of the various commissions detail the procedure followed for the examination of complaints, the handling of communications from the parties and other interested persons or organizations, and the organization of hearings.
- Example: Annex 3 to the report of the commission of inquiry set up by the complaint against Venezuela (complaint submitted to the 2015 Conference) contains the rules of procedure applied in carrying out its work.<sup>49</sup>
- In the framework of the standards initiative, a codification of the procedure under Article 26 of the ILO Constitution is being considered.

## Is it necessary to exhaust national procedures or domestic jurisdiction?

- No. The filing of a complaint is not subject to the exhaustion of domestic procedures or jurisdiction.

## Who can file a complaint?

- The complaint may be filed by:
  - Any Member State of the ILO that has ratified the same convention.
  - The Governing Body ex officio within the framework of its competence.
  - A delegate from the International Labour Conference.
- With regard to the submission of a complaint by a delegate to the International Conference of the ILO, it is possible that the complaint be submitted by a single delegate or jointly by two or more delegates. Likewise, the Conference delegate does not necessarily have to be from the country of the State complained of.
- Examples:
  - Complaint regarding Chile's noncompliance with Convention 87 on Freedom of Association and Protection of the Right to Organise, Convention 98 on the Right to Organise and Collective Bargaining, Convention 103 on Maternity Protection (Revised), Convention 135 on Workers' Representatives and Convention 151 on Labour Relations in the Public Service: this complaint was presented to the International Labour

<sup>49</sup>. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50012:0::NO::P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:3255837,es](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50012:0::NO::P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:3255837,es)



Conference in 2019 by a worker delegate from Venezuela.

- [Complaint concerning Myanmar's failure to comply with Convention 29 on forced labour](#): This complaint was presented to the 1996 International Labour Conference by 25 workers' delegates from different countries and regions.

### What options does the Governing Body have in receiving the complaint?

- The Officers of the Governing Body check whether the Convention is in force, whether the State concerned has ratified the Convention and whether the complaint has been submitted by duly accredited delegates to the International Labour Conference. After examining these elements, the Bureau sends the complaint to the Governing Body.
- The Governing Body has the following options upon receipt of the report of admissibility of the complaint:
  - a) (a) If the Governing Body decides, on the basis of the report of its Officers, that a complaint is admissible as meeting the conditions laid down in Article 26 of the ILO Constitution, it shall request the Director-General of the ILO to transmit the complaint to the Government of the State concerned with a view to inviting it to communicate its observations on the complaint within a specified time limit. The Governing Body shall also place the discussion of the complaint on the agenda of its next session.
  - b) After receiving the observations of the Government of the State concerned in the complaint, the Governing Body may:
    - I) Decide to set up a commission of inquiry (Example: [Complaint against Venezuela filed in 2015](#));
    - II) Decide that the complaint shall not be referred to a Commission of Inquiry and request the ILO Committee of Experts on the Application of Conventions and Recommendations to examine the issues in the complaint for follow-up (Examples: [Complaint against Chile 2016](#), [Complaint against Venezuela 2016](#)).
- If the Governing Body decides that the complaint should not be referred to a Commission of Inquiry, it is possible that both the Governing Body and the ILO Office will coordinate or encourage the Government concerned in the complaint to take steps to try to overcome the facts reported by the complainants in the complaint.
- An example is the [complaint filed against the Government of Guatemala in 2012 under Convention 87](#). The complaint was not finally referred to a commission of inquiry, but the Government of Guatemala, under political pressure from the ILO, adopted a series of measures, including:
  - Accepting a permanent representative of the ILO Director-General in Guatemala and technical assistance from the Office;
  - Creating a Special Unit for Crimes against Trade Unionists;
  - Signing a Road Map;



- Concluding a tripartite National Agreement on the implementation of the Road Map;
  - Establishing a Tripartite Commission on Labour Relations and Trade Union Freedom; and
  - Accepting a tripartite mission to assess the progress of the Road Map, which was carried out in September 2018.
- The case of Guatemala continues to be monitored by the ILO, both by the Committee of Experts on the Application of Conventions and Recommendations and by the Governing Body itself. The minutes of the November 2019 session of the Governing Body where the follow-up to the Tripartite National Agreement on the Implementation of the Road Map was carried out are included in these links:

**Minutes:** [https://www.ilo.org/gb/GBSessions/GB337/ins/WCMS\\_724001/lang--en/index.htm](https://www.ilo.org/gb/GBSessions/GB337/ins/WCMS_724001/lang--en/index.htm)

**Decision:** [https://www.ilo.org/gb/GBSessions/GB337/ins/WCMS\\_727028/lang--en/index.htm](https://www.ilo.org/gb/GBSessions/GB337/ins/WCMS_727028/lang--en/index.htm)

### What is the composition of the Commission of Inquiry?

- The Commission of Inquiry is composed of three independent members appointed by the Governing Body. The profile and background of the members of the survey committee is described in the minutes of the Governing Body and in the Board of Inquiry's own final report.
- **Example:** At its 333rd meeting (June 2018) the Governing Body decided that the Commission of Inquiry constituted for the [complaint filed against Venezuela in 2015](#) would be composed as follows:

- President of the commission of inquiry:

**Manuel Herrera Carbuccia** (Dominican Republic): Judge of the Supreme Court of Justice of the Dominican Republic Doctor in Labour Law. Former President of the Dominican Association, the Central American and Caribbean Association and the Ibero-American Association of Labour and Social Security Law. University Professor.

- Other members:

**María Emilia Casas Baamonde** (Spain): Professor of Labour and Social Security Law. Judge and President of the Constitutional Court of the Kingdom of Spain (1998-2011; 2004-2011). President of the Spanish Association of Labour and Social Security Law. Grand Cross of the Royal and Distinguished Spanish Order of Charles III and the Order of San Raimundo de Peñafort. Medal of the Order of Constitutional Merit. Gold Medal of Galicia.

**Santiago Pérez del Castillo Algorta** (Uruguay): Former Minister of Labour in his country and a government member of the ILO Governing Body and the Committee on Freedom of Association. Mr. Algorta has a doctoral degree in Law and Social Sciences, and taught Labour Law and Social Security Law at the University of the Republic and at the University of Montevideo, where he was president.

### What are the functions of the Commission of Inquiry?

- The Commission of Inquiry has the following functions:
  - To conduct a thorough investigation of the complaint, determining all the facts of the case.
  - Make recommendations on the actions to be taken to address the issues raised by the complaint.
- Taking the reports of the latest commissions of inquiry as examples in order to carry out their functions, the members of the commission include among their tasks:
  - The collection of documentation and written information (receiving communications from the Government, the complainants, and various social partners in the country concerned);
  - Direct interaction with the parties and other actors concerned, through videoconferences and the country visits;
  - The holding of adversarial hearings at ILO headquarters in Geneva, with the presence of representatives of both parties and with the participation of witnesses from both public authorities and nongovernmental sectors.

### What is the content of the Commission of Inquiry's report?

- Taking the reports of the last commissions of inquiry constituted by the filing of complaints as examples, the content of the report includes the following points:
  - **Part I: Introduction**, context of the complaint and procedure of the commission of inquiry. It details the procedure followed and analyzes the context of the complaint (historical framework and national legal framework; previous relations with the ILO, including the comments of its supervisory bodies on the issues raised).
  - **Part II: Information on the factual issues investigated by the Commission.** Summary of information concerning the factual issues investigated by the Commission in relation to the complaint, general allegations, specific complaints, allegations of lack of tripartite consultation.
  - **Part III: Conclusions and recommendations**
  - **Annexes:** including an annex containing the rules of procedure which the committee followed in carrying out its work.
- The Commission of Inquiry makes recommendations to ensure compliance with the Conventions invoked on the issues in the complaint. The content and scope of the conclusions and recommendations depend on each case. Based on the reports of recent commissions of inquiry, possible recommendations include:
  - The immediate cessation of the acts that are causing the violation of rights.

- The immediate release of persons who may be in prison in connection with the allegations made in the complaint.
  - The prompt and independent investigation of all allegations made by the complainants.
  - The adoption of necessary measures to address the problems highlighted in the complaint to ensure that, both in law and in practice, the rights highlighted in the complainants' allegations are respected.
  - The elimination in legislation and practice of all provisions that are incompatible with respecting and guaranteeing the exercise of rights.
  - The establishment of tripartite consultation procedures.
  - The organization of training programmes with the ILO.
- In its report, the Commission of Inquiry points out that its recommendations should be implemented without further delay and should be completed within a specified time frame.
  - The Commission of Inquiry further urges the Government concerned to seek ILO technical assistance for the implementation of the recommendations.

### **What happens if a State refuses to comply with the recommendations of a Commission of Inquiry or the decision of the International Court of Justice?**

- When a country refuses to comply with a recommendation of an inquiry commission or a decision of the International Court of Justice, the Governing Body may adopt actions based on Article 33 of the ILO Constitution, which establishes:

“1. In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.”
- As pointed out in the document *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*,<sup>50</sup> Article 33 of the ILO Constitution was first invoked in 2000, when the Governing Body requested the International Labour Conference to take the necessary measures to bring Myanmar to end the use of forced labor.<sup>51</sup>

<sup>50</sup>. [https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_672549/lang-en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_672549/lang-en/index.htm)

<sup>51</sup>. The case of Myanmar can be seen at this link: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50012:0::NO::P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:2508280,es](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50012:0::NO::P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2508280,es)

### 11.2.1. How can unions file a complaint (Article 26 of the ILO Constitution)?

As noted in the explanation of the complaint procedure, the complaint may be lodged by: (a) any Member State of the ILO which has ratified the same convention; (b) the Governing Body on its own initiative within the framework of its competence; or (c) a delegate of the International Labour Conference.

Therefore, there are two ways in which trade unions could present a complaint: through the tripartite discussions held within the Governing Body, through the Workers' group of

the Council, and through one or more workers' delegates duly accredited to the International Labour Conference, which usually takes place the first two weeks of June at ILO headquarters in Geneva.

As explained in the procedure for the complaint, it can be presented by a single delegate or jointly by two or more delegates, while the delegate does not necessarily have to be from the country of the State being denounced.

### 11.3. Procedure for the examination of complaints at the Committee on Freedom of Association<sup>52</sup>

#### PROCEDURE FOR THE EXAMINATION OF COMPLAINTS AT THE COMMITTEE ON FREEDOM OF ASSOCIATION

##### What is a complaint to the Committee on Freedom of Association?

- A complaint to the Committee on Freedom of Association is a special procedure of the ILO through which workers' organizations can denounce the violation of the principle of freedom of association.
- The Committee on Freedom of Association is a tripartite body of the Governing Body.
- The procedures of the Committee on Freedom of Association are set out in "Special procedures for the examination in the ILO of complaints alleging violations of freedom of association".<sup>53</sup>
- These procedures are also set out in Annex I to the Committee on Freedom of Association Digest of Decisions (the latest version of this Digest is from 2018).
- In addition, the Committee on Freedom of Association regularly takes decisions on its working methods and reports to the Governing Body.

