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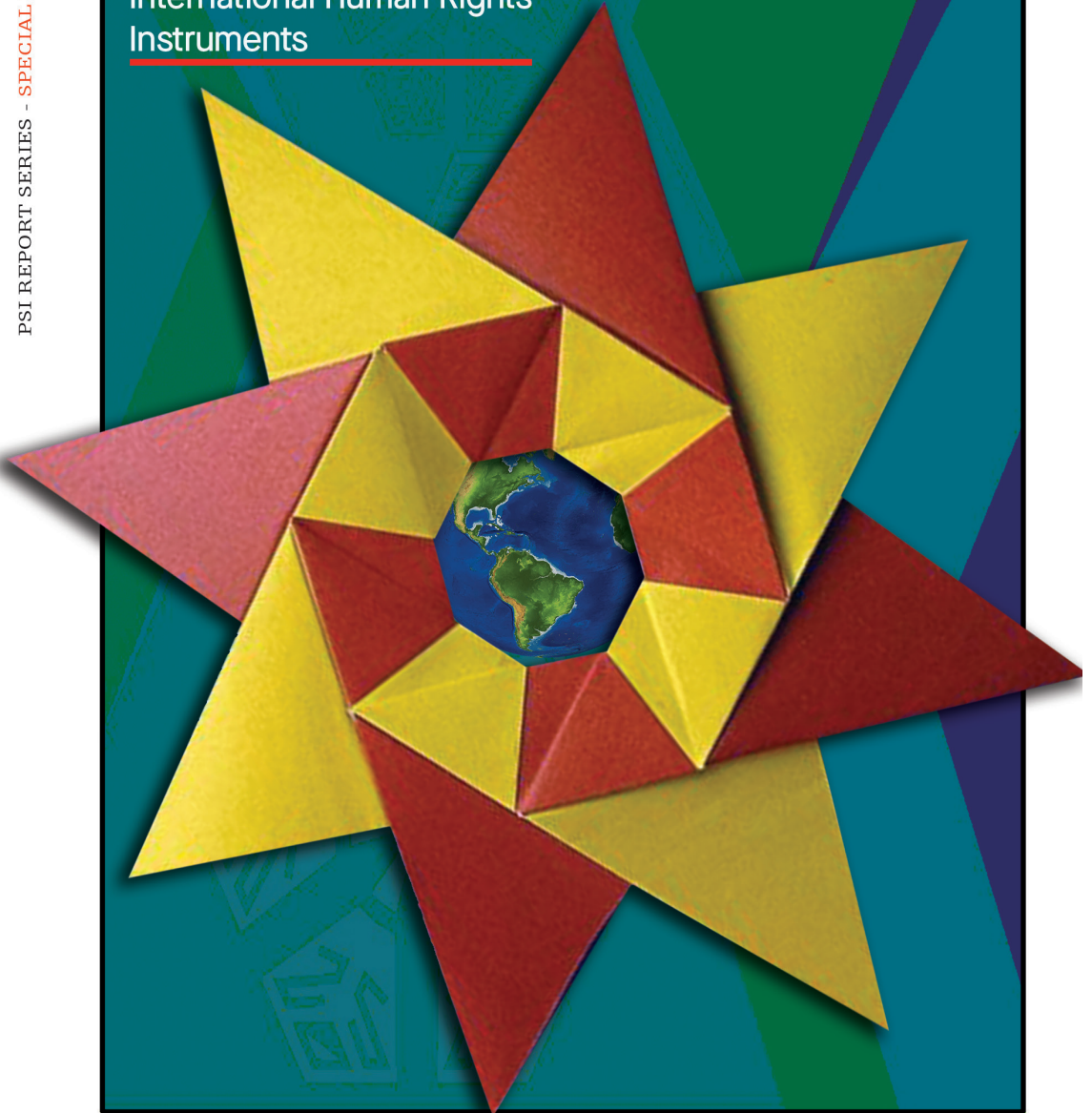
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PSI REPORT SERIES - SPECIAL REPORT

PRACTICAL GUIDE TO TRADE UNION ACTION

International Human Rights
Instruments



PRACTICAL GUIDE TO TRADE UNION ACTION:

INTERNATIONAL HUMAN RIGHTS
INSTRUMENTS

CARLOS LEDESMA

Practical Guide to Trade Union Action: International Human Rights Instruments

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TABLE OF CONTENTS

Foreword	7
Introduction	9
1 UNIVERSAL HUMAN RIGHTS SYSTEM OF THE UNITED NATIONS	11
1.1. What is the Universal Human Rights System?	11
1.2. How can unions use the regular mechanisms of the Universal System?	13
1.3. How can unions use the special mechanisms of the Universal System?	18
2 AGENDA 2030 MONITORING SYSTEM	22
2.1. What is Agenda 2030?	22
2.2. How does the UN measure progress on Sustainable Development Goals?	26
2.3. Why are the Sustainable Development Goals relevant to the trade union movement?	31
3 PROMOTION AND IMPLEMENTATION OF THE OECD GUIDELINES	34
3.1. What are the OECD Guidelines for Multinational Enterprises?	34
3.2. What is the content of the Guidelines?	35
3.3. How can unions use National Contact Points?	40

4 | GLOBAL FRAMEWORK AGREEMENTS 45

4.1. What are Global Framework Agreements? 45

4.2. What Global Framework Agreements has Public Services International signed? 47

4.2.1. Global Framework Agreement with the EDF Group 48

4.2.2. Global Framework Agreement with the ENEL Group 53

4.2.3. Global Framework Agreement with the GDF SUEZ-ENGIE Group 60

5 | LABOR CHAPTERS IN FREE TRADE AGREEMENTS 63

5.1. What are the Labor Chapters of Free Trade Agreements? 63

5.2. What is the content of the labor chapters of the Free Trade Agreements? 64

5.3. How have unions used the labor chapters of Free Trade Agreements? 66

6 | LABOUR PROTECTION MECHANISMS IN THE INTERNATIONAL FINANCIAL INSTITUTIONS 72

6.1. What are the Labor Safeguards of the Multilateral Development Banks? 72

6.2. What are the contents of the multilateral banks' labor safeguards? 74

6.3. How can unions use the labor safeguards of the multilateral banks? 78

7 | CRIMINAL RESPONSIBILITY FOR GENOCIDE AND CRIMES AGAINST HUMANITY 80

7.1. What are genocide and crimes against humanity? 80

7.2. Where can unions report crimes against humanity and genocide? 83

7.2.1. National courts of the State on whose territory the crimes occurred 84

7.2.2. International Criminal Court 85

7.2.3. National courts and the principle of universal jurisdiction 90

FOREWORD

The publication in your hands (or on your screen) is the most recent of the Guides to Union Action published by PSI with the support of the DGB.

In addition to complementing the other two previously published - the “Practical Guide to Trade Union Action in the Inter-American Human Rights System” and the “Practical Guide to Trade Union Action at the International Labour Organization” - it represents a further effort by the Secretariat for Inter-America to create and make practical, effective and up-to-date tools available to all PSI affiliates in the region.

It is not the first and most likely will not be the last. The violation of workers’ rights, in the public sector and in general, embodies constant struggles and challenges; in addition to being persistently repeated, violations are becoming increasingly complex and sophisticated. We are therefore obliged to move out of our comfort zone and explore other mechanisms, actions and courses of action if we want not only to

preserve but also to extend our rights.

The mechanisms outlined in this Guide have been comparatively underused by unions to date. However, it is not a question of supplanting one by another, but of using them strategically, according to the circumstances. In no way can they replace union action at the national level.

The COVID-19 pandemic, however, has clearly demonstrated how events of this kind place new limits and restrictions on our actions, including our rights, and how digital and other tools will increasingly be an integral part of our work and our societies.

This transformation requires us to adapt and use all means at our disposal to secure our own future and to ensure that the conduct of governments and businesses is more democratic, inclusive and respectful of workers’ rights. This guide provides us with an opportunity to address these challenges in the years ahead.

Camilo Rubiano

PSI TRADE UNION RIGHTS OFFICER

INTRODUCTION

This “Practical Guide to Trade Union Action: International Human Rights Instruments” presents tools that trade unions can use at the international level to strengthen their action in the defense and promotion of human rights at the local and national levels. Human rights, including labor and trade union rights, have long been recognized in important international human rights standards adopted within the United Nations and the International Labor Organization. There is no doubt that international regulation of labor and union human rights has been an important step to improve the working and living conditions of the working class. However, it is also clear that mere proclamations at the international level are not enough for human rights to be effectively respected, promoted or protected at the local and national levels. The existence of concrete and effective mechanisms of control and protection capable of enforcing international human rights obligations on States and companies are indispensable.

Today, at the international level, there are various mechanisms (contentious, non-contentious, ‘semi-contentious’) that trade unions can use to put pressure on states and companies to respect human rights. The vast majority of these mechanisms are complementary; that is, they can be used by trade unions in a parallel and coordinated manner. The combined and simultaneous use of these mechanisms by trade unions reinforces their effectiveness.

Finally, the existence of these international mechanisms is not sufficient to guarantee the effective respect of the human rights of workers. What really counts is their effective and strategic use. In this sense, the action of the unions is essential and irreplaceable to guaranteeing the efficacy, respect, promotion and protection of human rights for the working class.

With all of this in mind, Public Services International, with support from the DGB, previously published Practical Guides on the mechanisms of the Inter-American Human Rights

System and the International Labour Organization. This Guide follows up on those by presenting practical

information on the following 7 international instruments:

- 1 | The Universal Human Rights System of the United Nations**

- 2 | Monitoring system of the Sustainable Development Goals of Agenda 2030**

- 3 | System for the promotion and implementation of the OECD Guidelines for Multinational Enterprises**

- 4 | Global Framework Agreements**

- 5 | Labor Chapters of Free Trade Agreements**

- 6 | Labor Safeguards of the Multilateral Banks**

- 7 | International Criminal System for crimes against humanity and genocide**

The Guide has been developed using a practical approach for use by union leaders and advisors. Care has been taken to explain the contents with the aim of introducing trade unionists to the mechanisms

and procedures of each of these 7 instruments, opening a door and inviting them to get to know these tools and use them to strengthen trade union action.

1 | UNIVERSAL HUMAN RIGHTS SYSTEM OF THE UNITED NATIONS

1.1 | What is the Universal Human Rights System?

The Universal System of Human Rights (hereinafter referred to as the Universal System) is one of the most important international protection systems at the global level that can be used by trade unions to defend and promote human rights, including labour and trade union rights.

The Charter of the United Nations adopted in 1945 and the Universal Declaration of Human Rights

adopted in 1948 are the fundamental pillars of the United Nations and set out its mandate to ensure peace, security and respect for human rights worldwide.

Based on the Universal Declaration of Human Rights, the United Nations General Assembly has adopted a set of international treaties on human rights and a series of mechanisms to ensure respect, promotion and protection of their exercise.

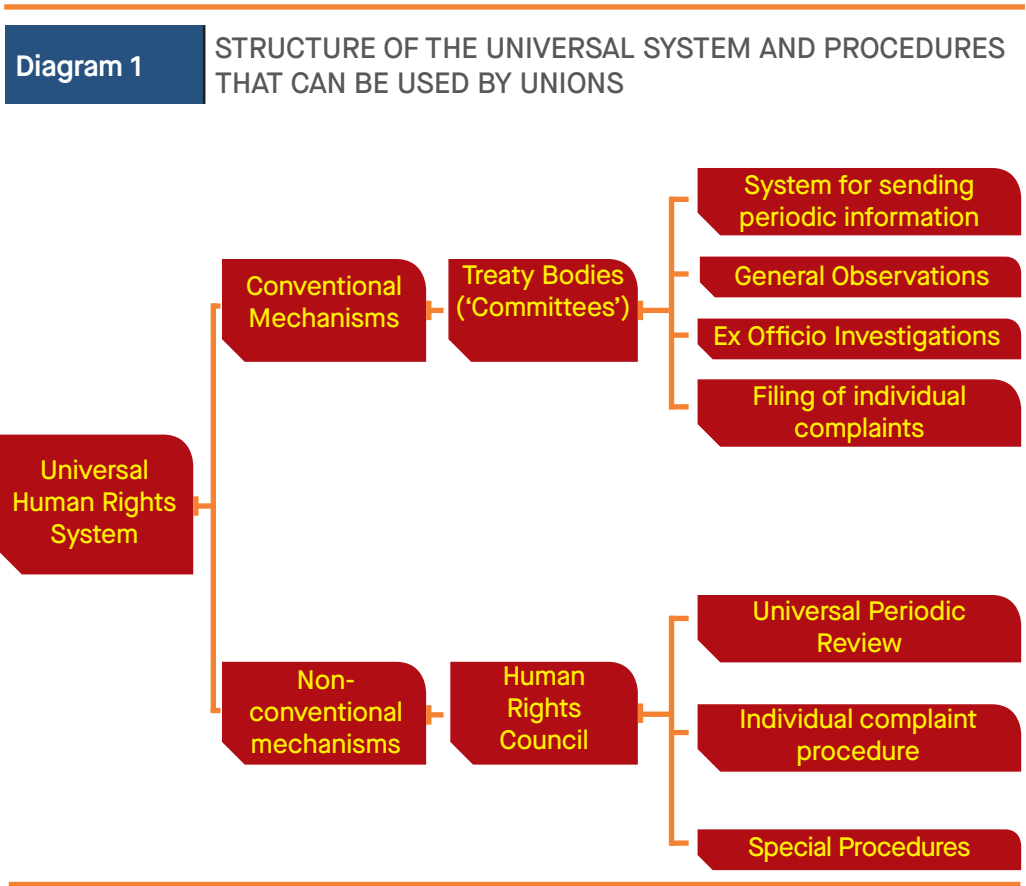
INTERNATIONAL HUMAN RIGHTS STANDARDS ADOPTED BY THE UNITED NATIONS

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child

- International Convention on Protection of the Rights of All Migrant Workers and Members of Their Familie
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearance

The Universal System is composed of the international human rights standards adopted within the United Nations and the mechanisms (conventional and non-conventional) created to monitor the compliance of States

with their international human rights obligations. The following diagram shows the structure of the Universal System and the procedures that will be presented in this guide.



Author’s elaboration

1.2

How can unions use the regular mechanisms of the Universal System?

Treaty Bodies (the Committees) are bodies created under the international treaties adopted by the United Nations General Assembly to monitor the implementation of international human rights obligations by the States that have ratified the treaties. Each Committee is composed of

independent experts, usually 18 experts per Committee. **Table 1** details the list of existing committees, the international treaties they are responsible for monitoring and the link for each committee.