<sup>52</sup>. Sources. ILO *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO. 2019, pp. 50-52. Rules of the Game: An introduction to the standards-related work of the International Labour Organization. Centenary edition. 2019, pp. 112-113.

<sup>53</sup>. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:62:1515877479373::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2565060:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:62:1515877479373::NO:62:P62_LIST_ENTRIE_ID:2565060:NO)

### **Is it necessary to exhaust national procedures or domestic jurisdiction?**

- No. The filing of a complaint with the Committee on Freedom of Association is not subject to the exhaustion of national procedures or domestic jurisdiction.

### **Can complaints to the Committee on Freedom of Association be lodged against States that have not ratified the conventions on freedom of association?**

- Yes. Complaints can be filed with the Committee on Freedom of Association regardless of whether the State has ratified any of the conventions related to freedom of association or not.
- This is possible because, by virtue of their compliance with the Constitution, all Member States are obliged to recognize the principle of freedom of association.
- For example, Brazil and Mexico have not yet ratified Convention 87 on freedom of association. Thanks to this special ILO procedure, workers' organizations in Brazil or Mexico can lodge complaints with the Committee on Freedom of Association alleging violations of the principles of freedom of association enshrined in Convention 87.

### **What is the mandate of the Committee on Freedom of Association?**

- The Committee on Freedom of Association is mandated to examine complaints of violations of the principle of freedom of association and the right to collective bargaining and to submit its conclusions and recommendations to the Governing Body.

### **What is the composition of the Committee on Freedom of Association?**

- The Committee on Freedom of Association has a tripartite composition (nine full members and nine deputy members, acting in their personal capacity), as well as an independent chairperson.

### **What are the criteria for the admissibility of a complaint to the Committee on Freedom of Association?**

- The admissibility criteria for a complaint to the Committee on Freedom of Association are:
  - a) Complaints must be submitted in writing, signed, and supported by evidence of the allegations concerning specific violations of the principle of freedom of association and the right to collective bargaining; and
  - b) Complaints must come from employers' or workers' organizations or governments. The Committee on Freedom of Association itself decides whether the complainant can be considered an organization for this purpose. The Office has the power to request additional information from a complainant organization in order to determine its exact nature.

### **What kind of organizations can lodge a complaint with the Committee on Freedom of Association?**

- The organization can be:
  - I) A national organization with a direct interest in the matter;
  - II) An international organization of employers or workers having consultative status with the ILO (the International Trade Union Confederation, the World Federation of Trade Unions, the Organization of African Trade Union Unity, the International Organization of Employers);
  - III) Another international employers' or workers' organization, where the complaint concerns matters directly affecting organizations affiliated to it (e.g. Global Union Federations).
- The Committee on Freedom of Association has a certain margin of appreciation in judging the admissibility of the complaint, given the status of the complainant.
- Under the ILO's special procedure for the examination of complaints alleging violations of the exercise of freedom of association, the Committee on Freedom of Association is entirely free to decide whether an organization may be considered as an occupational organization from the point of view of the ILO Constitution, and is not bound by any national definition of that term.
- The fact that a trade union had not submitted its statutes as might be required under national law would not be sufficient for a complaint to be declared inadmissible, since the principles of freedom of association rightly required that workers should be able, without prior authorization, to form whatever professional organizations they deemed appropriate.
- The absence of official recognition of an organization cannot justify the rejection of the allegations when it appears from the complaint that the organization has at least one factual existence.

### **What is the working method of the Committee on Freedom of Association?**

- The Committee on Freedom of Association meets three times a year.
- The International Labour Office may at any time ask the complainant to specify the violations that are the subject of the complaint, if the complaint is not sufficiently precise.
- The International Labour Office informs the complainant that additional information may be submitted in support of the complaint within one month. Thereafter, only new evidence that could not be submitted within the one-month period will be admissible.
- The Office transmits the allegations to the government concerned, so that it can reply within a specified time limit.

- In cases involving companies, the Office requests the government to obtain information from the representative organization of employers concerned.
- The Committee on Freedom of Association can decide whether to examine the complaint and draw conclusions or to request additional information from the government.
- The Committee may invite its Chairperson to consult with a government delegation in order to draw its attention to the seriousness of certain difficulties and to consider the various means by which the situation might be remedied.

### **What kind of missions can be carried out in the framework of a complaint to the Committee on Freedom of Association?**

- Different types of missions may be carried out under the procedure with the consent of the Government, including:
  - Direct Contact Missions
  - Technical assistance missions

### **What kind of reports does the Committee on Freedom of Association publish?**

- The Committee on Freedom of Association publishes three types of reports:
  - "Definitive" reports: when it considers that the issues do not require further examination and are effectively resolved;
  - "Interim" reports when you need additional information from the parties; and
  - "To be kept informed" reports when it requests to be kept informed of developments.
- Follow-up cases are considered "closed" when the issues have been resolved or the Committee considers that they do not require further consideration.

### **How does the Committee on Freedom of Association examine the complaints submitted to it?**

- In November 2018, the Governing Body instructed the Committee on Freedom of Association to examine the complaints submitted to it in accordance with the procedures for the examination of complaints submitted under Article 24, in order to ensure that they are examined in accordance with the procedure for the examination of complaints.

### **How are the Committee on Freedom of Association's recommendations followed up?**

- The Committee on Freedom of Association may invite the Governing Body to draw the attention of the government to the Committee's recommendations, in which it may request corrective action, and to keep it informed of developments.

- The Committee may also recommend that the matter be referred to the Fact-Finding and Conciliation Commission on Freedom of Association.
- The Committee's report is published in the Official Gazette.
- If the State has ratified the relevant conventions on freedom of association, the Committee on Freedom of Association may submit the legislative aspects of a case to the Committee of Experts on the Application of Conventions and Recommendations.

### **How can one know whether complaints have already been to submitted to the Committee on Freedom of Association in a country?**

- The information on complaints to the Committee on Freedom of Association submitted for each country is contained in the NORMLEX database. The link is as follows:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>

- The NORMLEX website has a menu on the left with the option "Supervising the application of international labour standards", with a list of ILO member states. The direct link is as follows:

<https://www.ilo.org/dyn/normlex/es/f?p=1000:11000::NO::>

- When you enter a country on the list, you will see full information on the supervisory mechanisms that the respective country has been or is involved in.
- Another way to locate the cases submitted to the Committee on Freedom of Association is the NORMLEX search engine located at this link:

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO:::>

- In this search engine you can search for cases by country.

### **What are Fact-Finding and Conciliation Commissions on Freedom of Association?**

- A Fact-Finding and Conciliation Commission on Freedom of Association is composed of nine independent persons, appointed by the Governing Body and normally working in groups of three.
- This commission examines complaints concerning violations of freedom of association referred to it by the Governing Body, including at the request of a government against which allegations have been made.
- Such complaints may relate to:
  - Member States that have ratified conventions related to freedom of association;
  - Member States which have not ratified the relevant conventions and which accept that the case be referred to the Commission; and
  - Non-Member States of the ILO that are members of the United Nations, if the Economic and Social Council has transmitted the case and the State has accepted it.



- The procedure of this commission is similar to that of a commission of inquiry, and its reports are published.
- Like the Commission of Inquiry, the Fact-Finding and Conciliation Commission on Freedom of Association is a procedure at the highest level of the ILO that was used only in a few cases where the ILO member state is accused of committing persistent and serious violations.
- In the following link you can find the reports of the six Fact-Finding and Conciliation Commissions on Freedom of Association:

[https://www.ilo.org/global/standards/information-resources-and-publications/WCMS\\_160778/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_160778/lang--en/index.htm)

- A relevant report that reveals the importance of this mechanism is the report of the Fact-Finding and Conciliation Commission on Freedom of Association regarding Chile, adopted in 1975. This report can be found at the following link: [https://www.ilo.org/public/libdoc/ilo/1975/75B09\\_227.pdf](https://www.ilo.org/public/libdoc/ilo/1975/75B09_227.pdf)

### 11.3.1. How can unions file a complaint with the Committee on Freedom of Association?

The complaint to the Committee on Freedom of Association is the special monitoring procedure most frequently used by trade unions to lodge complaints with the ILO in serious cases of non-compliance with the rights recognized in the ILO Conventions on freedom of association.

The ILO has developed several specific guides and manuals to provide guidance on how to submit complaints to the Committee on Freedom of Association. For example, "Freedom of association: A user's guide", prepared by ACTRAV. This guide can be found

at the following link: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_087990.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087990.pdf)

This guide explains in a simple and brief manner the procedure for submitting a complaint to the Committee on Freedom of Association and mentions some criteria and guidelines to bear in mind if your union wishes to use this ILO control procedure, highlights the elements that the text of a complaint to the Committee on Freedom of Association must contain, and finally shows a model complaint.

#### "FREEDOM OF ASSOCIATION: A USER'S GUIDE" (ACTRAV-ILO)

##### Elements that a complaint to the Committee on Freedom of Association should include

###### • Who's it for?

The complaint is addressed to the Director-General of the ILO or the Chairperson of the Committee on Freedom of Association.

###### • Where do you file a complaint?

Directly with the International Labour Office's world headquarters or any other of its offices (Route Des Moril-lons 4 Ch-1211, Geneva, Switzerland. Fax: +41

(0) 22 798 8685). The complaint can be submitted in advance by fax, but it is essential that original documents are received in order for the case to be processed.

- **Identification of the organization submitting the complaint**

Indicate the name and general data of the trade union organization or organizations submitting the complaint, and that of their representatives.

- **Address**

An address must be provided in the submission of the complaint in order to receive communications from the ILO.

- **Description of the facts**

Describe in detail the facts that give rise to the complaint; to do so it is important to chronologically locate the events, as well as to identify the persons or institutions involved. It is important that this section answers basic questions such as: who, where, when, how, why, what for, among others. Remember that it is on the basis of this information that the case will be analyzed; therefore, if there is ambiguity or insufficient data, the processing will take much longer.

- **Evidence**

The complaint must be accompanied by the necessary evidence to prove the alleged violations, point by point.

- **Legal basis**

The complaint does not need to be substantiated in legal terms; therefore, it is optional to do so.

- **Application**

A brief and clear request for restoration of the exercise of freedom of association and reparation for damages caused may be included.

- **Date and location**

Do not forget to indicate the location and time at which the complaint is made.

- **Name and signature**

This is an indispensable requirement; therefore, it must be indicated who represents the union organization submitting the complaint.

## UNIT 6.

# RELEVANT LEGAL ELEMENTS OF ILO STANDARDS

## 12. The legal nature of ILO standards

### 12.1. ILO standards as part of international human rights law

The international instruments of the ILO form part of the broad content of international law and in particular international human rights law. International labor standards recognize and regulate human rights, that is, rights universally accepted as inherent and inalienable to every human person, without discrimination. States have

the responsibility to respect, protect, and ensure that they are fully realized so that every member of society can achieve their full realization and enjoy a life of dignity.

The rights regulated by international labor standards have been recognized by the most important international human rights treaties of a universal and regional nature, including:

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- **International Covenant on Civil and Political Rights (UN, 1966)**

Article 2.1 recognizes the right of everyone to form and join trade unions for the protection of his or her interests.

- **International Covenant on Economic, Social and Cultural Rights (UN, 1966)**

It recognizes the right of every person: (b) to just and favorable conditions of work, in particular minimum wages, fair and equal pay for work of equal value, safety and health at work, rest and paid holidays (Article 7) (c) to form trade unions and join the trade union of their choice to promote and protect their economic and social interests, the right of trade unions to form national federations or confederations and the right of the latter to form or join international trade union organizations and the right to strike (Article 8); and (d) to social security (Article 9).

• **American Convention on Human Rights (OAS, 1969)**

Recognizes the right of all persons to associate freely for labor purposes (Article 16(1)).

• **Additional protocol to the American convention on human rights in the area of economic, social and cultural rights "Protocol of San Salvador" (OAS, 1988)**

Includes in the protection regime of the American Convention the right of every person: 1) to freely elected or accepted work (Article 6); 2) to just, equitable, and satisfactory conditions of work and in particular to minimum remuneration, promotion or advancement, job stability, occupational safety and health, maximum working hours, rest, and paid vacation (Article 8); (1.a.) to organize trade unions and to join the trade union of their choice for the protection and promotion of their interests, and, as a projection of this right, the right of trade unions to form and join national federations and confederations and to form and join international trade union organizations of their choice, and the right to strike.

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The human rights to freely chosen or accepted work, to just, fair and favorable conditions of work, to freedom of association and to social security are part of the essential content of the right to life with dignity. In this regard, the Inter-American Court of Human Rights established that:

- The fundamental right to life includes not only the right of every human being not to be arbitrarily deprived of life, but also the right not to be denied access to the conditions which would guarantee a dignified existence.<sup>54</sup>

**12.2. Principles and rules for the application and interpretation of international labor standards**

As international treaties adopted within the framework of an international organization, the provisions of the Vienna Convention on the Law of Treaties of 1969 (Vienna

Convention) apply to international labour conventions (Article 5). The Vienna Convention establishes rules for the observance and interpretation of international treaties.

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<sup>54</sup> Inter-American Court of Human Rights. Decision: Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Fondo. November 19, 1999.

### Rules for the enforcement of international treaties (Article 27 of the Vienna Convention)

- **Rule 1: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty**

This rule reflects the negative dimension of the principle of the primacy of international law over national law at the international level. Under this rule, a State party to an ILO Convention may not invoke provisions of its domestic law to breach the international obligations contained in the Convention.

- **Rule 2: Every treaty in force is binding upon the parties to it and must be performed by them in good faith (“Pacta sunt servanda”) (Article 26 of the Vienna Convention)**

This rule reflects the positive dimension of the principle of primacy of international law. Under this rule, States have an obligation to bring their domestic legal system into line with the international obligations they undertook by ratifying the ILO Convention. This obligation in turn implies obligations to:<sup>55</sup>

- I) Adopt the necessary measures – legislative, executive, judicial and/or of any other nature – to give effect to the international obligations arising from the ratified ILO Convention, filling any gaps or deficiencies in domestic law;
- II) Repeal national legal provisions that are incompatible with the international obligations derived from the ratified ILO Convention in order to harmonize national law with the Convention; and
- III) To refrain from promulgating domestic regulations that are contrary to the international obligations assumed by the ratification of the ILO Convention.

Under the obligation to comply in good faith with international treaties, it can be argued that States must adopt provisions of domestic law in accordance with the interpretation of the provisions of the international treaties by the monitoring bodies of the international human rights protection systems. With regard to the ILO Conventions, therefore, provisions of domestic law should be adopted in accordance with the interpretation of their provisions by the ILO supervisory bodies.

### Rules for the interpretation of international treaties (Articles 31 and 32 of the Vienna Convention)

- **General rule of interpretation**

The general rule of interpretation of the Vienna Convention provides that a treaty shall be interpreted in good faith in accordance with the ordinary

<sup>55</sup>. SALMÓN, Elizabeth. *Course on international law*. Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú, 2014, pp. 282-284. The author refers to international law treaties of international law in general.

meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

- **Supplementary means of interpretation**

The Vienna Convention accepts the possibility of resorting to supplementary means of interpretation, in particular to the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of the general rule of interpretation or to determine the meaning when the interpretation given in accordance with the general rule leaves the meaning ambiguous or obscure or leads to a manifestly absurd or unreasonable result.

The Inter-American Court of Human Rights used the rules of interpretation of the Vienna Convention in the Advisory Opinion on entitlement of rights to legal persons, where it interpreted Article 8 of the Protocol of San Salvador on trade union rights.<sup>56</sup>

As international human rights treaties, the International Labour Conventions must also be applied and interpreted in accordance with the principles and rules recognized in international human rights law. A relevant reference in relation to these criteria is the jurisprudence of

the Inter-American Court of Human Rights which has established and highlighted principles and rules of application and interpretation with reference to the American Convention on Human Rights and which can be taken into account with reference to the ILO Conventions.

## PRINCIPLES AND RULES OF THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

### Principles and rules for the observance of international human rights treaties

- **Obligation to respect the exercise of human rights<sup>57</sup>**

- This obligation presupposes that States and all their agents refrain from acting in such a way that the exercise of State power results in the violation of human rights.
- This obligation binds all agents of the State, including the security forces and, in addition, legislators in case they intend to adopt rules whose regulation, for example, criminalizes social protest or penalizes conduct that responds to the legitimate exercise of freedom of expression and assembly, essential for the exercise of trade union freedom.

<sup>56</sup>. Inter-American Court of Human Rights. Advisory Opinion OC-22/2016 on whether legal persons are entitled to rights. Paragraph 31.

<sup>57</sup>. Inter-American Court of Human Rights. Advisory Opinion OC-6/86, of 9 May 1986, on the expression “laws” in Article 30 of the American Convention; Case of Velásquez Rodríguez vs Honduras. Sentence of 26 June 1987. In SALMÓN, Elizabeth, 2019, pp. 54-55., Elizabeth, 2019, pp. 54-55.

- This obligation implies the duty of States not to criminalize the carrying out of activities in defense of labour and trade union human rights, nor the membership in trade union entities.

- **Obligation to guarantee the exercise of human rights<sup>58</sup>**

- This obligation implies the duty of States to organize the entire governmental apparatus and, in general, all structures through which public power is exercised, in such a way that they are capable of publicly ensuring the free and full exercise of human rights.
- This obligation does not end with the existence of a normative order aimed at making it possible to comply with this obligation, but rather entails the need for government conduct that ensures the existence, in reality, of an effective guarantee of the free and full exercise of human rights.
- It imposes a duty on States to adopt all necessary measures to remove obstacles that may restrict the enjoyment of rights.
- Unlike the obligation to respect, the obligation to guarantee is not satisfied with the absence of human rights violations, but requires the State to take concrete actions (legislation, public policies) that ensure the full enjoyment and exercise of human rights.
- This obligation also implies the duty of States to take all appropriate measures, including affirmative action, to ensure that persons in vulnerable situations have the capacity to effectively exercise their human rights, such as women, youth, people of African descent and indigenous peoples, LGBTI people, among others.

- **Prohibition of non-discrimination in respect of and guarantee of the exercise of human rights.**

- This prohibition implies the obligation of States to ensure that everyone can exercise their human rights without discrimination on the grounds of race, color, sex, gender identity, sexual orientation, age, religion, political or other opinion.
- States have the obligation to take positive measures to reverse or change discriminatory situations, which implies a special duty of protection for certain groups of people, seeking to create adequate conditions for them to enjoy and exercise their human rights.

- **Obligation to adopt provisions of domestic law necessary for the realization of human rights**

On the scope of this obligation, see **section 13.1**.

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<sup>58</sup> Inter-American Court of Human Rights. Case of Velásquez Rodríguez vs Honduras. Sentence of 29 July 1988, paragraphs 166 and 167; Advisory Opinion OC-11/90 August 10, 1980 on Exceptions to the exhaustion of domestic remedies (art. 46.1, 46.2.a, and 46.2.b of the American Convention). In SALMÓN, Elizabeth, 2019, pp. 55-56.

## Principles and rules for the interpretation of international human rights treaties

### • Pro Person Interpretation Rule

By virtue of this rule the provisions of an ILO Convention should always be interpreted in the most favorable way for the individuals or groups covered and protected by the Convention and any provisions restricting rights should always be given the most restrictive interpretation. The Inter-American Court noted that "the balance of interpretation is obtained by directing it in the sense most favourable to the recipient of international protection, provided that this does not imply an alteration to the system."<sup>59</sup>

This rule has its equivalent in the principle of labour law: in dubio pro operario [if in doubt, for the worker], consisting of the "criterion to be used by the judge or the interpreter to choose among several possible meanings of a rule, that which is most favourable to the worker."<sup>60</sup> Both rules bind the interpreter to interpret the right broadly and to interpret possible restrictions or limitations restrictively.

### • Dynamic or evolutionary rule of interpretation

By virtue of this principle, the provisions of an ILO Convention should be interpreted in accordance with the law in force at the time of interpretation. An example of the application of this principle can be found in Convention 102 on Social Security (Minimum Standards) which has some provisions whose language is gender-biased. Under this principle, Convention 102 should be interpreted in the light of developments in international law and in particular international law on gender equality.

### • Rule of interpretation according to the corpus iuris of international human rights law

By virtue of this rule the provisions of an ILO Convention should be interpreted in the context of the evolution of fundamental human rights in contemporary international law,<sup>61</sup> in the light of the corpus iuris of existing international human rights law (where the inclusion of fundamental principles and rights at work as defined by the ILO and its supervisory bodies can be argued).

<sup>59</sup>. Inter-American Court of Human Rights. Advisory Opinion OC-3/83 September 8, 1983. Restrictions to the death penalty (Articles 4.2 and 4.4, American Convention on Human Rights, paragraph 26).

<sup>60</sup>. PLÁ RODRÍGUEZ, Américo. *Los principios del derecho del trabajo*. Montevideo: Fundación de Cultura Universitaria. 2015, 4ta Edition, p. 91.

<sup>61</sup>. Inter-American Court of Human Rights. Advisory Opinion OC-16/99 October 1, 1999. The right to information on consular assistance in the framework of the guarantees of the due process of law, paragraph 115.