Table 1 INTERNATIONAL COMMITTEES AND TREATIES TO BE SUPERVISED		
Committee (Treaty Body)	International Treaty supervised by the Committee	Web link
United Nations Human Rights Committee (OHCHR)	International Covenant on Civil and Political Rights	https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights	https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination	https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx
Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child	https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx
Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	https://www.ohchr.org/en/hrbodies/cmw/pages/cmwinindex.aspx
Committee on the Elimination of Discrimination against Women (CEDAW)	Convention on the Elimination of All Forms of Discrimination against Women	https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx
Committee on the Rights of Persons with Disabilities (CRPD)	Convention on the Rights of Persons with Disabilities	https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx
Committee on Enforced Disappearances (CED)	Convention for the Protection of All Persons from Enforced Disappearance	https://www.ohchr.org/en/hrbodies/ced/pages/cedintro.aspx

Table 1 | International committees and treaties to be supervised

Committee Against Torture (CAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx .
Subcommittee on Prevention of Torture (SPT)	Optional Protocol to the Convention against Torture	https://www.ohchr.org/En/HRbodies/opcAt/Pages/OP-CATIndex.aspx

Trade unions can use the various procedures with which the treaty bodies or committees carry out their work to monitor and protect human rights:

- **Non-contentious procedures**
 - System for sending periodic information;
 - Adoption of General Comments;
 - Ex officio enquiries to States Parties.
- **Quasi-judicial procedures**
 - Individual complaint system;
 - Ex officio investigations

Table 2

HOW CAN TRADE UNIONS USE THE CONVENTIONAL MECHANISMS OF THE UNIVERSAL SYSTEM?

Conven- tional mecha- nism	What is it?	How can unions use this mechanism?
Periodic reporting system	<p>It consists of the examination by the Committees of the periodic reports sent by the States Parties to the international treaties. Once the report has been examined, the Committee establishes a dialogue with the representatives of the State Party and finally draws up and presents concluding observations and recommendations. It is a responsibility of all the Committees.</p>	<p>Trade unions can send any relevant information to the Committees to be taken into account in the framework of the examination of the periodic reports sent by the States and in the public sessions held under this mechanism.</p> <p>Trade unions can also send the Committees information on the follow-up given to the concluding observations and recommendations by States.</p> <p>A useful guide that can support the participation of trade unions is a document designed for the participation of civil society in the work of the Committee on Economic, Social and Cultural Rights, which can be found at this link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2f2000%2f6&Lang=en</p>
	<p>It is a preventive (“ex ante”) system that seeks to identify the difficulties that prevent compliance with international obligations and the measures that must be adopted to overcome them.</p>	<p>Trade unions can locate the concluding observations and recommendations in the “Universal Human Rights Index” which can be found at this link: https://uhri.ohchr.org/en/</p> <p>The calendar can be found at this link: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/MasterCalendar.aspx?-Type=Session&Lang=SP</p> <p>A compilation of guidelines on this procedure can be found at this link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=HRI%2fGEN%2f2%2fRev.6&Lang=en</p>

Table 2 | How can trade unions use the conventional mechanisms of the Universal System?

<p>General Comments</p>	<p>These are institutional pronouncements drawn up and adopted by the Committees within the scope of their power to interpret the reach of the provisions of the international human rights treaties adopted by the General Assembly of the United Nations.</p> <p>The General Comments adopted by the Committees can be found at this link: https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx</p>	<p>Trade unions can use the General Comments to support their demands at the national level. For example, the following General Comments of the Committee on Economic, Social and Cultural Rights may be relevant to support trade union positions:</p> <ul style="list-style-type: none">■ General comment No. 18 (2005) on the Right to Work https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2fGC%2f18&Lang=en■ General comment No. 23 (2016) on the right to just and favourable conditions of work https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2fGC%2f23&Lang=en■ General comment No. 19 (2007) on the right to social security https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2fGC%2f19&Lang=en■ General comment No. 20 (2009) Non-discrimination in economic, social and cultural rights https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2fGC%2f20&Lang=en■ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2fGC%2f24&Lang=en■ General comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E%2fC.12%2f2005%2f4&Lang=en
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Table 2 | How can trade unions use the conventional mechanisms of the Universal System?

System for submission of individual communication (individual complaints)¹

<p>System of condemnation (“ex post”) which, based on the complaint of a specific case, seeks to determine: whether a state has failed to comply with its international obligations and the measures it must take to eliminate the violation of rights, to repair the damage caused and to prevent it from happening again in the future (measures of non-repetition).</p> <p>The “jurisprudence” of the Committees adopted under this procedure can be found here: https://juris.ohchr.org/Home/About</p>	<p>Anyone can make a complaint to a Committee against a State party to the treaty in question and which has accepted the Committee’s competence. It may also be made by third parties representing the victims, provided that they have received the victims’ written consent. In certain cases, the third party may make the complaint without such consent (for example, when a person is in prison and has no contact with the outside world or when he or she is a victim of an enforced disappearance). Trade unions can make complaints on behalf of their members.</p> <p>Two requirements to be taken into account:</p> <ul style="list-style-type: none">■ Unions have to verify that the requirement of exhaustion of domestic jurisdiction has been met.■ It is not possible to submit the same case or complaint to another international mechanism such as the Inter-American Court of Human Rights. <p>Provisional measures may be requested when there is a serious and imminent threat of irreparable damage.</p> <p>A model form has been developed to facilitate the submission of complaints. The link to the form is located at this link: https://www.ohchr.org/Documents/HRBodies/TB/ComplaintForm.doc</p> <p>Complaints can be filed via this email address: tb-petitions@ohchr.org</p> <p>A useful guide to trade union participation in this mechanism is an Information Booklet prepared by the United Nations, which explains in detail the procedure and particularities of each Committee.: https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf</p> <p>The Regulations for the system of individual communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights can be found at this link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/49/3&Lang=en</p>
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1. The Committees have three procedures for receiving complaints concerning violations of the clauses contained in the human rights treaties: State-to-State complaints; individual communications; and own-initiative investigations. The State-to-State complaint procedure consists of a complaint by a State party to a treaty to the Committee responsible for violations of the treaty against another State party to the treaty. So far, this mechanism has never been used.

Table 2 | How can trade unions use the conventional mechanisms of the Universal System?

Ex officio investigations	Investigation mechanism that certain Committees can engage with on their own initiative (ex officio) when they receive reliable information indicating the existence of serious or systematic violations in a State party of the rights set out in the treaty they are monitoring.	Trade unions can help persuade and convince the Committees of the existence of a situation of serious and systematic human rights violations by States that are parties to the treaties. For example, the widespread and systematic anti-union violence in certain countries such as Colombia, Guatemala and Honduras, which has been repeatedly denounced at the international level by international trade unions at the ILO and recorded in the International Trade Union Confederation's Global Human Rights Index, is an example of a situation that can be the subject of this Committee mechanism.
	These investigations may include on-site visits, hearings and protective measures.	One element to bear in mind is that this type of investigation can only be carried out in relation to States that have recognized the Committee's competence for this investigation procedure. The Rules of Procedure for the system of enquiries under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights can be found at this link: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=E/C.12/49/3&Lang=en

1.3 | How can unions use the special mechanisms of the Universal System?

The non-conventional mechanisms of the Universal System are centred on the Human Rights Council, which is the main intergovernmental body of the United Nations for the promotion and protection of human rights. The Human Rights Council is a subsidiary body of the United Nations General Assembly and is composed of 47 members

(elected by the General Assembly for a term of 3 years). It has at least 3 regular sessions (March, June and September) and the Office of the High Commissioner for Human Rights (OHCHR) acts as the Secretariat of the Council. The Human Rights Council carries out its work through three mechanisms:

- Universal Periodic Review (UPR)
- Human Rights Council complaint procedure
- Special procedures

Table 3

HOW CAN UNIONS USE THE SPECIAL MECHANISMS OF THE UNIVERSAL SYSTEM?

Conven- tional mecha- nism	What is it?	How can unions use this mechanism?
Universal Periodic Review (UPR)	<p>Periodic review of the fulfilment of international human rights obligations by the Member States of the United Nations carried out in the Human Rights Council.</p>	<p>Trade unions can submit information to be included in the “Summary of stakeholder information” (written by the Office of the United Nations High Commissioner for Human Rights).</p> <p>Information may be submitted by trade unions in consultative status with the Economic and Social Council.</p>
	<p>Unlike the periodic review carried out by the independent experts who make up the Committees (Treaty Bodies), the Universal Periodic Review is a review carried out among the States themselves.</p>	<p>To submit information, trade unions should use the “UPR Online Submission System” which can be found at this link: https://uprdoc.ohchr.org/</p>
	<p>The review is conducted by a Working Group composed of 47 member States of the Human Rights Council, as well as observer States.</p>	<p>Trade union organizations in consultative status with the Economic and Social Council may be accredited to participate as observers in the sessions of the Working Group and in the plenary session of the Human Rights Council. Trade unions in consultative status include the International Trade Union Confederation.</p>
	<p>After the review, the Working Group adopts a report with recommendations to the State under review. The Council will adopt an outcome document containing the report of the Working Group and the position of the State under review with respect to the recommendations received.</p>	<p>Trade unions can also participate in the follow-up to the outcome of the universal periodic review, working together with partner organizations, with a view to the State’s compliance with the recommendations issued at the end of the review, in accordance with its human rights obligations. This may involve the promotion of legal reforms, public policies and national practices.</p> <p>A useful guide to trade union participation in this mechanism is the “Practical Guide for Civil Society. Universal Periodic Review”, produced by the United Nations, which can be found at this link: https://www.ohchr.org/en/HRBodies/UPR/Documents/PracticalGuideCivilSociety.pdf</p> <p>All the information on this mechanism (procedures, documents, calendars, guides, etc.) can be found at this link: https://www.ohchr.org/EN/hrbodies/upr/pages/Documentation.aspx</p>

Table 3 | How can unions use the special mechanisms of the Universal System?

Human Rights Council complaint procedure	<p>It is a new complaint procedure established to address a consistent pattern of gross and reliably attested violations of human rights occurring in any part of the world and under any circumstances.</p> <p>The procedure is confidential, with a view to enhancing cooperation with the State concerned.</p> <p>The Working Group on Communications and the Working Group on Situations are responsible for examining written communications and for notifying the Council of consistent patterns of gross and reliably attested violations of human rights.</p>	<p>The complaints procedure deals with communications submitted by individuals, groups or non-governmental organisations who claim to be victims of human rights violations or who have direct and reliable knowledge of such violations.</p> <p>Trade unions can lodge a complaint against any country regardless of whether that country has ratified a particular treaty or made reservations under a particular instrument.</p> <p>Complaints can be sent by e-mail to cp@ohchr.org or to any national or regional office of the United Nations High Commissioner for Human Rights.</p> <p>In order to use this mechanism, the following must be taken into account:</p> <ul style="list-style-type: none">■ It should not be a case that is already being dealt with by a special procedure, a treaty committee or other similar UN or regional procedure.■ Domestic remedies must have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.■ The procedure is not designed to provide remedies in individual cases or to compensate alleged victims. <p>A useful guide to trade union participation in this mechanism is the document “The Human Rights Council. Complaint Procedure”, which can be found at this link: https://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/ComplaintProcedure-booklet_s.pdf</p>
Special procedures	<p>Mechanism based on independent experts appointed by the Human Rights Council to monitor the human rights situation, on a thematic and country-by-country basis, and report to the Council.</p>	<p>Trade unions can use the special procedures mechanism both to report individual cases and problems and to alert to human rights problems of a structural nature.</p> <p>There are currently 44 thematic and 12 country-based special procedures. The list of thematic special procedures can be found at this link: https://spinternet.ohchr.org/ViewAllCountry-Mandates.aspx?Type=TM&lang=En</p>

Table 3 | How can unions use the special mechanisms of the Universal System?

Special procedures	<p>They may be special rapporteurs, independent experts or working groups (composed of five members). Their activities include: on-site visits; system of sending communications to States and other actors; contribution to the development of international human rights law; advice on technical cooperation.</p> <p>Once a year these independent experts present reports to the Council with their conclusions and recommendations.</p>	<p>Some special procedures that unions can use:</p> <ul style="list-style-type: none">■ Special Rapporteur on the right to freedom of peaceful assembly and association■ Special Rapporteur on the situation of human rights defenders■ Special Rapporteur on the Rights of Indigenous Peoples■ Independent Expert on protection from violence and discrimination based on sexual orientation or gender identity■ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance■ Working Group on Arbitrary Detention <p>A useful guide to trade union use of this mechanism can be found in chapter IV of this UN Manual for Civil Society, available here: https://www.ohchr.org/documents/publications/ngohandbook/ngohandbook6.pdf</p> <p>The online form for submitting complaints under the communications mechanism can be found at this link: https://spsubmission.ohchr.org/</p> <p>The database where the communications of these special procedures and the replies of States are displayed is located at this link: https://spcommreports.ohchr.org/Tmsearch/TMDocuments</p> <p>Information on the visits (upcoming, pending or already completed) can be found at this link: https://spinternet.ohchr.org/Home.aspx?lang=En</p>
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2 | AGENDA 2030 MONITORING SYSTEM

2.1 | What is Agenda 2030?

Agenda 2030 is currently the most important global action plan on sustainable development and human rights. The United Nations Member States have committed themselves to adapting their national development structures and plans in order to monitor compliance. Furthermore, all specialized agencies and all subsidiary bodies of the United Nations, including the International Labour Organization and the Universal System for the Protection of Human Rights, have integrated the objectives and goals of Agenda 2030 into their processes.

Agenda 2030 was approved within the framework of the United Nations in September 2015. It contains 17 Sustainable Development Goals (SDGs) which set the agenda for countries in terms of sustainable development and human rights, from 1 January

2016 to December 2030. It is a much more comprehensive and universal agenda than the Millennium Development Goals (MDGs, 2000-2015) as it integrates the environmental, social and economic dimensions of sustainable development in a more complete and coherent way and involves all countries, regardless of their level of development.

There is a specific SDG on decent work, SDG 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), which received strong support from the international trade union movement. There are also other SDGs that are relevant to the trade union movement, such as SDG 10 (Reducing Inequality in and between Countries), which is fundamental for Latin America and the Caribbean.

Table 4 THE SUSTAINABLE DEVELOPMENT GOALS OF AGENDA 2030	
SDG 1	End poverty in all its forms everywhere
SDG 2	End hunger, achieve food security and improved nutrition, and promote sustainable agriculture
SDG 3	Ensure healthy lives and promote well-being for all at all ages
SDG 4	Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
SDG 5	Achieve gender equality and empower all women and girls
SDG 6	Ensure availability and sustainable management of water and sanitation for all
SDG 7	Ensure access to affordable, reliable, sustainable and modern energy for all
SDG 8	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
SDG 9	Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation
SDG 10	Reduce income inequality within and among countries
SDG 11	Make cities and human settlements inclusive, safe, resilient, and sustainable
SDG 12	Ensure sustainable consumption and production patterns
SDG 13	Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy
SDG 14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development
SDG 15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
SDG 16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
SDG 17	Strengthen the means of implementation and revitalize the global partnership for sustainable development

The Economic Commission for Latin America and the Caribbean (ECLAC) launched a regional knowledge platform on Agenda 2030 and the SDGs (which can be found at this link: <https://agenda2030lac.org/en>) where you can find information on each country, monitoring mechanisms and information tools on the content of the SDGs. Each SDG has specific targets and indicators, several of which are highly relevant to trade unions. For

example, SDG 1 has an indicator on population covered by social protection floors (SDG 1.3.1); SDG 5 has an indicator on time spent on unpaid work (domestic and care work) by sex (SDG 5.4.1); SDG 10 has an indicator on the share of labour in GDP (SDG 10.4.1); and SDG 16 has an indicator on homicide/kidnapping/torture of human rights defenders. Table 5 below shows the targets and indicators for SDG 8 on decent work and economic growth.

Table 5 SDG 8 TARGETS AND INDICATORS	
TARGETS	INDICATORS
8.1. Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.	8.1.1 Annual growth rate of real GDP per capita
8.2 Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors.	8.2.1 Annual growth rate of real GDP per employed person
8.3 Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation.	8.3.1 Proportion of informal employment in non-agriculture employment, by sex

Table 5 | SDG 8 Targets and Indicators

<p>8.4 Improve progressively, through 2030, global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation.</p>	<p>8.4.1 Material footprint, material footprint per capita, and material footprint per GDP</p> <p>8.4.2 Domestic material consumption, domestic material consumption per capita, and domestic material consumption per GDP</p>
<p>8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.</p>	<p>8.5.1 Average hourly earnings of female and male employees, by occupation, age and persons with disabilities</p> <p>8.5.2 Unemployment rate, by sex, age and persons with disabilities</p>
<p>8.6 Substantially reduce the proportion of youth not in employment, education or training.</p>	<p>8.6.1 Proportion of youth (aged 15–24 years) not in education, employment or training</p>
<p>8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.</p>	<p>8.7.1 Proportion and number of children aged 5–17 years engaged in child labour, by sex and age</p>
<p>8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.</p>	<p>8.8.1 Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status</p> <p>8.8.2 Level of national compliance with labour right (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation</p>

Table 5 | SDG 8 Targets and Indicators

8.9 By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products.	8.9.1 Tourism direct GDP as a proportion of total GDP and in growth rate 8.9.2 Proportion of jobs in sustainable tourism industries out of total tourism jobs
8.10 Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all.	8.10.1 a (a) Number of commercial bank branches per 100,000 adults and (b) number of automated teller machines (ATMs) per 100,000 adults 8.10.2 Proportion of adults (15 years and older) with an account at a bank or other financial institution or with a mobile-money-service provider
8.a Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-related Technical Assistance to Least Developed Countries.	8.a.1 Aid for trade commitments and disbursements
8.b By 2020, develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization.	8.b.1 Total expenditure of public funds on social protection and employment programmes as a percentage of national budgets and GDP

The official UN database on SDGs, targets and statistical information on each of the indicators can be found

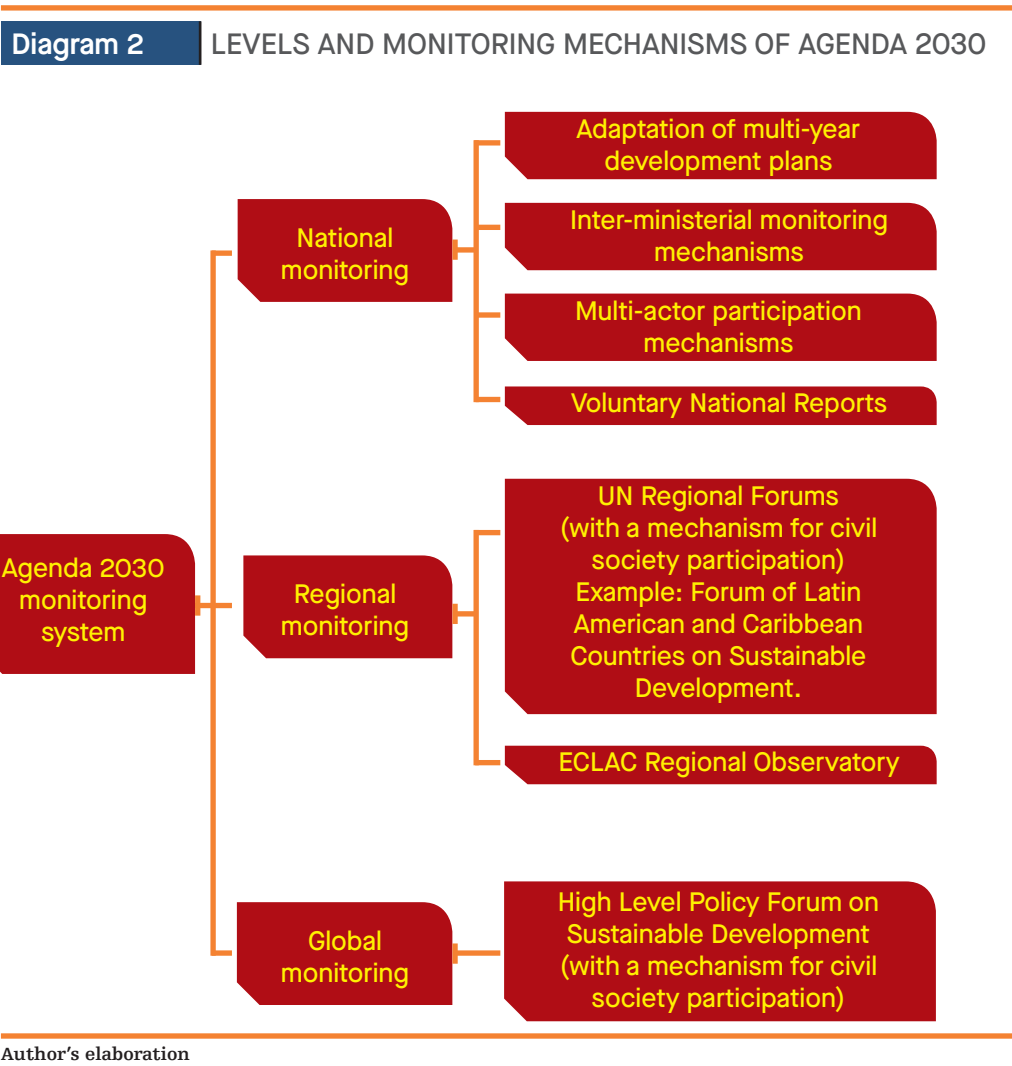
at this link:
<https://unstats.un.org/sdgs/indicators/database/>

2.2

How does the UN measure progress on Sustainable Development Goals?

Agenda 2030 has three levels of monitoring: national, regional and global. **Diagram 2** below shows the different levels and some of the monitoring mechanisms of the

SDGs and the following **Tables (6, 7 and 8)** detail what each level of monitoring and each instrument consists of.



WHAT IS THE NATIONAL MONITORING MECHANISM FOR AGENDA 2030?**Adaptation of multi-year development plans**

As part of their commitment to Agenda 2030, States have adapted their multi-year development plans to the Agenda 2030 SDG targets and indicators. ECLAC has created a Regional Observatory where information from national development plans that have been adapted to Agenda 2030 can be identified (on an interactive map). This Regional Observatory can be found at this link:

<https://observatorioplanificacion.cepal.org/en>

Inter-ministerial monitoring mechanisms

States have established inter-ministerial mechanisms for monitoring Agenda 2030. They have usually indicated a ministry responsible for coordination. The structure of the States had to be reorganized for national monitoring, as all the ministries are involved in the SDGs of Agenda 2030. Information on these follow-up mechanisms for each country can be found at the ECLAC Regional Observatory at this link:

<https://observatorioplanificacion.cepal.org/en/countries>

Multi-actor participation mechanisms

Some States have created “multi-actor” participation mechanisms. In this mechanism, trade unions have a space to participate directly. This type of mechanism derives from SDG 17 “Strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development”. In practice, the quality of these mechanisms depends on the relationship that the government has with civil society and the trade union movement.

Voluntary National Report

A report many States have pledged to issue throughout the Agenda 2030 period (on average 3 reports) in order to inform what they are doing to meet the objectives and goals of Agenda 2030. The report is circulated at all three levels of monitoring: national, regional and global. This report should also be produced with the participation of civil society as a whole, which usually depends on the government and its relationship with civil society. You can find the Voluntary National Reports by country at this link:

www.cepal.org/es/temas/agenda-2030-desarrollo-sostenible/america-latina-caribe-foro-politico-alto-nivel

Table 7	REGIONAL MONITORING
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WHAT IS THE REGIONAL MONITORING MECHANISM FOR AGENDA 2030?

UN Regional Forums (with mechanisms for civil society participation)

Every year, between February and April, regional forums are held, coordinated by the UN Economic Commissions of each region. In Latin America and the Caribbean, they are coordinated by the Economic Commission for Latin America and the Caribbean (ECLAC).

The Forum of Latin American and Caribbean Countries on Sustainable Development is the first moment where the States present their National Voluntary Report (or a synthesis if it is not finished) and discuss the level of progress at the regional level of the agenda. The position of the trade union movement is that this regional forum should be above all a space for political discussion and the adoption of commitments, and not just a space for the exchange of information and good practices.

In the regional forums there are also spaces for civil society participation. In the case of the regional forum for Latin America and the Caribbean, this space is called the “Civil Society Participation Roundtable”, which is coordinated by a Liaison Table composed of one representative (Focal Point) from each of the groups (interest groups, subregional and thematic). The Interest Groups include a Trade Union Focal Point. Complete information on the Civil Society Liaison Mechanism can be found at this link:

<https://agenda2030lac.org/en/civil-society>

These regional forums also produce the annual reports on the regional progress and challenges of Agenda 2030. The annual reports for the Latin America and Caribbean region can be found at this link:

<https://foroalc2030.cepal.org/2019/en/documents/annual-reports>

Table 8	GLOBAL MONITORING
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WHAT IS THE GLOBAL MONITORING MECHANISM FOR AGENDA 2030?

High-Level Political Forum on Sustainable Development

The High-Level Political Forum on Sustainable Development (HLPF) is an international strategic platform for the analysis, monitoring and global evaluation of Agenda 2030. It meets annually under the auspices of the Economic and Social Council and once every four years at the level of Heads of State and Government under the auspices of the United Nations General Assembly.

Civil society and the international trade union movement have been fighting to ensure that this global forum is not a space for the media to visualize the policies of States, but rather that it becomes a space for global political discussion that allows for the adoption of concrete political recommendations and commitments to be implemented at the national level.

In addition to the reports of the UN regional forums held within the framework of the regional monitoring level of Agenda 2030, reports and contributions from the specialized agencies of the United Nations, as well as from the bodies of the universal human rights protection system, are produced and sent to this global forum.

The following are some examples:

- 2020 Report of the International Labour Organization
<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2592&menu=3170>
- 2020 Report of the United Nations Human Rights Council Report 2020
<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2532&menu=3170>
- 2020 Report of the United Nations Committee on Economic, Social and Cultural Rights
<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2481&menu=3170>
- 2020 Report of the Committee on the Elimination of Discrimination against Women
<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2585&menu=3170>
- 2020 Report of the Committee on the Rights of the Child
<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2498&menu=3170>

In this global forum there is also a space for civil society participation called “**The Major Civil Society Groups**”, where the trade union movement is also represented. The Major Groups also produce and submit reports. The 2020 Report of the Trade Union and Workers Major Group can be found here:

<https://sustainabledevelopment.un.org/index.php?page=view&-type=30022&nr=2617&menu=3170>

It is in this global forum that States present their **National Voluntary Reports** to the entire international community. In 2020, the following countries in the Latin America and Caribbean region presented their National Voluntary Reports: Argentina, Barbados, Costa Rica, Ecuador, Honduras, Panama, Peru, Saint Vincent and the Grenadines and Trinidad and Tobago.

For 2021, the following countries have expressed their willingness to present Voluntary National Reports: Bahamas, Bolivia, Guatemala, Mexico, Paraguay and Uruguay.

The information and content of the reports presented can be found at this link:

<https://sustainabledevelopment.un.org/inputs/>

2.3

Why are the Sustainable Development Goals relevant to the trade union movement?

It is important to highlight the consistency of the trade union agenda with the content of Agenda 2030. The SDGs can be an important instrument to help support trade union demands at the national level. Rather than adding additional work to the already full trade union agenda, the SDGs can facilitate spaces for dialogue and participation on demands that are already part of the trade union agenda, connecting them with an integral development agenda to which governments

have committed themselves before their peoples and the international community. Trade unions, through the Trade Union Development Cooperation Network (TUDCN) of the International Trade Union Confederation (ITUC), are involved in the Agenda 2030 process and the SDGs at the global, regional and national levels. Members of this Trade Union Network carry out national monitoring and analysis to ensure that States fulfil their commitments under Agenda 2030.