## 13. Relevant elements to be considered once ILO Conventions have been ratified

### 13.1. Scope of the obligation to take the necessary measures to effectively implement a Convention

Under Article 19.5.d of the ILO Constitution, a State which ratifies a Convention undertakes to take "such action as may be necessary to make effective the provisions of such Convention." This obligation does not only consist in incorporating the Convention into domestic law, but also entails the need to ensure that it is applied in practice and to give effect to it through legislation by any other means which are in conformity with national practice, such as those provided for by the Convention (e.g. court decisions, awards, collective agreements).

As mentioned in the previous section, as an international treaty adopted within the framework of an international organization, the 1969 Vienna Convention on the Law of Treaties (Vienna Convention) applies (Article 5). The Vienna Convention establishes rules deriving from the principle of the primacy of international law over national law in the international sphere, among which the rule provided for in Article 26, which states that every treaty in force is binding on the parties and must be performed by them in good faith ("*Pacta sunt servanda*"). Under this rule, States are obliged to bring their domestic legal system into line with the international obligations they assumed by ratifying the ILO Convention. This obligation in turn entails the obligations to: (a)

adopt the necessary measures – legislative, executive, judicial and/or other – to give effect to the international obligations under the ratified ILO Convention, filling any gaps or deficiencies in domestic law; (b) repeal domestic legal provisions that are inconsistent with the international obligations under the ratified ILO Convention in order to bring domestic law into conformity with the Convention; and (c) refrain from promulgating domestic regulations that are inconsistent with the international obligations assumed upon ratification of the ILO Convention.

This obligation should not be confused with the dualist system of incorporation of international law into domestic law. The obligation in Article 26 of the Vienna Convention relates to the possible need to adopt additional domestic measures necessary to bring the domestic legal system into conformity with the international obligations of the international treaty.<sup>62</sup>

As noted above, under the obligation to comply in good faith with international treaties, it can be argued that States must adopt provisions of domestic law in accordance with the interpretation of the provisions of the ILO Conventions by the ILO supervisory bodies.

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<sup>62</sup>. SALMÓN, Elizabeth. 2014, p. 284..

A relevant reference with regard to the scope of the obligation to adopt provisions of domestic law is the jurisprudence of the Inter-American Court of Human Rights. The Court has established, with reference to the American Convention on Human Rights, that the adoption of provisions of domestic law necessary for the realization of human rights implies:<sup>63</sup>

- a) The obligation to abolish rules and practices of any kind which violate human rights or which ignore or obstruct the exercise thereof; and
- b) The obligation to issue standards and develop practices conducive to the effective enforcement of such guarantees. This second obligation requires States to prevent the recurrence of human rights violations by adopting all necessary legal, administrative, and other measures for that purpose.

This obligation also implies the duty of States to establish procedures to ensure the consultation and effective participation of workers' organizations, on an equal footing with employers' organizations, in the design, adoption, and evaluation of the measures to be adopted.

Recommendation 152 on tripartite consultation (paragraph 5, c) states that ILO Member States should undertake tripartite consultations, taking into account national practices, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, and in particular ratified Conventions.

The following is an example of the implementation of the obligation to take the necessary measures to give effect to the provisions of Convention 151.

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### CONVENTION 151 ON LABOUR RELATIONS IN THE PUBLIC SERVICE

Implementation of the obligation to take the necessary measures to give effect to the provisions of ratified Conventions

(Art. 19, para. 5, d, ILO Constitution)

**With regard to the rights of persons working in the public sector, in accordance with Convention 151, the measures covered by this obligation include:**

- Recognize the employment nature of the working relationship of persons employed in the public sector.
- Make effective the exercise of freedom of association for persons employed in the public sector and their trade union organizations, in accordance with ILO standards and the decisions of its supervisory bodies.

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<sup>63</sup> Inter-American Court of Human Rights. Case of Fornerón and daughter v. Argentina. Sentence of April 27, 2012, paragraph 131.

- Eliminate the provisions of domestic law that exclude persons employed in the public sector from the right to organize.
  - Guarantee the right of public sector workers to protection against any act of anti-union discrimination.
  - Guarantee the right of public sector workers' representatives to be provided with appropriate facilities to carry out the activities necessary for their representative work.
  - Promote the exercise of the right to collective bargaining for the determination and improvement of the conditions of employment of persons employed in the public sector, including in a context of economic stabilization. Labour dispute resolution bodies and procedures should be designed in such a way as to help promote collective bargaining.
  - Guarantee the exercise of the civil and political rights of public sector workers, which are essential for the normal exercise of freedom of association.
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### **13.2. Procedure for the incorporation of international standards into domestic law**

The incorporation of international labor standards into domestic law is a procedure for the reception of international law into the national legal system.

There are two predominant models for this procedure: dualism and monism. Dualism implies that international law and national law are two distinct and separate legal orders that are not confused with each other and therefore, in addition to ratification, an additional act (usually a post-ratification law) is necessary to transform the international standard into national law.<sup>64</sup> In contrast, monism assumes that international law and national law form a unity, and therefore the

ratification and implementation of the international standard is sufficient for it to become part of the national legal system.

The legal systems of most Latin American and Caribbean countries belong to the monist model. In other words, ratification of the ILO Convention (or Protocol) and its entry into force are sufficient for it to be integrated into the national legal system. No law additional to ratification is needed to make the Convention binding. Most of the region's constitutions contain provisions to incorporate the provisions of international law into domestic law, to integrate them into national law or to have the

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<sup>64</sup> SALMÓN, Elizabeth. 2014, pp. 269-277.

force of national law, or provisions recognizing the immediate and direct application by national courts of the provisions of ratified international human rights treaties.

The following are some examples of constitutional provisions relating to the incorporation of the international standard into domestic law in accordance with the monist model:

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## CONSTITUTIONAL PROVISIONS ON THE INCORPORATION OF INTERNATIONAL LAW

- **Article 8 of the Constitution of Cuba**

"The provisions of international treaties in force for the Republic of Cuba form part or are integrated, as appropriate, into the national legal system."

- **Article 417 of the Constitution of Ecuador**

"In the case of treaties and other international human rights instruments, the principles of direct applicability".

- **Article 144 of the Constitution of El Salvador**

"International treaties concluded by El Salvador with other states or with international organizations constitute laws of the Republic when they enter into force".

- **Article 137 of the Constitution of Paraguay**

"[...] international treaties, conventions and agreements approved and ratified [...] are part of national positive law [...]."

- **Article 55 of the Constitution of Peru**

"Treaties concluded by the State and in force form part of national law".

- **Article 74.3 of the Constitution of the Dominican Republic**

"Treaties, covenants and conventions relating to human rights, signed and ratified by the Dominican State [...] are of direct and immediate application by the courts and other organs of the State".

- **Article 23 of the Constitution of Venezuela**

"The treaties, pacts, and conventions relating to human rights signed and ratified by Venezuela [...] are of immediate and direct application by the courts and other organs of the Public Power".

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Under this type of constitutional provision, no legislation additional to ratification is required to make the ILO Convention binding at the national level. Additional measures may be useful to eliminate any contradiction between the provisions

of the Convention and national law and practice or to ensure that all authorities and persons concerned are aware of the incorporation of the Convention into national law and, if necessary, to provide guidance.

### 13.3. Hierarchy of international standards in domestic law

The hierarchy of international standards in domestic law is a procedure by which the hierarchy of international standards over domestic standards is determined.

Most of the region's constitutions contain provisions recognizing the preferential application of the

provisions of international human rights treaties when they are more favorable. International Labour Conventions are international human rights treaties and therefore have this preferential application.

The following are examples of constitutional provisions:

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#### CONSTITUTIONAL PROVISIONS THAT DEMONSTRATE THE HIERARCHY OF INTERNATIONAL LAW

- **Constitution of Bolivia, Article 256.I**

"International treaties and instruments on human rights that have been signed, ratified or to which the State has acceded, which declare rights more favourable than those contained in the Constitution, shall be applied in preference to the Constitution."

- **Constitution of Colombia, Article 93**

"International treaties and conventions ratified by the Congress, which recognize human rights and prohibit their limitation in states of emergency, shall prevail in the internal order."

- **Constitution of Costa Rica, Article 7**

"Public treaties, international conventions and concordats, duly approved by the Legislative Assembly, shall have, from their promulgation or from the day they are designated, an authority superior to the laws."

- **Constitution of Ecuador, Article 417**

"The Constitution and international human rights treaties ratified by the State that recognize rights more favourable than those contained in the Constitution shall prevail over any other legal rule or act of public authority."

- **Constitution of Guatemala, Article 46**

"[...] in matters of human rights, the treaties and conventions accepted and ratified by Guatemala have precedence over domestic law."

- **Constitution of the Dominican Republic, Article 74.3**

"Treaties, covenants and conventions relating to human rights, signed and ratified by the Dominican State, have constitutional hierarchy [...]."

- **Constitution of Venezuela, Article 23**

"The treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela, have constitutional hierarchy and prevail in the internal order, to the extent that they contain norms on their more favorable enjoyment and exercise."

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### 13.4. Interpretation of constitutional provisions in accordance with international standards

The interpretation of constitutional provisions in accordance with international standards is a practice of interpretation that establishes that constitutional provisions must be interpreted in accordance with the parameters and guarantees set out in international standards.

Some constitutions in the region contain provisions that expressly recognize this practice of interpretation with regard to international human rights treaties.

The following are some examples of constitutional provisions:

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#### CONSTITUTIONAL PROVISIONS THAT DEMONSTRATE INTERPRETATION IN CONFORMITY WITH INTERNATIONAL LAW

- **Constitution of Bolivia, Article 256.I**

"The rights recognized in the Constitution shall be interpreted in accordance with international human rights treaties when these provide for more favorable standards."

- **Constitution of Colombia, Article 93**

"The rights and duties enshrined in this Charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia."

- **Article 55 of the Constitution of Peru**

"The rules relating to the rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same subjects ratified by Peru."

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### 13.5. Hierarchy of international labor standards in international law

The hierarchy of international labor standards in international law consists of the determination of the rank or hierarchy of the international labor standard *vis-à-vis* the other standards of international law.

Between the norms of international human rights law and the systems of international protection of human rights there is a relationship of

coexistence and complementarity that provides the greatest possible effectiveness to the defense, promotion, and protection of the rights for the benefit of the persons or groups protected in the international instruments.<sup>65</sup> In the framework of this relationship, international standards recognize the principle of the application of the standard that is most favorable to the persons or

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65. PIOVESAN, Flávia. *Direitos humanos e justiça internacional. Um estudo comparativo dos sistemas regionais europeu, interamericano e africano*. São Paulo: Saraiva Educação, 2018, pp. 57-58.

groups protected. In labor and trade union matters, ILO standards play a predominant role in this relationship. A clear example of this relationship of preeminence is Article XXII.3 of the International Covenant on Civil and Political Rights and Article 8.3

of the International Covenant on Economic, Social and Cultural Rights, which expressly state that none of their provisions authorizes the adoption of measures that may undermine the guarantees provided for in ILO Convention 87.

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**PROVISIONS OF THE INTERNATIONAL COVENANTS ON  
HUMAN RIGHTS RELATING TO THE PRIMACY OF ILO  
CONVENTIONS IN INTERNATIONAL LAW**

- **International Covenant on Civil and Political Rights, Article XXII.3**  
"Nothing in this Article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice the guarantees provided for in that Convention or to apply the law in such a manner as to prejudice those guarantees.
  - **International Covenant on Economic, Social and Cultural Rights, Article 8.3**  
"Nothing in this Article shall authorize States Parties to the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice the guarantees provided for in that Convention or to apply the law in such a manner as to prejudice those guarantees."
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**14. Relevant elements when considering pronouncements of the ILO supervisory bodies**

**14.1. Legal value of the pronouncements of the supervisory bodies**

In determining the content of the provisions of international labor standards, the principles and decisions adopted by the ILO supervisory bodies play a predominant role.

In the 1994 General Survey on Freedom of Association and Collective Bargaining, the Committee of Experts on the Application of Conventions and Recommendations noted:

"ILO standards on trade union matters have been supplemented and developed by the principles laid down by the supervisory bodies, in particular the Committee on Freedom of Association of the Governing Body and the Fact-Finding and Conciliation Commission on Freedom of Association, which were set up to examine complaints concerning violations of trade union rights. These decisions, which are not limited

to the fundamental standards enshrined in the conventions on freedom of association, despite the importance that the latter have acquired in positive law, particularly because of the large number of countries that have ratified them, have gradually become a set of principles which, together with the observations made by the Commission on those same instruments, constitute a genuine international right to freedom of association.”

As explained in Unit 5, the ILO supervisory system coordinates bodies with a high level of technical-legal expertise, impartiality and international composition (Committee of Experts on the Application of Conventions and Recommendations; Commissions of Inquiry) with bodies of tripartite composition with a high level of representativeness and institutional legitimacy (Committee on Freedom of Association, Committee on the Application of Standards,

*ad hoc* committees). Thus, the interpretation of the legal scope of the ILO's international instruments by its supervisory bodies has legal and institutional backing at the highest level and, in accordance with the ILO Constitution, is effective and valid for all ILO Member States.

There are several arguments to support the legal value and far-reaching institutional legitimacy of the pronouncements of the ILO supervisory bodies, including:<sup>66</sup>

## ARGUMENTS TO SUPPORT THE LEGAL VALUE AND LEGITIMACY OF THE PRONOUNCEMENTS OF THE CONTROL BODIES

### Legitimacy of the interpretation carried out by the control bodies

- The ILO supervisory bodies have characteristics that give them unique importance and legitimacy:
  - High level of expertise of both the bodies and the secretariat of the ILO that supports them.
  - International nature.
  - Impartiality.
  - High legal level of the members of the Committee of Experts and the Commissions of Inquiry.
  - Tripartism of the Committee on Freedom of Association and the *ad hoc* committees.

### Valid interpretation until proven otherwise

- In case a Member State does not accept the position of the supervisory

66. BEAUDONNET, Xavier (Editor). *Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho*. ILO International Training Centre. 2010, pp. 92-95.



bodies on the meaning given to an international labor convention, the ILO Constitution provides for the possibility of recourse to the International Court of Justice in order to obtain a definitive interpretation.

- And if States do not use this faculty, it seems logical to assume that the reading that the supervisory bodies make of the conventions is tacitly accepted by the Member States, and therefore considered as internationally valid.

### Good faith application of treaties

- As provided for in Article 26 of the Vienna Convention on the Law of Treaties, by ratifying an international convention a State undertakes to respect and apply in good faith.
- As the ratification of ILO Conventions implies the acceptance by the State of the supervision by the supervisory bodies, it seems reasonable to consider that the implementation in good faith of these instruments requires the State to take into account the observations and recommendations of the ILO supervisory bodies.

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho.

With regard to the valid reading given by the ILO supervisory bodies "until proven otherwise", as long as there is no ruling by the International Court of Justice that contradicts it and

establishes a definitive interpretation, the Committee of Experts on the Application of Conventions and Recommendations itself stated the following:

"The Commission must examine the meaning of certain Articles of those Articles, determine their legal scope and, if necessary, express its opinion on them. Accordingly, as long as the International Court of Justice did not contradict the Commission's views, those views remained valid and generally recognized. The situation is the same with regard to the findings or recommendations of commissions of inquiry which the International Court of Justice, under Article 32 of the Constitution, may confirm, amend or annul, and the parties may not lawfully reject the validity of such findings or recommendations outside the procedure provided for in Article 29, paragraph 2, of the Constitution."

ILO. 1990 Annual Report of the Committee of Experts on the Application of Conventions and Recommendations. In BEAUDONNET, Xavier (Editor), 2010, p. 94, paragraph 7.

An additional element on the importance of the legal value of the pronouncements of the ILO supervisory bodies is highlighted by Alfredo Villavicencio Ríos<sup>67</sup> on

grounds of international legality and legal certainty. In this connection, the Committee of Experts stated in the 1990 General Report that acceptance of these considerations

<sup>67</sup>. VILLAVICENCIO RÍOS, Alfredo. *La libertad sindical en el Perú: fundamentos, alcances y regulación*. Lima: PLADES, 2010.

"is indispensable to the very existence of the principle of legality and, consequently, of the legal security necessary for the proper functioning of the International Labour Organization."<sup>68</sup>

The validity of the interpretation made by the ILO supervisory bodies is accepted and recognized by the international community and the human rights protection systems. In this regard, the Inter-American Court states:

"In order to reach conclusions as to whether the State violated the right to freedom of association, the Court takes particular account of the statements contained in the Commission's application, the evidence in the file, and the recommendations of the ILO Committee on Freedom of Association"<sup>69</sup>

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<sup>68</sup>. Committee of Experts on the Application of Conventions and Recommendations. General Report, 1990, paragraph 7. In VILLAVICENCIO RÍOS, Alfredo. La libertad sindical en el Perú: fundamentos, alcances y regulación. Lima: PLADES, 2010, p. 194.

<sup>69</sup>. Inter-American Court of Human Rights. Case of Baena Ricardo v. Panama. Sentence: February 2, 2001, paragraph 171.

## UNIT 7.

# USE OF INTERNATIONAL LABOUR INSTRUMENTS AND THE PRONOUNCEMENTS OF ILO SUPERVISORY BODIES

### 15. Designing national public policy strategies and proposals

The ILO's international labor standards establish a framework of obligations and policy guidelines for the creation of public policies. The Conventions, Recommendations, Protocols, and Resolutions adopted at the ILO Conference provide policy and legal guidelines and direction regarding the necessary measures to be taken by States to comply with the international obligations contained in ILO Conventions.

A significant number of the problems denounced by trade unions are related to governance issues, inadequate public policies developed without consultation and without the participation of trade unions.

Trade unions can use international labor standards and the pronouncements of the supervisory bodies to support the elaboration and design of public policy strategies and proposals or national plans with a view to the State's compliance with its international obligations under ILO Conventions. The Recommenda-

tions and Resolutions adopted by the International Labour Conference are relevant to the support of this type of strategy and proposals.

For example, in the area of the informal economy, particularly important are the [Resolution concerning decent work and the informal economy](#) and [Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy](#). Recognizing that informality is a multidimensional and heterogeneous phenomenon, these ILO instruments have a comprehensive approach and contain guidelines for the design, adoption, and evaluation of public policies in the areas of macroeconomics, employment, wages, labor migration, education, labor inspection, data collection and statistics, among others.

In the area of social security, the following are particularly important: the [Resolution concerning the recurrent discussion on social protection \(labor protection\)](#) and [Recommendation 202 concerning](#)

**social protection floors.** Recognizing that informality is a multidimensional and heterogeneous phenomenon, these ILO instruments have a comprehensive approach and contain guidelines for the design, adoption, and evaluation of

public policies in the areas of macroeconomics, employment, wages, labor migration, education, labor inspection, data collection and statistics, among others.

In the area of social security, the following are particularly important:

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## EXAMPLES OF THE USE OF INTERNATIONAL LABOR STANDARDS AND THE PRONOUNCEMENTS OF THE ILO SUPERVISORY BODIES TO SUPPORT THE DESIGN OF STRATEGIES AND PUBLIC POLICY PROPOSALS

### Trade union proposals on social security

#### • **Peru. "Proposals of the Trade Unions for the Reform of Social Security in Peru. Towards universal and solidarity-based social security."**

This proposal was constructed in a coordinated manner by the Peruvian trade union centers, taking into account the fundamental principles of social security (solidarity, universality, financial sustainability, State responsibility, gender equity, democratic participation) and used Convention 102 on social security (minimum standards) as a central reference. Specifically, the proposal includes: (a) a request by the trade union centers for the ratification of Parts IV and VI of Convention 102, in view of the need to universalize coverage of occupational risk insurance and to promote a culture of prevention of occupational accidents and diseases; (b) the creation of new institutions, including a National Social Security Council, a Social Security Treasury, a National Pension Institute, a Social Security Health Institute, an Occupational Risk Institute, and two Superintendencies for Health Insurance, Pensions and Occupational Risks.

#### • **Dominican Republic. Social Security reform proposal prepared by the Dominican Republic's trade union confederations.**

This proposal for reform of the Dominican Social Security System has been designed jointly by the National Confederation of Union Unity (CNUS), the Autonomous Confederation of Class-Sized Unions (CASC) and the National Confederation of Dominican Workers (CNTD). The proposal was drawn up from a human rights approach and taking as a reference the ILO Conventions ratified by the country, especially Convention 102 on Social Security, Convention 189 on Domestic Work, and Convention 183 on Maternity Protection.