ITUC Trade Union Development Cooperation Network (TUDCN)
<https://www.ituc-csi.org/development-cooperation?lang=en>

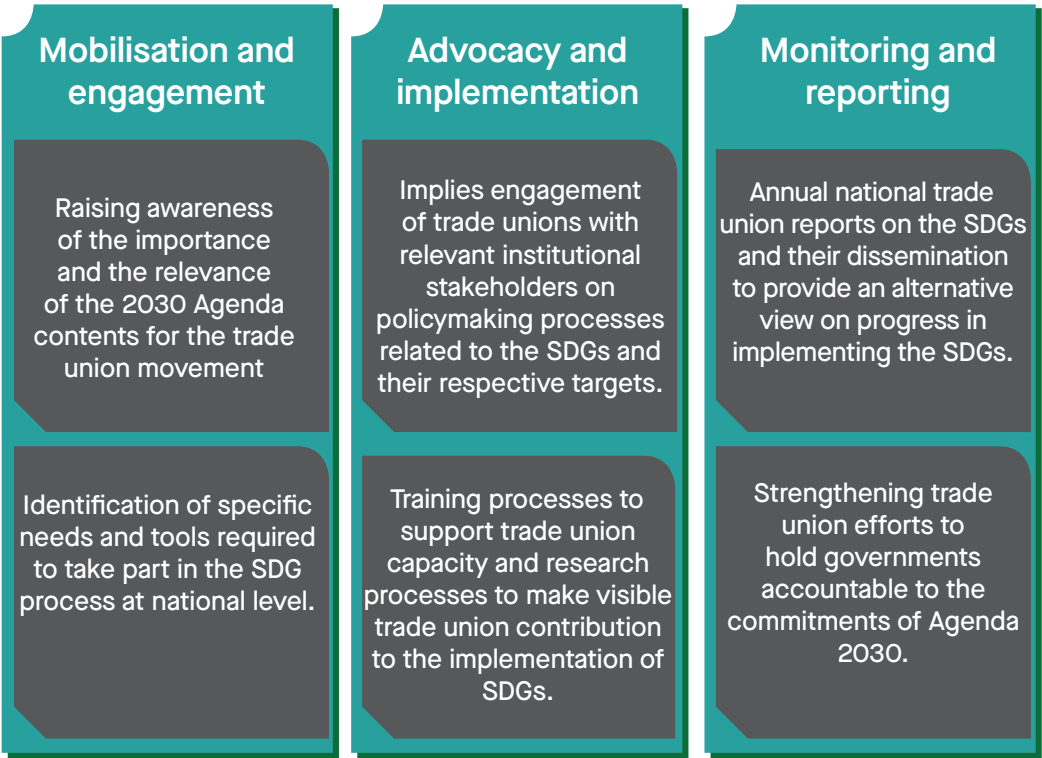
In the video “Trade Union Focus on Sustainable Development Goals” (which can be found at this link: <https://youtu.be/bXrw15-hkVg>) trade unionists from all continents

and members of this Trade Union Network answer the question ‘why the Sustainable Development Goals are relevant for trade unions’ and highlight the following elements:

A trade union focus on the Sustainable Development Goals

- The SDGs are part of the trade union movement’s programme of demands.
- They provide a framework for strengthening trade union work to promote decent work at the national level.
- They allow governments to be presented with the problems that exist at the national level, both in relation to the SDG on decent work and in relation to other SDGs that are relevant to the trade union movement, such as the one on combating inequalities.
- They allow trade unions to open channels of dialogue and participation with national authorities, other UN agencies and other civil society actors.
- They allow trade unions to work in a unified and coordinated way in the processes opened by the Agenda and in the establishment of priorities.
- They allow the trade union position on sustainable development, decent work, social protection or just transition to be presented in regional and global intergovernmental forums.

The Trade Union Development Cooperation Network Strategy has three pillars:



The trade union reviews can be found at this link:
<https://www.ituc-csi.org/2030Agenda>.

Here are some examples of trade union reviews from the region:



- Argentina:**
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-2020-argentina>
- Brazil:**
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-2020-brazil>
- Chile:**
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-2020-chile>
- Colombia:**
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-2020-colombia>
- Venezuela:**
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-2020-venezuela>

Supporting
documents that can
guide trade union
participation in
Agenda 2030

- TUDCN Strategy on the 2030 Agenda for Sustainable Development
https://www.ituc-csi.org/IMG/pdf/tudcn_agenda_2030_strategy_nov_2017_en.pdf
- The Sustainable Development Goals – A Trade Union Issue!
http://www.ituc-csi.org/IMG/pdf/sdg_pamphlet_en.pdf
- A Trade Union Take on the SDGs - 2020 edition
<https://www.ituc-csi.org/a-trade-union-take-on-the-sdgs-2020>
- SDG decade of action - trade union policy responses
<https://www.ituc-csi.org/sdg-decade-of-action-trade-union-policy-responses>
- A trade union focus on the SDGs – Argentina
<https://www.ituc-csi.org/a-trade-union-focus-on-the-sdgs-21686>
- SD in Action - Special Report on Voluntary Multi-Stakeholder Partnerships and Commitments for Sustainable Development
<https://sustainabledevelopment.un.org/sdinaction/2015report>

3 | PROMOTION AND IMPLEMENTATION OF THE OECD GUIDELINES

3.1 | What are the OECD Guidelines for Multinational Enterprises?

The OECD² Guidelines for Multinational Enterprises (hereinafter referred to as the Guidelines) are recommendations made by governments concerning the business conduct expected of multinational enterprises in all their activities and operations. A relevant element for trade unions to consider is their broad scope of application:

- Applies to all multinational companies whose head office is in one of the countries adhering to the Guidelines.

- Applies to all countries where these multinational enterprises have their operations.

- The term “multinational enterprises” may include both the multinational enterprise itself and its branches or subsidiaries, subsidiary enterprises or other enterprises which are otherwise linked to the multinational enterprise, such as supplier enterprises.

EXAMPLES OF APPLICATION OF THE GUIDELINES:

- They apply to multinational companies with their headquarters in Canada (called “home country”), which is an OECD member state.
- They apply to all countries where multinational enterprises with headquarters in Canada have their operations (called “host countries”), either directly (through branches or subsidiaries) or indirectly (through supplier companies).

² Organisation for Economic Co-operation and Development.

- The host countries for the operations of Canadian multinational enterprises may or may not be States that have adhered to the Guidelines. In other words, the Guidelines apply in countries whose States are not members of the OECD and which have not adhered to the Guidelines but which receive foreign investment and operations from multinational enterprises based in countries that have adhered to the Guidelines.
- El Salvador, Guatemala, Nicaragua or Panama are neither OECD members nor have adhered to the Guidelines, but are countries which, as part of global supply chains, are recipients of offshore operations by multinational enterprises based in countries that have adhered to the Guidelines. The Guidelines are also applicable to the offshore operations of these multinational companies in these four Central American countries.

The Guidelines are one of the main elements contained in the Declaration on International Investment and Multinational Enterprises adopted in 1976 within the OECD. Each national State signatory to this Declaration considers itself bound by the Guidelines.

Both OECD and non-OECD Member

States have adhered to the Guidelines.³ Each State signatory to the Guidelines is obliged to respect, encourage and promote compliance with the recommendations contained in the Guidelines and to establish so-called “National Contact Points” (discussed below).

Currently the OECD Member States are:⁴ Australia, Austria, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

The non-OECD states that are signatories to the Guidelines are: Argentina, Brazil, Costa Rica, Croatia, Egypt, Jordan, Kazakhstan, Morocco, Peru, Romania, Tunisia, Ukraine.

3.2 | What is the content of the Guidelines?

The Guidelines contain recommendations distributed thematically in 11 chapters. The updated text of the Guidelines can be found at this link:

<http://mneguidelines.oecd.org/guidelines/>

Some of the recommendations from each chapter are highlighted below.

³ The updated list of OECD Member States can be found here: <https://www.oecd.org/about/members-and-partners/>

⁴ The updated list of States adhering to the Guidelines can be found at this link: <https://mneguidelines.oecd.org/ncps/>

Table 9 RECOMMENDATIONS OF THE GUIDELINES BY CHAPTER

CHAPTER	RECOMMENDATIONS
CHAPTER I Concepts and Principles	<ul style="list-style-type: none"> ■ The first obligation of companies is to respect national laws. ■ Companies should seek to respect the Guidelines without infringing national laws. ■ “Multinational enterprises” usually include enterprises or other entities established in more than one country and linked in such a way that they can coordinate their activities in various ways. ■ The Guidelines are intended for all entities belonging to the multinational enterprise.
CHAPTER II General Policies	<p>Enterprises should:</p> <ul style="list-style-type: none"> ■ Respect human rights. ■ Refrain from taking retaliatory action (discriminatory or disciplinary measures) against employees who report to company management or public authorities any practices that are contrary to the law, the Guidelines or company policies. ■ Implement risk-based due diligence. ■ Prevent their own activities from generating or contributing to negative impacts. ■ Strive to prevent or mitigate negative impacts, even where companies have not contributed to them, if they are directly related to their activities, products or services under a business relationship. ■ Encourage their business partners, including their suppliers and contractors, to apply principles of responsible business conduct in accordance with the Guidelines. ■ Abstain from any improper involvement in local political activities.
CHAPTER III Disclosure	<p>Enterprises should:</p> <ul style="list-style-type: none"> ■ Ensure the publication of accurate information on all significant aspects of their activities, structure, financial situation, results, shareholders and system of corporate governance. ■ Include detailed information on financial and operating results, significant shareholdings and voting rights, including the structure of the group of companies and internal relations, issues relating to employees and other stakeholders.

Table 9 | Recommendations of the Guidelines by chapter

CHAPTER IV Human Rights	<p>Enterprises should:</p> <ul style="list-style-type: none">■ Respect human rights, which means ensuring that they do not violate the rights of others and addressing any negative impacts on them.■ Avoid causing or contributing to negative human rights impacts.■ Prevent and mitigate negative impacts directly linked to their activities, goods or services by virtue of a business relationship with another entity, even if they do not contribute to generating those impacts.■ Exercise human rights due diligence.■ Establish or cooperate through legitimate mechanisms to remedy negative impacts.
CHAPTER V Employment and Industrial Relations	<p>Enterprises should:</p> <ul style="list-style-type: none">■ Respect the right of workers to form or join trade unions.■ Respect the right of workers to instruct the unions of their choice to represent them in collective bargaining for the purpose of reaching agreements on conditions of employment.■ Contribute to the effective abolition of child labour and the elimination of all forms of forced labour.■ Respect the principle of equal opportunities and treatment and non-discrimination.■ Provide workers' representatives with the means to reach effective collective agreements, including the information they need for collective bargaining.■ Promote consultation and cooperation between employers and employees and their representatives.■ Respect standards of employment and industrial relations that are no less favorable than those applied in enterprises in similar conditions in the host country. Where there are no employers in similar conditions, they should provide the best wages, benefits and working conditions, at least sufficient to meet the essential needs of workers and their families.

Table 9 | Recommendations of the Guidelines by chapter

CHAPTER VI Environment	<p>Enterprises should:</p> <ul style="list-style-type: none">■ Establish and maintain an appropriate environmental management system.■ Provide citizens and employees with adequate, measurable and verifiable information on the potential impacts of the company's activities on the environment, health and safety.■ Develop adequate and timely communication and consultation with communities directly affected by the company's environmental, health and safety policies.■ Not use the lack of absolute scientific certainty to postpone the adoption of measures to prevent or minimize potential serious damage to the environment.■ Improve the environmental performance of the company and its supply chain by encouraging activities such as the development and supply of products and services that do not have undue environmental impacts, thus reducing greenhouse gas emissions.■ Provide education and training to employees on environmental, health and safety issues, including the handling of hazardous materials and the prevention of environmental accidents.
CHAPTER VII Combating Bribery, Bribe Solicitation and Extortion	<p>Enterprises:</p> <ul style="list-style-type: none">■ Must not offer, promise, give or solicit, directly or indirectly, illicit payments or other improper advantages in order to obtain or retain a contract or other illegitimate advantage.■ Must refuse any bribes and other forms of extortion.■ Should not pay illegal contributions to candidates for public office or to political parties or other political organizations.
CHAPTER VIII Consumer Interests	<p>Enterprises should:</p> <ul style="list-style-type: none">■ Ensure that the goods and services they provide conform to all agreed or legally required standards for consumer health and safety.■ Provide accurate, verifiable and clear information to enable consumers to make informed choices, in particular information on environmental effects.■ Cooperate with public authorities to prevent and combat deceptive business practices and reduce or prevent serious threats to public health and safety or to the environment.

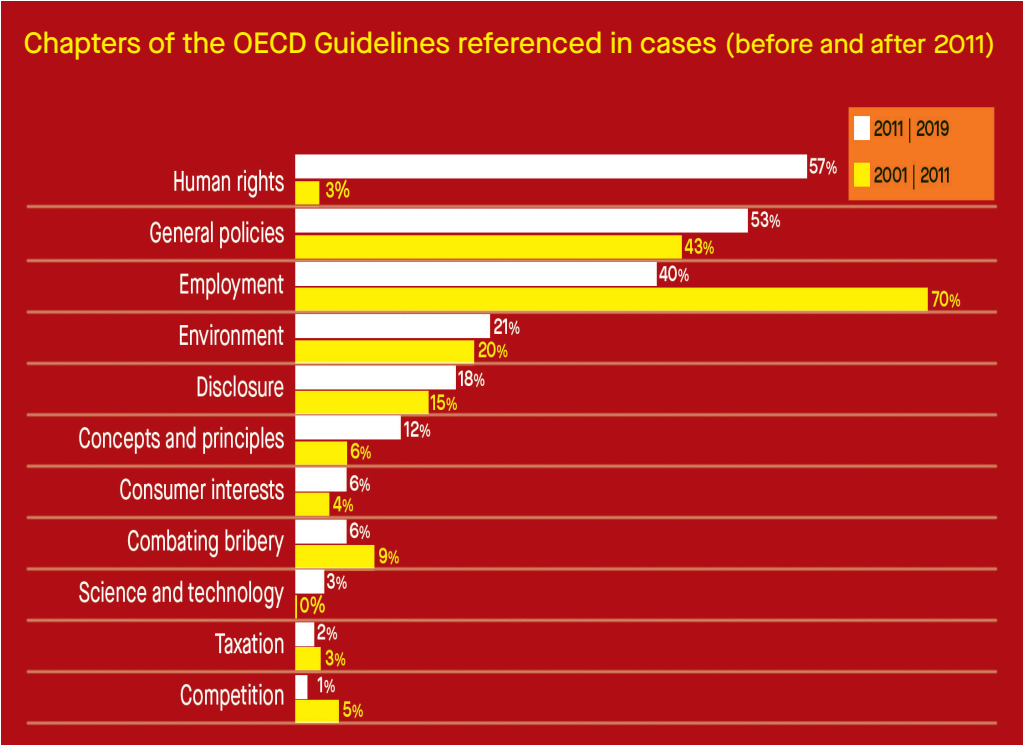
Table 9 | Recommendations of the Guidelines by chapter

CHAPTER IX Science and Technology	Enterprises should: <ul style="list-style-type: none">■ Contribute to the development of local and national innovative capacity and adopt practices that allow for the transfer and rapid dissemination of technologies and know-how.■ Where appropriate, carry out scientific and technological development work in host countries to meet local market needs and employ host country personnel in scientific and technological activities and promote their training.
CHAPTER X Competition	Enterprises should: <ul style="list-style-type: none">■ Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anticompetitive effects.■ Co-operate with investigating competition authorities.
CHAPTER XI Taxation	Enterprises should: <ul style="list-style-type: none">■ Comply punctually with tax obligations, which implies the timely communication to the authorities of the relevant and necessary information for the correct calculation of the taxes to be paid.■ Comply with the letter and spirit of the tax laws and regulations of the countries in which they operate.