### Strategies and Policies on Formalization of Work

#### • **Peru**

Using ILO databases and the conceptual guidelines of Recommendation 204 on the transition from the informal to the formal economy in Peru, the Sectoral Strategy for Labour Formalization was adopted, which includes among its specific objectives the strengthening of the capacity to comply with labor regulations. The legal resolution and technical support of this

Strategy can be found via this link:

[https://cdn.www.gob.pe/uploads/document/file/355675/Estrategia\\_Sectorial\\_para\\_la\\_Formalizaci%C3%B3n\\_Laboral\\_\\_2018-2021.pdf](https://cdn.www.gob.pe/uploads/document/file/355675/Estrategia_Sectorial_para_la_Formalizaci%C3%B3n_Laboral__2018-2021.pdf)

## **National Child Labour Strategies and Policies**

### **• Latin America**

In order to comply with the obligations of Conventions 138 on the minimum age and 182 on the worst forms of child labour, several Latin American and Caribbean countries have adopted National Plans for the Prevention and Eradication of Child Labour. Technical assistance from ILO's International Programme on the Elimination of Child Labour (IPEC) was provided in the design and development of the National Plans. The following link shows the National Plans of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, and Uruguay:

<http://white.lim.ilo.org/ipec/pagina.php?seccion=23&pagina=102>

### **• Peru**

One example is the National Strategy for the Prevention and Eradication of Child Labour adopted in Peru, which included the establishment of the National Steering Committee for the Prevention and Eradication of Child Labour (CPETI) as a multi-sectoral coordination body and a tripartite space involving the Peruvian trade union centers. In the process of preparing this strategy, technical assistance was provided by the ILO through the International Programme on the Elimination of Child Labour (IPEC). The Strategy can be found at this link:

<http://white.lim.ilo.org/ipec/documentos/estrategia20122021.pdf>

## **Strategies and Policies on Forced Labor**

### **• Peru**

With a view to fulfilling the obligations of Conventions 29 on forced labor and 105 on the abolition of forced labor, a series of public policy measures were designed and adopted in Peru, focusing on multisectoral coordination and synergies between the ministries involved in implementing actions and interventions to fulfil the tasks of eradicating forced labor and promoting, preventing, detecting, caring for, and recovering the victims of forced labor. The measures include:

- Intersectoral Protocol against Forced Labour;
- National Plan to Combat Forced Labour

<https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/93507/109343/F-450385432/PER93507.pdf>; and

- National Commission for the Fight against Forced Labour

[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=75528&p\\_country=PER&p\\_count=1328&p\\_classification=03&p\\_classcount=7](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=75528&p_country=PER&p_count=1328&p_classification=03&p_classcount=7)

## 16. Drafting laws and promoting legislative reforms<sup>70</sup>

As highlighted in Unit 1 of this practical guide, the instruments adopted at the International Labour Conference, the decisions of the bodies of the ILO's supervisory system, the technical assistance of the International Labour Office, and the political support of the ILO have had a substantial influence on the promotion of protective labor legislation.<sup>71</sup>

Trade unions can use international labor standards and the pronouncements of the supervisory bodies to develop proposals for legislation and to promote labor reforms in line with trade union demands.

It is important to note that the ILO regular supervisory bodies, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards, permanently monitor reforms in labor legislation in accordance with international labor standards and the observations and recommendations of the ILO supervisory bodies, including the bodies of the special supervisory procedures, the tripartite committees arising from complaints, the commissions of inquiry, and the Committee on Freedom of Association.

Trade unions can also use international labor standards, including unratified Conventions and Recommendations, as a source of inspiration in the framework of legislative reforms.

Another relevant resource is the comments on draft legislation and technical concepts provided by the International Labour Office. This resource can also be used for the formulation of draft legislation.

In addition, the following points are relevant:

- When a Convention is accompanied by a Recommendation, it is important that trade unions use both instruments together. Often the complementary Recommendation sets out the details regarding the implementation of the Convention.
- Use the comments and recommendations made by the ILO supervisory bodies concerning your country where relevant. Supporting the trade union proposal for reform in legislation with ILO recommendations reinforces the proposal politically and legally.

<sup>70</sup> The following documents have been taken as sources for this section: Panorama Laboral Normativo. Available at: [https://www.ilo.org/actrav/info/pubs/WCMS\\_537018/lang-es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_537018/lang-es/index.htm); Guía N° 12. Normas internacionales del trabajo: herramientas para fortalecer la legislación laboral nacional; and Guía N° 4 para promover la implementación de las recomendaciones del Comité de Libertad Sindical. Available here: [https://www.ilo.org/actrav/info/pubs/WCMS\\_430607/lang-es/index.htm](https://www.ilo.org/actrav/info/pubs/WCMS_430607/lang-es/index.htm)

<sup>71</sup> VILLASMIL PRIETO, Humberto. *Una visión "americana" del centenario de la OIT: aproximación a la comprensión de una relación histórica*. OIT: ILO Latin America Southern Cone Office, December 2019. Available: [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-santiago/documents/publication/wcms\\_736787.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-santiago/documents/publication/wcms_736787.pdf)

- Use the principles and decisions that the ILO supervisory bodies have produced over decades and which have underpinned protective labor reforms around the world. For example, the Compilation of Decisions and Principles of the Committee on Freedom of Association.<sup>72</sup>

A useful tool for monitoring reforms in

legislation is the ILO database NATLEX. This database contains national labor, social security, and general human rights legislation. Information can be searched by country and by topic. NATLEX can be found at this link:

<https://www.ilo.org/dyn/natlex/natlex4.home>

The following table offers some examples.

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## EXAMPLES OF THE USE OF INTERNATIONAL LABOR STANDARDS AND THE PRONOUNCEMENTS OF ILO SUPERVISORY BODIES FOR THE PROMOTION OF LEGISLATIVE REFORMS

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### Reforms to the legislation on the worst forms of child labor

#### • Argentina

The case deals with the shortcomings in Argentina's implementation of ILO Convention 182 on the worst forms of child labor, which the Committee of Experts on the Application of Conventions and Recommendations noted in relation to the failure to adopt a detailed list specifying the hazardous work activities prohibited for minors, as well as the lack of an explicit definition of the use of minors for prostitution in the Argentine Criminal Code. After urging the Government to address these shortcomings, the Committee of Experts engaged in a constructive dialogue with the Government, which was joined by the United Nations Committee on the Rights of the Child, ultimately leading to the adoption of a number of amendments to the respective laws, establishing the list of hazardous labor activities and criminalizing child prostitution.

The Committee of Experts has followed up on these legislative reforms in its Annual Report of 2018. The observation can be found at this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3340183](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3340183)

**Source:** ILO. Monitoring compliance with international labour standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 2019.

#### • Peru

With a view to meeting the obligations of ILO Conventions 138 and 183, legislation was adopted to establish a list of hazardous work and activities that are dangerous and harmful to the overall health of adolescents. The legal norm adopted can be found via this link:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96104/113460/F73813669/PER96104.pdf>

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<sup>72</sup>. [https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS\\_635185/lang--es/index.htm](https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_635185/lang--es/index.htm)

## Reforms to discrimination legislation

### • Brazil

Brazil was the subject of numerous observations by the Committee of Experts on the Application of Conventions and Recommendations and was included in the "short list" of the Conference Committee on the Application of Standards with regard to compliance with Convention No. 111 on Discrimination (Employment and Occupation). The observations and follow-up by both regular control bodies contributed to the adoption of legislative measures such as in the area of awareness raising by the Brazilian Government.

The Committee of Experts has followed up on these legislative reforms in its Annual Reports. The observations are available via the following links:

#### 2018 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3344330,102571,Brasil,2017](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3344330,102571,Brasil,2017)

#### 2014 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3149568,102571,Brasil,2013](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3149568,102571,Brasil,2013)

#### 2013 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3057584,102571,Brasil,2012](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3057584,102571,Brasil,2012)

#### 2010 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2308974,102571,Brasil,2009](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2308974,102571,Brasil,2009)

#### 2009 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2303709,102571,Brasil,2008](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2303709,102571,Brasil,2008)

#### 2007 Observations:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2272348,102571,Brasil,2006](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2272348,102571,Brasil,2006)

**Source:** ILO. The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion. Geneva: ILO, 2011, pp. 79-85.

## Asbestos Legislation Reforms

### • Canada

The case concerns Articles 3 and 10 of Convention No. 162, according to which ratifying States shall ensure the strictest possible protection of workers against asbestos and, as far as possible, prohibit the use of the substance. On several occasions in its reports, the Committee of Experts on the Application of Conventions and Recommendations had noted



comments by Canadian trade unions stating that, while Canada remained one of the largest producers of asbestos, scientific studies and updated guidelines from national research institutes, the ILO and WHO had indicated that, from a scientific point of view, it was recommended that the use of asbestos should be completely banned in Canada, and that that would not have major economic consequences. The Committee of Experts, with the support of the Committee on the Application of Standards, therefore invited the Government to consult with the social partners with a view to updating national asbestos legislation in accordance with current scientific standards, in compliance with the provisions of Convention No. 162.

The Committee of Experts has followed up on these legislative reforms in its Annual Report of 2018. The observation can be found at this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3343017](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3343017)

**Source:** ILO. Monitoring compliance with international labour standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 2019.

## Reforms to legislation on protection against anti-union discrimination

### • Costa Rica

The case concerns persistent failures to implement Costa Rica's laws against anti-union discrimination. These issues have resulted in many trade unionists not having adequate protection against discriminatory dismissals and other acts of harassment, which the Committee of Experts considers to be in violation of their rights under Articles 1 and 2 of Convention No. 98. Following comments by the Committee of Experts on the Application of Conventions and Recommendations and other international bodies, as well as ongoing consultations between the Government of Costa Rica and ILO experts, a new law was finally adopted in 2016, establishing a number of measures to drastically reduce the duration of proceedings in cases of anti-union discrimination and to improve the enforcement of court judgements in this regard.

The Committee of Experts followed up on these legislative reforms in its Annual Report of 2019. The observation can be found at this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3340183](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3340183)

**Source:** ILO. Monitoring compliance with international labour standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 2019.

## Reforms to equal pay legislation

### • Grenada

The case concerns a provision of the Grenada Minimum Wage Ordinance 2002, which established a different minimum wage for male and female agricultural workers. The Committee of Experts on the Application of Conventions and Recommendations recalled that this provision was not in conformity with Article 2(1) of ILO Convention No. 100, which prohibits any distinction in the determination of wages on the basis of sex, and urged the Government to amend the law. Following these comments, an agreement was reached between the social partners in Grenada,

which supported the position of the Committee of Experts. In response, the Government initiated a reform process that eventually resulted in an amendment to the Ordinance, which established equal minimum wages for all agricultural workers regardless of their gender.

The Committee of Experts followed up on these legislative reforms in its 2013 Annual Report. The observation can be found at this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3081676](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3081676)

**Source:** ILO. Monitoring compliance with international labour standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 2019.

## Reforms of forced labour legislation

### • Peru

The case concerns the Peruvian Penal Code, which, while covering offences relating to trafficking in persons and other types of compulsory labor, did not contain specific provisions criminalizing forced labor in all its forms, as required by Article 25 of ILO Convention No. 29. Having highlighted this shortcoming, the Committee of Experts on the Application of Conventions and Recommendations urged the Government to adopt new legislation establishing these criminal offences. As a result of these comments, the Government, with the assistance of ILO technical experts, began a process of reform that resulted in the preparation and adoption of a reform of the Peruvian Penal Code. This reform added a number of new offences, addressing forced labor in all its forms.