Suggested links on the OECD Guidelines for Multinational Enterprises

- OECD:
<http://mneguidelines.oecd.org/>
- TUAC:
<https://tuac.org/mne-guidelines-complaints/>
- OECD Watch:
<https://www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mes/>

According to the OECD database, in the period 2011-2019 complaints to National Contact Points have mostly (70%) referred to Chapter V “Employment and Industrial Relations”.



Source OCDE: <https://mneguidelines.oecd.org/Flyer-OECD-National-Contact-Points.pdf>

3.3 | How can unions use National Contact Points?

National Contact Points are government-supported bodies responsible for promoting and implementing the Guidelines and for functioning as grievance mechanisms. There are currently 49 National Contact Points in the following countries:

Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark,

Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Latvia, Lithuania, Luxembourg, Kazakhstan, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States.

National Contact Points
<https://mneguidelines.oecd.org/ncps/>

The National Contact Points have among their functions:

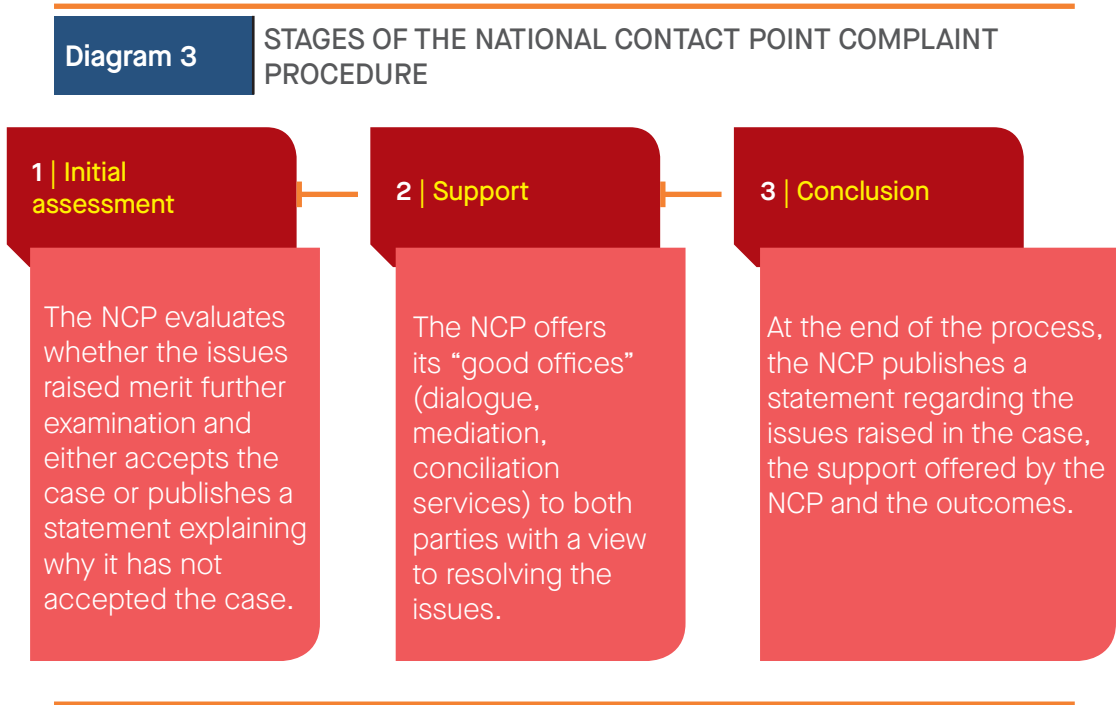
- Attend to stakeholder consultations and help take steps to promote them.

- Provide a mediation platform to solve problems in implementation.
- Receive complaints (specific instances) and manage cases of violations of the Guidelines.

Generally, National Contact Points operate within the government of each country. The structure of each National Contact Point varies from country to country. It may be a body assigned to a particular ministry, usually the Ministry of Economy or the Ministry of Foreign Affairs (for example, in Argentina, Chile, Costa

Rica, Mexico, and Peru), or it may be an interministerial body (for example, in Brazil). They may also be tripartite or quadripartite bodies (for example, in France).

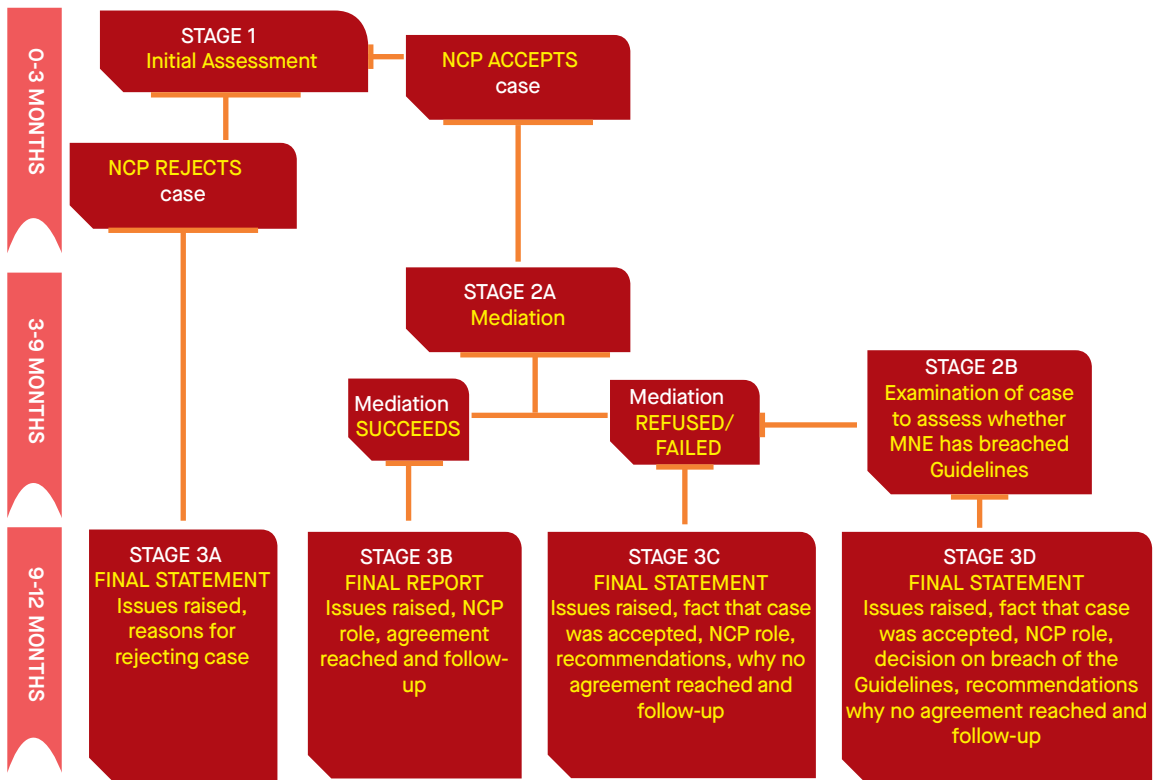
The procedure of each National Contact Point (NCP) basically has three stages:



According to the TUAC (Trade Union Advisory Committee to the OECD), considering the experience of the cases presented in this complaint mechanism, the whole procedure takes about 1 year, as shown in the

following diagram of the Manual “The OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context: TRADE UNION GUIDE” (TUAC, 2012).⁵

⁵. The TUAC Guide can be found at this link: https://members.tuac.org/en/public/e-docs/00/00/0D/3D/telecharger.phtml?cle_doc_attach=4403

Diagram 4**STAGES OF THE NATIONAL CONTACT POINT COMPLAINT PROCEDURE**

Source: TUAC. The OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context: TRADE UNION GUIDE

The complaint to the National Contact Point may be filed by any person or organization with a legitimate interest in the case. The complaint should concern non-compliance with the Guidelines by multinational enterprises based in countries that have adhered to the Guidelines in respect of all their activities and operations, including those in global supply chains, even in non-OECD countries that are not signatories to the Guidelines.

All trade union organizations - local, sectoral, national, regional or international - are entitled to file complaints with the National Contact Points.

Trade unions can submit cases on their own, in conjunction with other unions or with NGOs. It is recommended that support be sought from unions that already have experience in filing cases, as well as support from national centers, Global Union Federations and TUAC.

TUAC contact details (Trade Union Advisory Committee):

- <https://tuac.org/>
- tuac@tuac.org
- Telephone: (33) 01 55 37 37 37
- List of national trade union centers affiliated to TUAC: <https://tuac.org/about/affiliates/>

It is not required that the union exhaust national jurisdiction to access this mechanism. The union can use this mechanism in parallel and in coordination with other mechanisms such as national courts, the ILO supervisory system or the special procedures of the UN universal system. According to

the 2011 update of the Guidelines, National Contact Points should not refuse to admit a specific instance just because other legal actions have existed, are in progress or can be applied by the affected parties. Here are some elements to consider once it has been decided to use this mechanism:

- If the non-compliance has occurred in a country that has adopted the Guidelines:
 - The complaint can be filed with the National Contact Point of that country (host country), with a copy to the National Contact Point of the country where the multinational company is based (home country).
 - The complaint can be lodged with the National Contact Point of the home country, with a copy to the National Contact Point of the host country, stating why this National Contact Point is considered to be of vital importance in ensuring compliance with the Guidelines.
- If the non-compliance has occurred in a country that has not adopted the Guidelines:
 - The complaint can be filed with the National Contact Point in the country of origin and other countries that may be involved.
- If the breach of the Guidelines concerns the operations of branches, affiliates, subsidiaries or supplier companies:
 - The link between such entities involved in the non-compliance and the multinational company based in one of the countries adhering to the Guidelines must be established.
- If the union has filed or intends to file a lawsuit in national court as well:
 - It is recommended to point out in the complaint that the use of the National Contact Point mechanism does not generate serious prejudice to the parties involved in actions in national courts.

An additional suggestion is to review the experience of cases already submitted to National Contact Points.

The OECD, TUAC and OECD Watch databases are useful for this purpose and can be searched in detail.

- OECD:
<https://mneguidelines.oecd.org/database/>
- TUAC:
<https://mneguidelines.tuac.org/en/database>
- OECD Watch:
https://complaints.oecdwatch.org/cases/advanced-search?set_language=en

**Supporting
documents that
can guide union
participation**

- The OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context: TRADE UNION GUIDE (TUAC)
https://members.tuac.org/en/public/e-docs/00/00/OD/3D/telecharger.phtml?cle_doc_attach=4403
- Guide for National Contact Points on the Initial Assessment of Specific Instances
<https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>
- Guide for National Contact Points on Follow Up to Specific Instances
<https://mneguidelines.oecd.org/ncps/Guide-for-National-Contact-Points-on-Follow-Up-to-Specific-Instances.pdf>

4 | GLOBAL FRAMEWORK AGREEMENTS

4.1 | What are Global Framework Agreements?

Global Framework Agreements are agreements between international trade union organizations and multinational companies to recognize and guarantee the rights of those working in the operations of those multinational companies, wherever they may be. In most cases, these agreements apply to the operations of branches or subsidiaries as well as to operations

in the global supply chains of signatory companies. Reference is also made to the application of these agreements to supplier companies and subcontractors.

The international trade union organizations that have negotiated Global Framework Agreements are the sectoral Global Union Federations, including PSI.

SOME OF THE GLOBAL UNION FEDERATIONS THAT HAVE NEGOTIATED GLOBAL FRAMEWORK AGREEMENTS

- UNI Global Union: <https://www.uniglobalunion.org>
 - Building and Wood Workers' International (BWI): <https://www.bwint.org>
 - Public Services International (PSI): <http://www.world-psi.org>
 - International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF): : <http://www.iuf.org>
 - International Federation of Journalists (IFJ): <https://www.ifj.org>
 - IndustriAll: <http://www.industrialall-union.org>
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The content of the Global Framework Agreements often emphasizes the importance of multinational companies respecting the international standards adopted by the ILO. Among the standards highlighted are the Declaration of Fundamental Principles and Rights

at Work (2008) and the ILO's Fundamental Conventions. These agreements also make reference to other international instruments such as the international human rights treaties adopted by the United Nations, the SDGs (Agenda 2030) and the OECD Guidelines.

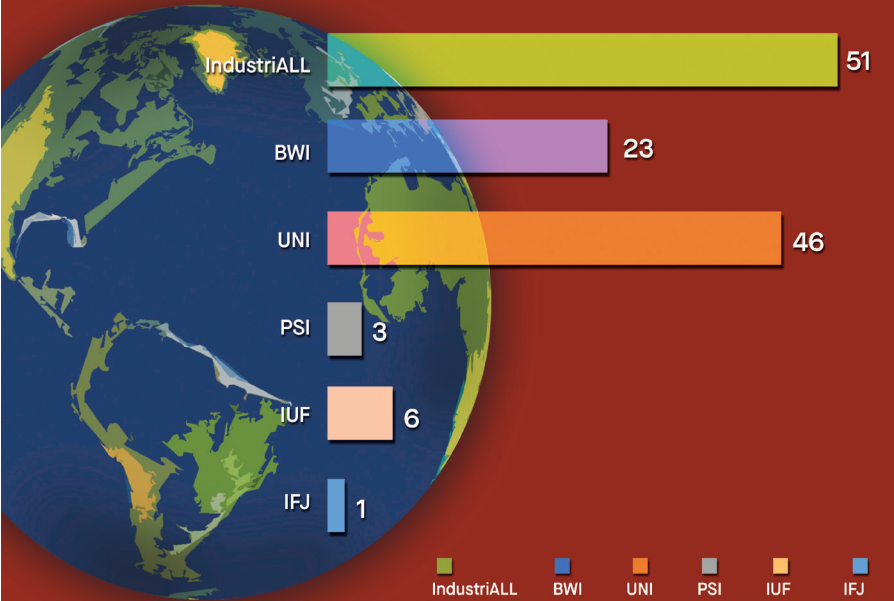
ILO STANDARDS MOST COMMONLY REFERRED TO
IN GLOBAL FRAMEWORK AGREEMENTS

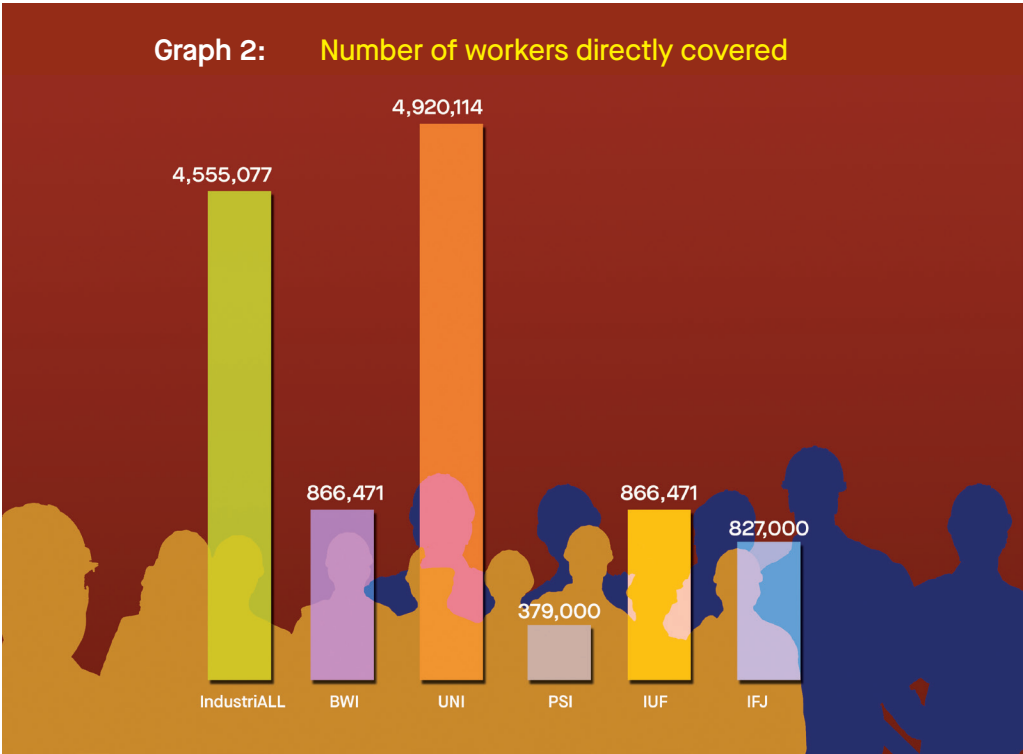
2008 ILO Declaration on Fundamental Principles and Rights at Work
<https://ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

Fundamental Conventions of the ILO

- Convention 29 on Forced Labour
- Protocol 29 of 2014 to the Forced Labour Convention
- Convention 87 on Freedom of Association and Protection of the Right to Organize
- Convention 98 on the Right to Organize and Collective Bargaining
- Convention 100 on Equal Remuneration
- Convention 105 on the Abolition of Forced Labour
- Convention 111 on Discrimination (Employment and Occupation)
- Convention 138 on Minimum Age
- Convention 182 on the worst forms of child labour

Graph 1: Number of Global Framework Agreements per Global union





Global Framework Agreements usually regulate labor rights such as working hours, adequate wages, training or occupational health and safety rights. Global Framework Agreements also regulate the relationship between the parties to the agreement, the international trade union organization and the multinational company, and often establish mechanisms for monitoring compliance with the agreements and resolving any disputes that may arise from their

implementation.

The number of these international agreements has grown significantly since 2000. Graph 1 shows the number of agreements concluded by BWI, UNI, PSI, IUF, IFJ and IndustriALL and Graph 2 shows the approximate number of workers covered directly by these agreements. This number increases dramatically when workers that are covered indirectly (supply chains) are included.

4.2 | What Global Framework Agreements has Public Services International signed?

Public Services International, together with IndustriALL, has negotiated Global Framework Agreements with three multinational companies, all of which work

in electricity generation and distribution of electricity and gas: EDF (based in France), ENEL (based in Italy) and ENGIE (based in France).

4.2.1 | Global Framework Agreement with the EDF Group

On 29 May 2018, PSI General Secretary Rosa Pavanelli, IndustriAll General Secretary Valter Sanchez and EDF Group CEO Jean-Bernard Lévy signed a renewed Global Framework Agreement on Corporate Social Responsibility, covering human and labour rights, in the presence of International Labour Organization Director-General Guy Ryder, during the 107th session of the International Labour Conference, and with the participation of French trade unions. Later, on 19 June, national trade union federations representing a majority of EDF Group workers affiliated to

PSI and IndustriAll completed the signature of the renewed Global Framework Agreement with EDF Group, which entered in full force as of 21 June for a 4-year term. The text of the agreement can be found at this link: <https://publicservices.international/resources/news/global-framework-agreement-on-the-edf-groups-corporate-social-responsibility-2018?id=9190&lang=en> The scope of the agreement and the commitments made are described in Table 10.

Table 10 GLOBAL FRAMEWORK AGREEMENT WITH EDF GROUP

Scope

- The agreement applies to every company that is directly or indirectly controlled by EDF, in all the territories where the Group is established. It applies to any new controlled company that joins the Group.
- It applies to all EDF Group employees, regardless of the nature of their employment contract.
- The EDF Group will promote the agreement and ensure that it is respected by its suppliers and subcontractors. This agreement will be promoted in the supply chain.

Commitments

- **Respect human rights in all EDF Group activities around the world, including those recognized in:**
 - The Universal Declaration and United Nations human rights treaties.
 - The principles and rights recognized in the Fundamental Conventions of the ILO.
 - The OECD Guidelines for Multinational Enterprises.
 - The United Nations Guiding Principles on Human Rights.
 - The ILO Declaration of Tripartite Principles on Multinational Enterprises.
 - The Principles of the United Nations Global Compact.
- **Develop, publish and implement, in partnership with the unions, a Surveillance Plan:**
 - The Plan will seek to identify risks and prevent serious violations of human rights, including the rights to health and safety at work and the environment.
 - The Plan will include a warning mechanism for the purpose of receiving complaints from unions.

- **Promote EDF Group's Ethics and prevent corruption, including:**
 - Promoting the fight against corruption in all its forms.
 - Protecting informants against any retaliation or act of discrimination.
 - Applying the principle of fiscal transparency, which includes transparent fiscal reporting in line with the recommendations of the OECD Guidelines.

- **Combat any form of harassment and violence at work**
 - The EDF Group is committed to protecting its employees against any form of violence, abuse or harassment at work.
 - Each EDF Group company will take the necessary measures to prevent and remedy harassment, as well as physical and psychological violence, with particular attention to those linked to gender.
 - Each EDF Group company will ensure that all employees are made aware of the risks of harassment and the means of preventing and combating it.

- **Ensure a socially responsible relationship with our suppliers and subcontractors**
 - The EDF Group undertakes to communicate and promote this agreement with its suppliers and subcontractors. Group companies must promote these principles with their bidders.
 - Any repeated failure to comply with the provisions of this agreement, which is not corrected after observations, may lead to the suspension of relations with the supplier or subcontractor.
 - Any communication concerning a supplier identified by all the trade union federations within EDF Group as being responsible for practices that deviate from the commitments described will be subject to analysis and information by EDF Group.

- **Be a reference in matters of health and safety in the workplace**
 - It is the duty and responsibility of the EDF Group to provide a safe working environment for all workers and subcontractors.
 - It is recognized that the protection of health and safety at work is the result of effective prevention systems, based on respect for three fundamental rights:
 - a) The right to be informed about the risks of the job and to receive appropriate education and training on how to work in total safety;
 - b) The right to refuse or stop work in case of serious and imminent danger; and
 - c) The right to participate actively in studies and programs on health and safety at work, including through the establishment of health and safety committees in all workplaces of the Group.

- **Facilitate and achieve equality at work between women and men**
 - The EDF Group is committed to equality between women and men at work, facilitating diversity in work teams and at all levels of the company, based on the principles of equal rights and non-discrimination between sexes, and equal treatment for equal work.
 - The EDF Group strives to eliminate the differences between the working conditions of women and men in each Group company, particularly in terms of career paths, training, access to positions of responsibility and remuneration.
 - It will contribute to the evolution of mentalities and the fight against stereotypes.
 - Practices to ensure the reconciliation of professional and family life for all the Group's employees will be promoted.

 - **Ensure fair treatment and combat discrimination**
 - The EDF Group protects its workers against all forms of discrimination and reprisals.
 - Three special surveillance areas are set up:
 - a) The integration of disabled workers.** The Group is committed to developing a policy for receiving disabled workers, based on a recruitment process, as well as on specific integration and career support actions.
 - b) The origin or belonging (ethical, national, regional, cultural, religious, family, social, etc.)** in no case can constitute a reason to leave aside a recruitment. In the same way that no type of employment should be reserved or prohibited for an individual because of his or her origin.
 - c) Sexual orientation.** The Group fights any discrimination linked to sexual orientation and gender identity. Within this area, an employee may refuse a geographical transfer to a State that incriminates homosexuality, without harming his or her career. The Group refers to the guiding principles adopted by the UN for the fight against discrimination related to sexual orientation.

 - **Facilitate each employee's skills development and career path**
 - **Guarantee workers' social coverage as well as social benefits**
 - **Support a "Just Transition"**
-

The Global Framework Agreement concluded with the EDF Group establishes a mechanism for implementing and monitoring compliance with the commitments made locally and globally.

Table 11 IMPLEMENTATION AND MONITORING MECHANISMS OF THE GLOBAL FRAMEWORK AGREEMENT	
General guidelines	<ul style="list-style-type: none">■ Initiatives to raise awareness and to divulge the agreement in the Group's companies and with their suppliers and subcontractors shall be promoted.■ The EDF Group will take the necessary steps to ensure that the agreement is effective for all Employees.
Implementation on a local scale	<ul style="list-style-type: none">■ Implementation at the local level will be monitored by facilitating a dialogue between management and workers' representatives on initiatives to be taken, action plans and modalities of implementation of the agreement.■ This local dialogue will result in at least one meeting per year between management and the unions/workers' representatives.
Worldwide implementation	<ul style="list-style-type: none">■ Implementation will be monitored at the global level through a Global Monitoring Committee (Social Responsibility Dialogue Committee) coordinated by management representatives and composed of workers' representatives and global union federations.■ This Global Monitoring Committee will meet to make an analysis of the situation of the implementation of the agreement, to take appropriate and necessary measures to ensure its compliance, and to discuss future cooperation in the field of global social dialogue.■ The parties to the agreement will communicate with each other on an ongoing basis between meetings in order to continue this implementation and the promotion of the agreement, and to reach mutually acceptable solutions to any problems that may arise.■ The EDF Group will communicate to the Global Monitoring Committee on a regular and ongoing basis all relevant information concerning the deployment of the agreement within the subsidiaries.■ The Global Monitoring Committee may propose to the EDF Group Management to carry out missions on an ad hoc basis to observe social responsibility practices in the field.■ The Global Monitoring Committee is solely responsible for all matters arising from the implementation of the agreement.■ The composition and functioning of this Global Committee is set out in the Annex to the Agreement.

This Agreement also establishes a grievance procedure so that a worker or any affected person can

report a failure to comply with the commitments made in the Framework Agreement.

Table 12 INDIVIDUAL COMPLAINT PROCEDURE FOR NON-COMPLIANCE WITH THE GLOBAL FRAMEWORK AGREEMENT WITH EDF	
Who can use it?	<ul style="list-style-type: none">■ This procedure may be used by a worker or any affected person who needs to inform or report that the agreement has not been fulfilled.
How does the procedure work?	<ul style="list-style-type: none">■ For problems of a local nature, it is established that every effort will be made to try to solve them locally.■ A worker may, if he or she wishes, obtain the assistance of a representative of a local labor organization.■ The EDF Group undertakes to carry out a proper assessment of the dispute in cooperation with the local union(s)/workers' representative(s). The signatories to the agreement will be kept informed.■ If the dispute is not resolved locally, it will be submitted to management and the social partners concerned at national level, then to the Group's Head Office.■ If the problem persists at the Head Office level, the dispute will be raised at the Global Monitoring Committee, while respecting a deadline of at least four weeks after the Group's Head Office has received a dispute.■ Once a dispute has arisen, it must be resolved within a maximum of three months. In the absence of a solution, the signatories are granted the right to jointly appoint a mediator to facilitate the resolution of the dispute.■ As a last resort, the parties may bring the matter before the competent jurisdiction of EDF's head office (France).■ All issues discussed and solutions reached will be presented during the next meeting of the Global Monitoring Committee.

Eight months after the signing of this Global Framework Agreement, more than 25 trade union and EDF Group management representatives met in

February 2019 at the International Training Centre of the ILO in Turin to upgrade skills to facilitate the implementation of the Agreement.⁶

6. PSI Note: <https://www.world-psi.org/en/edf-unions-and-management-have-training-implementing-human-and-labour-rights>

4.2.2 | Global Framework Agreement with the ENEL Group

The Global Framework Agreement was concluded on 14 June 2013 in Rome, Italy, between the ENEL Group management and the PSI and IndustriALL international trade union federations, in the presence and with the support of the Italian trade union centers (CGIL, CISL and UIL).

The text of the agreement can be found at this link:

<https://publicservices.international/resources/news/acuerdo-mundial-con-enel?id=9056&lang=en>

This Framework Agreement had a duration of 3 years and since 2016 meetings between union representatives and company representatives have been held to seek its renewal.

Table 13 below describes the scope and summarizes the commitments made by the ENEL Group under the Global Framework Agreement concluded in 2013.

Table 13

GLOBAL FRAMEWORK AGREEMENT CONCLUDED WITH THE ENEL GROUP

Scope

- The agreement applies to all EDF Group companies in the different countries where it operates.
- The ENEL Group is committed to promoting respect for the Global Framework Agreement with affiliates, subsidiaries, suppliers, contractors and the entire “supply chain”.
- The signatory parties of the Agreement will evaluate the possibility of stipulating complementary agreements to deal with new requirements and new areas.

Commitments

- **Respect the fundamental rights and principles, in coherence with:**
 - The Universal Declaration of Human Rights.
 - The United Nations Guiding Principles on Business and Human Rights.
 - The ILO’s Fundamental Labour Conventions.
 - The ILO Declaration of Tripartite Principles on Multinational Enterprises.
 - The OECD Guidelines for Multinational Enterprises.
 - The Principles of the United Nations Global Compact.
- **Not to use child labor or forced labor in any form**
 - ENEL undertakes not to employ any form of forced labor or compulsory work, as defined in the ILO Conventions, or child labor.
 - ENEL commits itself not to establish or maintain business relations with suppliers that employ minors.

■ Respect safety and health at work

- Establish a solid occupational health and safety (OHS) accountability system, based on respect for the three fundamental rights of workers:
 - 1) The right to know the dangers of the job, and to receive education and training to be able to perform the job safely;
 - 2) The right to refuse to do or to stop doing unsafe work, subjecting such refusals to appropriate joint investigation and resolution; and
 - 3) The right to participate in the occupational health and safety process.
- The ENEL Group is committed to guaranteeing the highest standards of health and safety protection for its employees, as well as for subsidiaries, contractors and suppliers and throughout the “supply chain”, ensuring, at a minimum, total compliance with the relevant ILO standards.
- The ENEL Group will pay great attention when defining the safety standards present in the Tenders, including by using a model of qualification and selection of the contractors that work with ENEL and by strengthening management and monitoring processes.