The Committee of Experts followed up on these legislative reforms in its 2018 Annual Report. The observation can be found at this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3330851](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3330851)

**Source:** ILO. Monitoring compliance with international labour standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 2019.

## Reforms to legislation on the abolition of forced labour

### • Dominican Republic.

The Dominican Republic was the subject of numerous observations by the Committee of Experts on the Application of Conventions and Recommendations and was discussed in the Conference Committee on the Application of Standards with regard to compliance with Convention No. 105 on forced labour, in particular in the area of sugar plantations and abuses committed against Haitian migrant workers. Observations and follow-up by both regular monitoring bodies, including direct contact missions and technical assistance from the International Labour Office, contributed to legislative action.

The Committee of Experts followed up on these legislative reforms in its Annual Reports. The observations are located in the following links:

**2000 Observations:**

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2186925,102930,Rep%C3%BAblica%20Dominicana,1999](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2186925,102930,Rep%C3%BAblica%20Dominicana,1999)

**1998 Observations:**

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2163153,102930,Rep%C3%BAblica%20Dominicana,1997](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2163153,102930,Rep%C3%BAblica%20Dominicana,1997)

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[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2106152,102930,Rep%C3%BAblica%20Dominicana,1992](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2106152,102930,Rep%C3%BAblica%20Dominicana,1992)

**Source:** ILO. The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion. Geneva: ILO, 2011, pp. 85-93.

**17. Arguing cases before national courts**

Trade unions can use international labor standards and the rulings of supervisory bodies to support their claims in national courts. Trade unions may include in their submissions the observations and recommendations of supervisory bodies, including the Committee of Experts and the Committee on Freedom of Association, to support their arguments.

In addition, several national courts have adopted international labor standards and the guidelines of the decisions of the supervisory bodies, and reflect them in their rulings. Trade unions often use the remedies of amparo or guardianship and actions of unconstitutionality.

The following table shows some examples.

## EXAMPLES OF THE USE OF INTERNATIONAL LABOR STANDARDS AND THE RULINGS OF ILO SUPERVISORY BODIES TO SUPPORT CASES BEFORE NATIONAL JUDICIAL BODIES

### EQUALITY AND NON-DISCRIMINATION CASES

#### Case on wage equality

##### • Canada

The case concerns the allegation by the Commission des droits de la personne et des droits de la jeunesse [Human Rights and Youth Rights Commission] that the current compensation system (Québec Charter of Human Rights and Freedoms) maintained a discriminatory wage differential between employees in the administrative area (dominated by women) and those in the specialized and service sectors (dominated by men). The Québec Court of Human Rights took as its basis ILO Convention No. 100 and Recommendation No. 90, as well as the relevant United Nations treaties, and determined that national legislation should be interpreted in accordance with the State's international obligations. The court declared that Laval University had violated the right to equality of employees in the administrative area by not granting them remuneration equal to that of their colleagues in the specialized and service sectors, since they performed work of equal value.

**Source:** BEAUDONNET, Xavier (Editor). *Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho*. Turin: International Training Centre of the ILO. 2010.

#### Case on the rights of domestic workers, job stability and the right to non-discrimination

##### • Colombia

The case refers to a ruling by the Constitutional Court of Colombia (Ruling C-028/19) which supports the jurisdictional decision taking into account ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, "which requires the State to promote equality of treatment and opportunity in employment and occupation, through various mechanisms, including the repeal of legislative provisions incompatible with that postulate, and the modification of practices which distinguish, exclude or are based on unjustified preferences based on race, religion, colour, political opinion, descent or social origin" ((Article 1(b) (considering 4. 16)).

The sentence is available at this link: [https://www.corteconstitucional.gov.co/relatoria/2019/C-028-19.htm?fbclid=IwAR2tPcReypJWy\\_jgl-FA4QZS48kxAqJi2QhEVW7u-MTEcb-oyXugkpzU-yOY](https://www.corteconstitucional.gov.co/relatoria/2019/C-028-19.htm?fbclid=IwAR2tPcReypJWy_jgl-FA4QZS48kxAqJi2QhEVW7u-MTEcb-oyXugkpzU-yOY)

Reference by Mery Perdomo, labor lawyer, union legal advisor, and union leader.

## CASES ON THE RIGHTS OF INDIGENOUS PEOPLES

### • Costa Rica

The case concerns a ruling by the Constitutional Chamber of the Supreme Court of Justice of 11 August 1999 (decision No. 06229-aa, file No. 96-007361-007-CO-C), in which the court invalidated a decree reducing the size of an indigenous reservation, on the sole basis of a violation of Article 11 of ILO Convention No. 107.

### • Costa Rica

The case refers to a decision of the Constitutional Chamber of the Supreme Court of Justice of 16 January 1998 (decision No. 0241-98, file No. 5325-V-97) in which the court, on the basis of Article 4 of ILO Convention No. 169, by which States undertake to adopt special measures of protection for the benefit of indigenous and tribal peoples, invalidated the decision to reduce the budget of the National Commission for Indigenous Affairs by 85 per cent. "From the moment Costa Rica adopted this international instrument, the Costa Rican State undertook, according to the aforementioned Article 4, to establish special measures, which must be understood as constant activism to safeguard these minority ethnic groups, their institutions, their property, their work, their environment, among other things, from the influence of our population and culture. These special measures must mean for the State a prohibition on abandoning or leaving a public institution that aims to establish itself as a forum for discussion and initiatives on indigenous affairs in the country."

**Source:** BEAUDONNET, Xavier (Editor). *Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho.* Turin: International Training Centre of the ILO. 2010.

## WORKING CONDITIONS CASES

### Case on working hours

#### • Peru

The case concerns a claim of unconstitutionality filed by the Toquepala Workers' Union and others with the Peruvian Constitutional Court. In its judgement of 17 April 2006 (case No. 4635-2004-AA/TC), the Constitutional Court declared the working hours set by the collective agreement of a mining company to be invalid. To this end, the Court reviewed various international instruments such as ILO Convention No. 1, as well as observations on this same Convention made by the Committee of Experts to Peru. "In this regard, it should be mentioned that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization, in its Individual Observation on Convention No. 1 - Hours of Work (Industry) 1919 (Ratification 1945), Document No. 062002PER001, of 2002, considered that the 14 x 7 working system applicable in Peru does not comply with the provisions of Article 2 of ILO Convention No. 1, since the average weekly working hours over a three-week period reach 56 hours per week and exceed the limit prescribed by Article 2 (c) (48 hours per week).

The decision of the Constitutional Court can be found at this link:

<https://www.tc.gob.pe/jurisprudencia/2006/04635-2004-AA.pdf>

The Committee of Experts followed up on this case in its 2009 Annual Report. The observation can be found via this link:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:2290936,102805,Per%C3%BA,2008](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXoPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2290936,102805,Per%C3%BA,2008)

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: Turin: International Training Centre of the ILO. 2010.

## Case on protection against unfair dismissal

### • Trinidad and Tobago

The case refers to a decision of the Labour Court of Trinidad and Tobago (3 March 1998, No. 140 of 1997) which states: "The principles of good industrial relations practice prohibit the termination of employment without just cause relating to the ability of the worker to perform the work for which he was hired or based on the operational needs of the enterprise. These principles are recognized in Convention No. 158 of the International Labour Organization, which sets out written principles of good industrial relations practice that have already been established, without the influence of the fact that the Convention has not been ratified by Trinidad and Tobago. The Convention does not apply as an integral element of the domestic law of Trinidad and Tobago but it does apply as evidence of the existence of internationally accepted principles of good industrial relations practice."

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

## FREEDOM OF ASSOCIATION CASES

## Case on the right to organize in the agricultural sector

### • Canada

The case concerns the right of agricultural workers to organize. The law under consideration by the Supreme Court of Canada did not prohibit agricultural workers from joining unions, but refrained from giving them the protection afforded to other workers from, inter alia, anti-union practices. The Supreme Court of Canada (20 December 2001) stressed the centrality of the principle of non-discrimination in the effective recognition of freedom of association. In order to support the recognition of the positive obligation of the State to extend the protection of freedom of association to agricultural workers, the Court referred to several ILO Conventions, in particular Articles 2 and 10 of Convention No. 87 and Conventions Nos. 11 and 141.

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

## Cases on protection against anti-union discrimination

### • Chile

The case refers to a decision by the Chilean Supreme Court of Justice of 19

October 2000 (file no. 10.695). The jurisdiction was to determine whether trade union jurisdiction covered workers who were candidates for union representatives even before the official registration of the union. Noting the contradiction between two Articles of the labour legislation concerning the moment when trade union jurisdiction began to take full effect, the Supreme Court of Chile resorted to the ILO conventions ratified by Chile in order to decide which of the two solutions should ultimately prevail. The Court referred specifically to Article 3 of ILO Convention No. 87, which recognizes the right of trade unions to freely elect their representatives, and to Conventions Nos. 98 and 135, which oblige States to ensure effective and adequate protection against discrimination of workers on the basis of their union membership or activities. On that basis, the Supreme Court ruled that national legislation must be interpreted in such a way as to effectively protect candidates for trade union representatives against any act of discrimination, even if they stand for election before the official establishment of the union. With regard to the use of international law for the interpretation of domestic law, the Supreme Court ruled as follows: "(...) International Labour Conventions Nos. 87, 98 and 135, so it is clear that in the face of any doubts that may arise in our domestic law, the precepts of international law must be considered, especially in the light of the provisions of Article 5 of the Political Constitution of the Republic. (...) That Article 3 of Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize refers to the autonomy of these organizations, one of the aspects of which is to freely elect their representatives. It is obvious that if on the occasion of the constitution of a trade union and the election of its directive, the leaders are dismissed due to the needs of the company, those who are not accredited, our legislation would not be in accordance with the international precepts."

- **Costa Rica**

The case refers to a ruling by the Constitutional Chamber of the Supreme Court of Costa Rica of 8 October 1993 (resolution No. 5000-93, file No. 1214-S-93) in which the Court, relying mainly on Articles 1 of ILO Conventions Nos. 98 and 135, in the absence of an express provision in the Labour Code, recognized the existence of enhanced protection for the benefit of workers' representatives, including, inter alia, the right to reinstatement in the event of unjustified dismissal.

- **Peru**

The case refers to the claim of unconstitutionality filed by the Union of Workers of Telefónica del Peru S.A. and FETRATEL before the Peruvian Constitutional Court (file no. 1124-2001-AA/TC). In relation to anti-union dismissals, the Constitutional Court ordered, taking into account the provisions of ILO Conventions Nos. 87, Article 2, and 98, Article 1, paragraph 2 (b), the return to work of the persons affiliated to the plaintiffs' unions who had been dismissed from the company, arguing that the criterion of union membership had been used to determine the application of the dismissal measure.