■ Exclude any form of discrimination and not tolerate violence or harassment in the workplace

■ Respect limits on working hours

- The ENEL Group is committed to respecting the limits indicated by the ILO instruments in terms of working hours and to pursuing the objective of guaranteeing appropriate living standards for its employees and their families.

■ Respect the minimum wage

- The ENEL Group is committed to respecting the minimum remuneration established in the collective agreements and legislation, in accordance with the ILO Conventions.
- ENEL, its subsidiaries, contractors and subcontractors will guarantee social security coverage, with the payment of their contributions, to their workers when required by law.

■ Recognize the value of training and skills

- The ENEL Group recognizes the fundamental role of guidance and professional training for the development of human resources and competences as an instrument to improve productivity.

- **Respect freedom of organization and collective bargaining**
 - The ENEL Group recognizes:
 - The right of its employees to constitute and form part of union organizations in the defense of their interests;
 - That its employees are represented, within the different production units, by union organizations or by representatives elected according to the legislation and practices in force in the different countries;
 - The value of collective bargaining as a privileged instrument to determine working conditions, as well as the regulation of relations between Company Management and trade unions.
 - The ENEL Group respects the principle of union autonomy and does not interfere in any way with the organization of representation, allowing access of its workers' representatives to the workplace in order to communicate with their constituents, in accordance with the law and the labor relations systems in force in each country.
 - The ENEL Group provides the necessary information to its employees and the unions that represent them, in order to facilitate collective bargaining.

- **Protect the environment**
 - The ENEL Group is committed to sensitizing and training the managers and employees of the Group to understand and exercise a proactive role in the achievement of ENEL's sustainability objectives, committing itself actively and responsibly to the protection of the environment and to consideration of the environmental and social impacts of the production processes.

- **Business Ethics and Conflicts of Interest (Zero Tolerance Policy on Corruption)**

- **Recognize the importance of the ILO's concept of decent work and promote it**

- **Promote respect for rights with subsidiaries, contractors and the "supply chain"**
 - The ENEL group guarantees total compliance with applicable laws and international standards in its relations with suppliers and contractors and promotes this agreement with respect to the entire "supply chain".
 - The ENEL Group commits itself to providing updates to its subsidiaries, suppliers, contractors and "supply chain" and to its business partners regarding the modifications of the Global Framework Agreement.

A number of committees were set up under this Global Framework Agreement to guarantee the implementation of the commitments made in the Agreement in the

framework of a dialogue between the parties.
The composition and competencies of these committees are described in **Table 14**.

Table 14

**COMMITTEES CREATED IN THE GLOBAL FRAMEWORK
AGREEMENT CONCLUDED WITH THE ENEL GROUP**

**World Works
Council**

Composition of the World Works Council

- The composition of the World Works Council shall respect the criteria of proportionality in relation to the number of employees in each country in which the Group is present, establishing that countries with a smaller number of employees shall be adequately represented through a rotating presence.
- The World Works Council is made up of a maximum of 12 members.
- Union representation will be allocated in proportion to the total number of the Group. Union members will be appointed by the competent union organizations.
- The term of office of the members shall coincide with the duration of this Agreement.

Functions of the World Works Council

- Its purpose, among others, is to verify, together with the Company, the performance of this agreement, and also to take joint initiatives to ensure and extend social dialogue in the company, analyze the main aspects of the Group's operation and propose improvement initiatives.
- The World Works Council does not supplant the rights of employees to information and consultation in force in the various countries and does not interfere with the negotiating powers attributed by law or by agreements to the corresponding trade union organizations.
- The World Works Council does not have negotiating powers and does not constitute a second instance of reference for issues dealt with at national level.
- The World Works Council is an information body at Group level and does not concern itself with employees' rights to information and consultation in force in the various countries, nor does it interfere with the competences attributed by law or by agreements with the trade unions.
- As concerns matters of transnational nature, the representatives of the company will inform the World Works Council at the annual meeting of: the economic and financial situation; activity and investment programmes; company restructuring, changes in the scope of the company; employment policies; health and safety at work; environmental policies; vocational training; equal opportunities and non-discrimination; sustainability plan and balance sheet.

Table 14 | Committees created in the Global Framework Agreement concluded with the ENEL Group

Multilateral Committees	<p>Constitution and functioning of Multilateral Committees</p> <ul style="list-style-type: none">■ The Agreement establishes that the World Works Council may constitute Multilateral Committees focused on the most relevant matters at a transnational level, including safety, training and equal opportunities.■ The Multilateral Committees will be provided with internal rules of operation at the time of their constitution.■ They will be constituted by a maximum number of 10 union representatives and 10 company representatives.■ The work of the Multilateral Committees shall be presented to the Company and the World Works Council in order to jointly analyze the main issues of international interest to the Group and its employees.■ Activities and proposals of the Multilateral Committees will be presented at the annual meeting of the World Works Council so that they may be jointly analyzed and assessed, together with feasibility studies by the Company. <p>Main competences</p> <p>Multilateral Committee on Occupational Health and Safety</p> <ul style="list-style-type: none">■ The purpose of this Multilateral Committee is to build and strengthen a culture that protects the health and safety of all people who work for ENEL and have contact with the Group, in all countries, including employees, contractors, suppliers and customers.■ The function of this Multilateral Committee is to discuss and recommend to the ENEL Group health and safety policies, programs and campaigns to raise awareness of risks.■ By way of example, discussions can be guided by the review and analysis of best industry practices and, where appropriate, through studies and research.■ Recommendations may include advice on risk reduction, risk management or the development of international training programs for all persons with responsibilities in the area of health and safety.
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Table 14 | Committees created in the Global Framework Agreement concluded with the ENEL Group

Multilateral Committees (cont.)	<p>Multilateral Training Committee</p> <ul style="list-style-type: none">■ The purpose of this Multilateral Committee will be to carry out analyses and formulate proposals with the aim of creating an international reference framework capable of considering the major initiatives carried out in the field of training and facilitating, guiding and supporting training in all countries.■ The main functions of this Multilateral Committee will be to:<ul style="list-style-type: none">■ receive information on the planning and development of business training projects;■ Identify and propose training projects that may enable access to international, community, regional and/or inter-professional funds; and■ identify new types of training needs, including through the use or implementation of specific studies and research. <p>Multilateral Committee on Equal Opportunities</p> <ul style="list-style-type: none">■ ENEL establishes the intention to extend best initiatives on issues related to equal opportunities to all of the Group's companies.■ The main functions of this Multilateral Committee will be:<ul style="list-style-type: none">■ to analyze and share the initiatives and projects that have been implemented or planned;■ to promote study and research initiatives on female employment at the international level and within the Group, also coordinating with the joint committees at country level and identifying forms of financing; and■ to promote actions aimed at identifying initiatives to eliminate possible situations of subjective and objective obstacles that may compromise the effectiveness of equal opportunities, extending the scope to the broadened concept of diversity in the workplace (Diversity Management).
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Table 14 | Committees created in the Global Framework Agreement concluded with the ENEL Group

Coordinating Unions Committee	<ul style="list-style-type: none">■ The Framework Agreement states that the WFCW will be supported by the Coordinating Unions Committee, which will play a coordinating role in relation to the components of the WFCW and the Multilateral Committees in preparing meetings and communications with company management.■ It will be constituted by the Coordinator of the World Works Council and 4 other members.■ ENEL shall form a Coordinating Management Committee that shall play a role in managing and facilitating relations with the World Works Council and in the management of social dialogue at group level.■ It is established that the Coordinating Unions Committee and the Coordinating Management Committee shall meet every three months, holding up to a maximum of four meetings a year, in order to analyze the activities and proposals of the Multilateral Committees and to define a short list to be included in the agenda of the annual meeting of the World Works Council.
Multilateral Committee on Best Practices and Innovative Ideas	<ul style="list-style-type: none">■ In order to facilitate the dissemination of best practices within the ENEL Group, it was established that an additional and significant function of the Global Works Council will be to host a Multilateral Committee on Best Practices and Innovative Ideas in order to take full advantage of the work and initiatives of an international nature, paying special attention to the development of transnational competences in the area of industrial relations.■ The main functions of the Multilateral Committee on Best Practices and Innovative Ideas are:<ul style="list-style-type: none">■ to analyze the state and evolutionary needs of industrial relations systems;■ to propose comparative studies of other sectors or large industrial groups in order to align knowledge with best international practices;■ and to identify and propose new initiatives aimed at improving business ethics, social dialogue and sustainability.

On 22 July 2016, the ENEL Group's World Works Council held its annual meeting in Rome to study issues that had arisen in ENEL plants around the world and to develop the renewal of the Global Framework Agreement. The annual meeting was attended by company and union representatives from ENEL's operations around the world. During the meeting, union members from Latin America raised several issues facing unions in

the region. Two months earlier, in April 2016, the ENEL Group's union network in Latin America met to prepare for the meeting in Rome and to develop a mechanism to ensure effective compliance with the Global Framework Agreement, establishing a system of rotation for participation in the meetings whereby all Latin American affiliates are represented.⁷ This Global Framework Agreement is currently being renegotiated.

4.2.3 | Global Framework Agreement with the GDF SUEZ-ENGIE Group

The Global Framework Agreement (called the "Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development") was concluded in 2010 between the management of the GDF SUEZ Group

– the second largest gas, water and electricity utility in the world – and Public Services International, IndustriALL and Building and Wood Workers' International.

The text of the agreement can be found at this link:

<https://publicservices.international/resources/news/gdf-suez-global-agreement-on-fundamental-rights-social-dialogue-and-sustainable-development-2010?id=8599&lang=en>

The Agreement applies to all GDF SUEZ Group companies and to the Group's current and future workers, subcontractors and suppliers. By virtue of this Agreement, the Group is committed to a set of principles relating to equal opportunities and treatment, respect for trade union rights, training, health and safety at work, stable – including direct – and sustainable employment, and the fight against climate change. It also states the intention to adopt

additional, more specific agreements to ensure full compliance with all the agreements.

To guarantee the effectiveness and implementation of the Agreement, a reference group was set up comprising representatives of GDF SUEZ and the signatory international union federations, with the participation of other union representatives as agreed by the parties, with appropriate geographical representation.

7. IndustriALL article: <http://www.industriall-union.org/enel-global-works-council-meets-to-negotiate-agreement-renewal>

It was established that the reference group will meet at least once a year to review the agreement and discuss further cooperation.
The Agreement established a dispute

resolution mechanism based on a grievance procedure for violations of the commitments agreed on in the Agreement.

Table 15	COMPLAINT PROCEDURE FOR NON-COMPLIANCE WITH THE GLOBAL FRAMEWORK AGREEMENT WITH GDF SUEZ
<p>How does the procedure work?</p>	<ul style="list-style-type: none"> ■ The procedure has the following phases: <ul style="list-style-type: none"> a) First, the complaint will be submitted to local management. Workers may have union representation. b) When the complaint is not resolved with local management, it must be referred to the corresponding national union, which will raise the matter with the company. c) Any violations that cannot be resolved by discussion at local or national level shall be dealt with by the signatories of the agreement in close cooperation with the affiliates of the Global Union Federations in the country concerned and shall be brought to the attention of the responsible manager, who shall ensure that corrective measures are implemented in a timely manner. This process shall be carried out to the extent necessary and may include, but is not limited to, a meeting of the reference group. The reference group may study the matter and propose appropriate action. d) Informal discussions may also be appropriate, while efforts are made to resolve conflicts at the local or national level. e) In the event that a solution is not reached, the signatories may resort to mediation based on an agreement as to the selection of the mediator by the parties

The commitment to the principles of this Global Framework Agreement was reaffirmed in 2020 by the GDF SUEZ Group (now ENGIE), PSI, IndustriALL and BWI. ENGIE is committed to promoting the implementation of the commitments made in the Agreement also with its trading partners.
In the face of the enormous challenges arising from the health crisis in the context of the COVID-19 pandemic, in April 2020 PSI, IndustriALL and BWI welcomed and supported a program launched

by ENGIE to ensure social security coverage for all its employees worldwide, in particular the costs of hospitalization and death insurance since the beginning of the pandemic.
ENGIE, PSI, IndustriALL and BWI are committed to resuming their dialogue and negotiations for the adoption of a new Global Framework Agreement as soon as conditions allow. It is anticipated that the new Global Framework Agreement with ENGIE will include a commitment by the company to ensure a common

social protection floor in terms of parenthood, health, disability and death across its global operations for all employees.^{8, 9}

<div>Supporting Documents on Global Framework Agreements</div>	<div><div>■ PSI position paper on decent work in global supply chains http://www.world-psi.org/sites/default/files/attachment/news/en_it2.19_psi_position_on_global_supply_chains_revised_0.pdf</div><div>■ ILO document: “Global framework agreements: Achieving decent work in global supply chains” https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_434248.pdf</div><div>■ Video: “Using Global Framework Agreements (GFAs) for organizing” https://www.youtube.com/watch?v=9Jw-k2k8blo</div><div>■ International Framework Agreements: a global tool for supporting rights at work https://www.ilo.org/global/about-the-ilo/news-room/news/WCMS_080723/lang--en/index.htm</div><div>■ References made to the MNE Declaration in International Framework Agreements https://www.ilo.org/global/docs/WCMS_737309/lang--en/index.htm</div><div>■ Environment and occupational health and safety clauses in International Framework Agreements https://www.etuc.org/sites/default/files/Global_Report-version_finale_anglaise_1.pdf</div><div>■ Global Framework Agreements: Building and Protecting Space for Local Collective Bargaining Through International Organization http://www.alternativeroutes.ca/index.php/ar/article/view/22518/18310</div></div>
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8. PSI press release: <https://publicservices.international/resources/news/engie-commits-to-cover-covid-19-related-health-care-and-social-security-for-its-employees-worldwide?id=10758&lang=en>

9. IndustriALL press release: <http://www.industrialunion.org/global-unions-welcome-engies-commitment-to-cover-covid-19-related-health-care-and-social-security>

5

LABOR CHAPTERS IN FREE TRADE AGREEMENTS

5.1 | What are the Labor Chapters of Free Trade Agreements?

The Labor Chapters of Free Trade Agreements (FTA) are the set of provisions incorporated in these commercial, bilateral or multilateral, agreements, through which the signatory parties recognize their commitment to respect minimum labor standards and, in some cases, also establish mechanisms for monitoring and implementation. Especially since the beginning of the 1990's, the number of free

trade agreements has increased exponentially as they have become increasingly complex while comprising multiple policy areas, no longer limited to the trade of goods and services, among which the following usually stand out: intellectual property rights, rules of origin, public contracting, financial services, competition policy, dispute resolution procedures.