The judgment is available at this link:

<https://www.tc.gob.pe/jurisprudencia/2002/01124-2001-AA.html>

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

## **Case on the right to form trade unions without prior authorization**

### **• Colombia**

Article 372 of the Colombian Substantive Labour Code provides that workers' organizations must register their Articles of Association with the Ministry of Labour in order to enjoy the rights recognized to trade unions under national legislation. The validity of that provision was challenged before the Colombian Constitutional Court for alleged violation of Article 2 of ILO Convention No. 87 and Article 39 of the Colombian Constitution, which recognizes freedom of association. It was alleged that the registration procedure was in fact a prior authorization because of the extensive control of the content of the certificate of incorporation carried out by the Ministry. After having recalled that ILO Convention No. 87 was part of the Constitutionality Block, the Court based itself on Article 2 of that Convention as well as on Article 39 of the National Constitution to declare the conditional constitutionality of the contested Article, "on the understanding that the aforementioned registration exclusively fulfills the functions of publicity, without this authorizing the aforementioned ministry to carry out a prior control over the content of the act of incorporation".

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

## **Cases on the right to freely elect their representatives**

### **• Colombia**

The case refers to the ruling of the Colombian Constitutional Court of 5 February 2000 (Ruling C-385/2000) in which the Court declared unconstitutional an Article that reduced the access of foreign workers to leadership positions in trade unions, basing the ruling mainly on the violation of Article 3 of ILO Convention No. 87, which grants trade unions, inter alia, the right to freely elect their representatives.

### **• Paraguay**

The case refers to the action of unconstitutionality brought by the Single Confederation of Workers (CUT) and the National Confederation of Workers (CNT) against Decree No. 16769 of 1992, issued by the Executive, which regulated union elections and conditioned the registration of organizations, as well as the recognition of their leaders. The Supreme Court of Justice of Paraguay, in its judgement of 23 September 2000, No. 35, declared Decree No. 16,769 unconstitutional, considering it to be contrary to Article 3 of ILO Convention No. 87.

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

## **Case on collective bargaining in the public sector**

### **• Peru**

The case refers to a judgement of the Peruvian Constitutional Court, dated 3 September 2015, where, in order to base its decision to affirm the right to collective bargaining in the public sector, the Court uses ILO Conventions 98 and 151, pronouncements of the Committee of Experts



on the Application of Conventions and Recommendations, and several of the General Surveys prepared under the procedure of Article 19 of the ILO Constitution.

The sentence is available at this link:

<https://www.tc.gob.pe/jurisprudencia/2015/00003-2013-AI%2000004-2013-AI%2000023-2013-AI.pdf>

Reference by Saulo Galicia, labor lawyer and legal advisor to trade unions.

## **Cases on promotion of collective bargaining at branch level**

### **• Peru**

The case refers to a ruling by the Peruvian Constitutional Court (case no. 0261-2003-AA/TC) where the Court rejected the extraordinary appeal filed by the Peruvian Chamber of Construction-CAPECO against an administrative act imposing a sector-wide level for collective bargaining in the civil construction sector. The Court based itself, among other elements, on Article 4 of ILO Convention No. 98, according to which the State must not only guarantee the right to negotiate, but must also promote its development, which allows for the granting of certain "protection bonuses" when this is the only way to make collective negotiation possible. He considered that the unique characteristics of the sector and in particular the very high level of rotation of workers between different companies and sites make it impossible in practice to create a union organization at the company level, so that collective bargaining at the sector level is the only possibility for the Federation of Civil Construction Workers of Peru to make its constitutional right to collective bargaining viable.

The sentence is available via this link:

<https://tc.gob.pe/jurisprudencia/2003/00261-2003-AA.pdf>

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010..

### **• Peru**

The case refers to a ruling by the Peruvian Constitutional Court (file No. 03561-2009-PA/TC) where the Court bases its decision to affirm the right to collective bargaining by branch of activity for the port sector using various ILO instruments: Convention 98 on the right to organize and collective bargaining, Convention 154 on collective bargaining, Recommendation 91 on collective contracts and Recommendation 163 on collective bargaining.

The sentence is available at this link:

<https://tc.gob.pe/jurisprudencia/2009/03561-2009-AA.pdf>

Reference by Saulo Galicia, labor lawyer and legal advisor to trade unions.

## Case on the right to strike

### • Colombia

The case concerns the action of unconstitutionality brought by the Union of Various Enterprises of Medellín regarding the determination of whether the dismissals for participating in a strike that had been declared illegal by the administrative authority constituted anti-union dismissals. The Constitutional Court of Colombia, in its judgement of 10 August 1999 (file No. 206,360), applied ILO Conventions Nos. 87 and 98 and considered that, since the illegality of the strike had been declared by the administrative authority and not by the judicial authority, the workers had been deprived of the guarantee of impartiality and protection against anti-union discrimination. In the ruling, the Constitutional Court also noted that the block of constitutionality includes the ILO Constitution, Conventions 87 and 98 and the pronouncements of the Committee on Freedom of Association. It further stated that "The recommendations of the ILO supervisory and monitoring bodies cannot be ignored: when they result from State actions contrary to the international treaties referred to in Article 93 Superior, even if they are not directly binding, they generate a triple obligation on the part of the States: they must be 1) accepted and applied by the administrative authorities; 2) serve as a basis for the presentation of draft legislation; and 3) guide the meaning and scope of the orders that the guardianship judge must issue to restore the rights violated or threatened in that and similar cases."

The sentence is available at this link:

<https://www.corteconstitucional.gov.co/relatoria/1999/T-568-99.htm>

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

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## 18. Arguing cases before international human rights protection systems

Trade unions can also use international labour standards and the pronouncements of the ILO supervisory bodies in the pleadings of cases to be submitted to the other systems of international human rights protection, such as the universal system of the United Nations or the regional systems, including the inter-American human rights system.

There is an intrinsic complementarity and mutual reinforcement between the ILO and the inter-American human rights system. The organs of the inter-American system base their decisions on labour and trade union matters on the principles and decisions of the ILO supervisory bodies. The validity of the interpretation made by the ILO supervisory bodies is accepted and recognized by the inter-American human rights system. In this regard, the Inter-American Court states that "In order to reach conclusions on whether the State violated the right to freedom of association, the Court takes particular account of the statements contained in the Commission's application, the evidence in the file and the recommendations of the ILO Committee on Freedom of Association."<sup>73</sup>

The principles and decisions of the ILO supervisory bodies have been incorporated into the inter-American standards established by the Inter-American Court of Human Rights in its contentious jurisdiction and non-contentious or consultative jurisdiction. The inter-American standards "strengthen the validity of the human rights guaranteed by the American Convention in all the States of the hemisphere, since the international protection of human rights finds direct application in the domestic sphere."<sup>74</sup> The incorporation of inter-American standards into domestic law is related to the obligation of "control of conventionality", by virtue of which the organs of the State and, in particular, the domestic judges must verify the compatibility of the norms and acts that they must analyze with respect to the American Convention and with the interpretation that the Inter-American Court makes of it,<sup>75</sup> in its role as final interpreter. The following are some examples of judgments of the Inter-American Court of Human Rights where international labour standards and principles established by the ILO supervisory bodies have been used.

<sup>73</sup>. Inter-American Court of Human Rights. Case of Baena Ricardo v. Panama. Sentence February 2, 2001, paragraph 171.

<sup>74</sup>. Inter-American Court of Human Rights. Annual Report 2010, p. 55.

<sup>75</sup>. Inter-American Court of Human Rights. Advisory Opinion OC-21/14, August 19, 2014.

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## EXAMPLES OF THE USE OF INTERNATIONAL LABOUR STANDARDS AND THE RULINGS OF ILO SUPERVISORY BODIES TO SUPPORT CASES BEFORE INTERNATIONAL JUDICIAL BODIES

### Employment stability case

#### • Inter-American Court. Case of Baena Ricardo et al. v. Panama

In this judgment in respect of Panama, the Court considered that the dismissal, on the basis of a law specially promulgated for this purpose, of 270 public service workers who had taken part in a strike was contrary to the principle of freedom of association recognized by Article 16 of the American Convention on Human Rights. In accordance with the principle of full reparation recognized by international law, the dismissed employees were then required to be reinstated and be paid the remuneration that they had not received during the time that had elapsed. In order to give greater weight to its argument, the Court relied both on the recommendations of the ILO Committee on Freedom of Association, which had ruled on this particular case, and on the observations of the ILO Committee of Experts.

The sentence (February 2, 2001) is available at this link:

[http://www.corteidh.or.cr/docs/casos/articulos/Seriec\\_72\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/Seriec_72_esp.pdf)

**Source:** BEAUDONNET, Xavier (Editor). Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho. Turin: International Training Centre of the ILO. 2010.

### Cases of extrajudicial execution or forced disappearance of trade unionists

#### • Inter-American Court. Case of Lagos del Campo v. Peru

Based on the pronouncements of the Committee on Freedom of Association, the Inter-American Court states that recognition of freedom of expression is a *conditio sine qua non* for the full development of trade unions. It points out that the protection of the right of association in labour matters not only protects trade unions, their members, and their representatives, but also extends to organizations which, being of a different nature from trade unions, pursue purposes of representing the interests of workers, and that the protection of labour stability must be strengthened for the elected representatives of workers. The ruling (August 31, 2017) is available at this link:

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_340\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_340_esp.pdf)

### Case on freedom of expression and freedom of association

#### • Inter-American Court. Case of Lagos del Campo v. Peru

Based on the pronouncements of the Committee on Freedom of Association, the Inter-American Court states that recognition of freedom of expression is a *conditio sine qua non* for the full development of trade unions. It points out that the protection of the right of association in labour matters not only protects trade unions, their members, and their representatives, but also extends to organizations which, being of

a different nature from trade unions, pursue purposes of representing the interests of workers, and that the protection of labour stability must be strengthened for the elected representatives of workers. The ruling (August 31, 2017) is available at this link:

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_340\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_340_esp.pdf)

### **Case on the ownership of rights by trade unions**

#### **• Inter-American Court. Advisory Opinion on the Ownership of Rights by Legal Entities in the Inter-American Human Rights System.**

The Court establishes that States have the obligation to guarantee the rights of trade union organizations contained in Article 8(1)(a) of the Protocol of San Salvador and that such obligation includes: a) positive obligations: to allow and encourage the creation of conditions in which such rights can be effectively realized, and b) negative obligations: to refrain from creating barriers such as legal or political ones that tend to prevent trade unions, federations, and confederations from enjoying the possibility of free functioning and, in addition, trade unions from associating.

The Advisory Opinion (26 February 2016) is available here:

[http://www.corteidh.or.cr/docs/opiniones/seriea\\_22\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_22_esp.pdf)

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## NOTES

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## NOTES

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