List of bilateral or multilateral free trade agreements by country:

http://www.sice.oas.org/countries_e.asp

The World Trade Organization (WTO) has a database containing statistical data and an interactive map where you can locate information on free trade agreements signed by country and region:

<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

Trade unions and social movements have questioned unjust trade agreements and have highlighted

their interconnectedness with the process of deregulation, privatization and liberalization of

economic activities, for the benefit of transnational corporations yet to the detriment of local economies, workers in all countries involved, tax revenues and the environment. PSI has highlighted the harmful effects of this type of trade agreements on public services such as education, health, pensions, telecommunications, transport, etc. In this regard, PSI has reaffirmed its commitment to fight to protect public services and the interests of workers providing public services from such agreements and to continue to defend a fair, democratic, multilateral trading system that is consistent with human rights obligations, promotes development, and preserves government policy space.¹⁰ PSI has stressed that the recent wave of trade agreements

threatens the provision of quality public services by encouraging privatization, creating more rights for multinationals and delegitimizing governments by restricting their ability to regulate in the public interest. These agreements are also a threat to democracy. They are negotiated in secret, without consultation with democratic institutions, placing obligations on governments, present and future, without regard to the decisions of national elections, parliament and the courts.

The defense of labor clauses contained in such trade agreements is risky because it requires an acceptance of unfair agreements in all respects, not only at the commercial level but also and especially at the level of provision of public services and living conditions of the working class.

5.2

What is the content of the labor chapters of the Free Trade Agreements?

The content of the labor chapters of FTAs usually includes references to respect of minimum labor standards, which are in accordance with ILO instruments, in particular with the Declaration on Fundamental Principles and Rights at Work and the Fundamental Conventions. Reference is made to the obligation not to fail to apply labor laws, including those aimed at respecting and protecting fundamental labor rights, in a way that affects trade or investment between the parties. Finally, the obligation to ensure that individuals have adequate access

to the courts for the enforcement of labor laws is often highlighted. In addition, labor chapters usually establish various types of procedures to control compliance with the provisions of the Labor Chapter. In the case of the Free Trade Agreements that the United States has entered into bilaterally with several Latin American and Caribbean countries, the Labor Chapters include procedures for receiving individual complaints and procedures for monitoring the general implementation of the Labor Chapter.

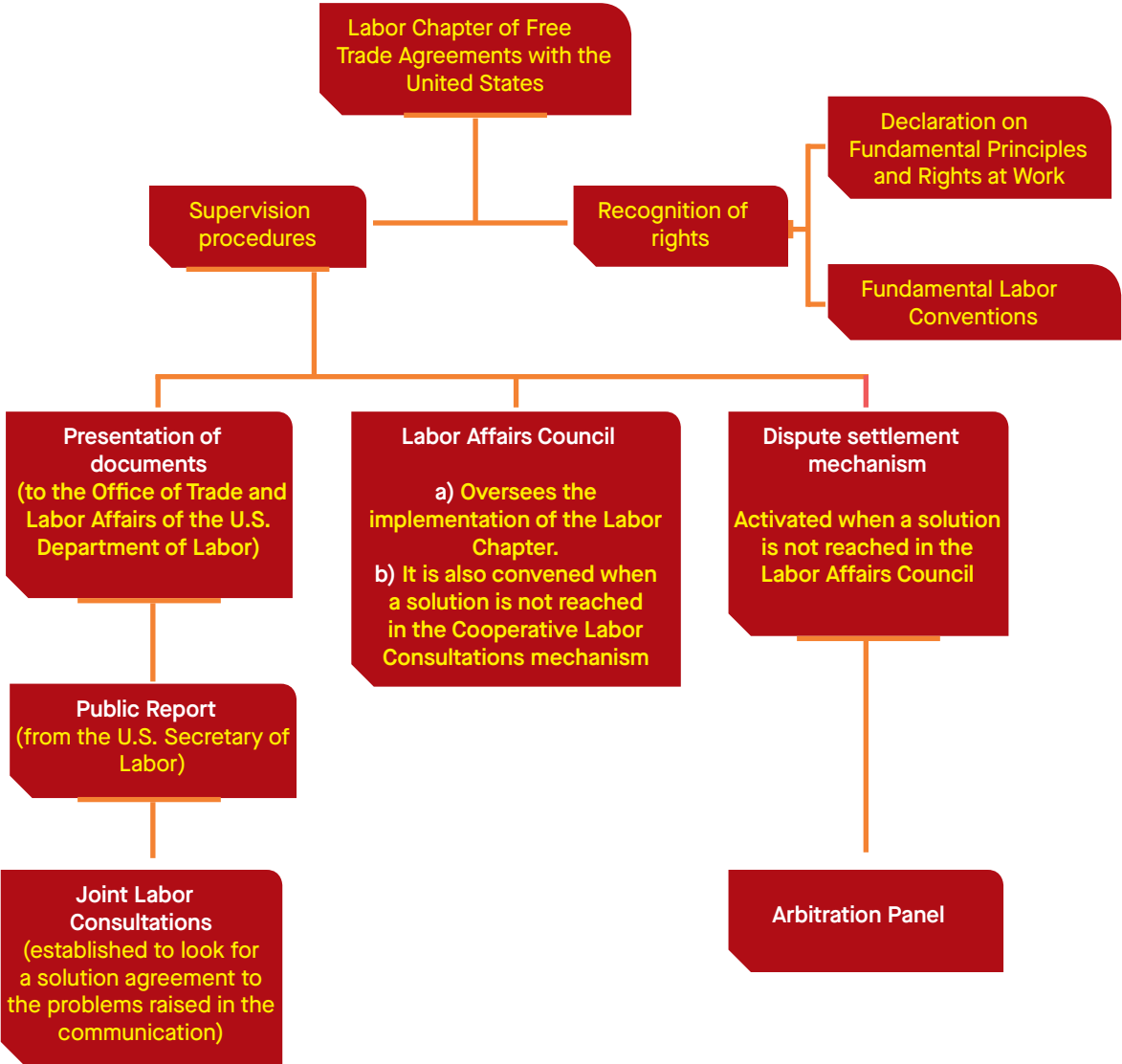
The monitoring procedures are

10. PSI Priorities 2018-2022": http://www.world-psi.org/sites/default/files/en_poa_priorities_2018-2022_post-eb153_0.pdf

usually linked to the general dispute resolution mechanisms provided for in the FTA and may ultimately lead to the constitution of an Arbitration Panel in charge of determining whether there was a breach of the Agreement by the “respondent” state and

establishing recommendations. Failure to comply with the decisions or recommendations of the Arbitral Panel may lead to the suspension of benefits established in the Free Trade Agreement by the complaining state against the respondent state.

Diagram 5 COMMON CONTENT OF THE LABOR CHAPTERS OF FREE TRADE AGREEMENTS WITH THE U.S.



Author's elaboration

The supervision procedures of the Labor Chapter involve a body composed of Contact Points from each of the States that are signatories of the Agreement, which have among their functions to receive and examine the communications that are presented in relation to possible violations of

the provisions of the Labor Chapter. In the case of the agreements signed by the United States, this Contact Point is the Monitoring & Enforcement of Trade Agreements Division, which is part of the Office of Trade and Labor Affairs of the Department of Labor.

The list of Labor Chapters in Free Trade Agreements signed by the United States can be found here:

<https://www.dol.gov/agencies/ilab/our-work/trade>

5.3 | How have unions used the labor chapters of Free Trade Agreements?

As noted above, the consequence of failing to comply with the provisions of the Labor Chapter of the FTA could ultimately result in the suspension of the trade benefits set forth in the Agreement against the Party that has failed to comply. This trade “sanction” can be a relevant deterrent tool to encourage or force the States Parties to the Agreement to comply with the Labor Chapter and, therefore, to render its provisions effective.

In view of this, several trade union organizations in the Americas

have used the control procedures established in the Free Trade Agreements entered into by their respective countries as a complementary tool to the actions in other bodies at the national and international level.

In the case of the agreements signed by the United States, unions can make public communications to the Department of Labor’s Office of Trade and Labor Affairs in order to initiate mechanisms for monitoring and implementing the Labor Chapters.

Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines:

<https://www.govinfo.gov/content/pkg/FR-2006-12-21/pdf/E6-21837.pdf>

Submissions under the Labor Provisions of Free Trade Agreements:

<https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions>

The following table details some cases of union use of Labor Chapters

of Free Trade Agreements in the Americas.

Table 16

CASES OF UNION USE OF LABOR CHAPTERS OF FREE TRADE AGREEMENTS

Country/Case

COLOMBIA

- **January 2017.** The U.S. Department of Labor issued a Public Report in response to a May 2016 submission under the Labor Chapter of the U.S.-Colombia FTA
- The report, which denounces anti-union violence, impunity of the perpetrators of violence and the lack of protection of labor rights, was submitted by:
 - The AFL-CIO, the Central Unitaria de Trabajadores (CUT), the Confederación de Trabajadores de Colombia (CTC), the Corporación Colombiana para la Justicia y el Trabajo (COLJUSTICIA), the Sindicato Nacional de Trabajadores de la Industria Agropecuaria (SINTRAINAGRO) and the Unión Sindical Obrera (USO).
 - The communication can be found at this link
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/O-2016-002459-SPA-FINAL_Colombia-Trade-Promotion-Agreement-Non-Compliance.pdf
- The Public Report recommended that the Secretary of Labor initiate consultations through the Contact Points established in the Labor Chapter of the Agreement.
- The Public Report can be found at this link
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/PublicReportofReviewofUSSubmission2016-02_Final.pdf

GUATEMALA

- **January 2009.** The U.S. Department of Labor issued a Public Report in response to an April 2008 submission under the CAFTA-DR Labor Chapter.
- The report was submitted by:
- AFL-CIO and six Guatemalan trade unions.
- The report can be found at this link:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/GuatemalaSub.pdf>
 - The Public Report recommended measures to make labor legislation effective and indicated that the implementation of the recommendations would be followed up.
 - The Public Report can be found at this link
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/PublicReportofReviewofUSSubmission2016-02_Final.pdf
- **January 2017.** Final Report of the Arbitration Panel
- The Final Report of the Arbitral Panel can be found at this link:
http://www.sice.oas.org/TPD/USA_CAFTA/Dispute_Settlement/final_panel_report_guatemala_Art_16_2_1_a_e.pdf
 - Unions that submitted written opinions in the proceeding were:
 - AFL-CIO, the Autonomous Trade Union and Popular Movement of Guatemala, the Global Unions of Guatemala and the International Trade Union Confederation.

HONDURAS

- **February 27, 2015.** The U.S. Department of Labor issued a Public Report in response to a 2012 submission under the CAFTA-DR Labor Chapter.
- The 2012 report was submitted by:
- The AFL-CIO, the General Workers' Central (CGT), the Confederation of Workers of Honduras (CTH), the United Confederation of Workers of Honduras (CUTH), and various Confederations, Federations and Grassroots Unions of Honduras.
- The report is located at this link:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/HondurasQueja-Final-OTLA-redactado.pdf>
- **The Public Report concluded that:**
- The Office of Trade and Labor Affairs views with great concern the protection and promotion of internationally recognized labor rights in Honduras.
- It is recommended that the Department of Labor initiate consultations through the Contact Points established in the Labor Chapter of the Agreement in order to develop and implement a Monitoring and Action Plan, which should include measures subject to time frames and quantifiable parameters that allow for measuring progress in the resolution of the problems identified in the Public Report.
- The Public Report can be found at this link:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Informe_Publico_del_Examen_de_la_Comunicacion_Publica-2012-01_Honduras_022715.pdf
- On February 27, 2015, a Joint Declaration was issued by the U.S. Department of Labor and the Honduran Secretary of Labor and Social Security, in which they agreed to:
 - Work together to implement the recommendations set forth in the Public Report; and
 - Strengthen the protection of internationally recognized labor rights in Honduras by improving labor legislation.
- On December 9, 2015, the Monitoring and Action Plan required in the Public Report was adopted.
- The Plan can be found at this link:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Honduras_MAP_esp.pdf

MEXICO

- **July 2016.** The U.S. Department of Labor issued a Public Report in response to a communication submitted under the North American Agreement on Labor Cooperation (NAALC).
- The report submitted in 2015 was submitted by:
- United Food & Commercial Workers Local 770, the Authentic Labor Front, the Los Angeles Alliance for a New Economy, and the Organizing, Development, Education and Research Project, with research assistance from Change to Win.

- The report is located at this link:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/ChedrauiNAFTA-Complaint_12November_English.pdf
- The Public Report:
 - Concluded that there is insufficient evidence to support specific conclusions related to the issues reported in the communication.
 - Nevertheless, it analyzed in detail the Department of Labor's serious and long-standing concerns regarding the issues raised in the submission, in particular the so-called "protection contracts" and the main factors that facilitate them, such as structural bias in Conciliation and Arbitration Boards administering labor justice in Mexico.
 - Finally, the report remarked that monitoring of these and other issues raised in the submission will continue.
- The Public Report can be found at this link:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/070816-Che-draui-report.pdf>

PERU | Case presented by the Coordination of Trade Unions (CGTP, CATP, CUT, CTP)

- **March 2016.** The U.S. Department of Labor issued a Public Report in response to a July 2015 submission under the Labor Chapter of the U.S.-Peru FTA.
- The 2015 report was sent by:
 - The International Labor Rights Forum (ILRF) Peru Equidad and the Coordinadora de Centrales Sindicales del Perú (CGTP, CATP, CTP, CUT), the Federación Nacional de Trabajadores Textiles del Perú (FNTTP), the Federación de Trabajadores en Tejidos del Perú (FTTP) and the Federación de Trabajadores de la Agroindustria y Afines.
- The report can be found at this link:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Comunicaci%C3%B3n-p%C3%BAblica_23-julio-2015.pdf
- The Public Report:
 - Raises concerns about the right to freedom of association in Peru's non-traditional export sectors, which includes exports such as textiles, clothing, and certain agricultural products, and questions about the application of labor law in Peru;
 - Provides 6 recommendations aimed at addressing the questions and concerns, including strengthening the Peruvian inspection system; and
 - Highlights the U.S. government's commitment to assess any progress made by Peru.
- The Public Report can be found at this link:
https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Public_Report_of_Review_of_US_Submission_2015-01.pdf

PERU | Case presented by SINAUT

- **August 2012.** The U.S. Department of Labor issued a Public Report in response to a communication filed in December 2010 under the Labor Chapter of the U.S.-Peru FTA.
 - The 2010 report was sent by:
 - The National Union of Workers' Unity of the National Superintendence of Tax Administration (SINAUT).
 - The report can be found at this link:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/PeruSubmission2010.pdf>
 - The Public Report:
 - Does not consider that formal consultations are necessary to ensure continued progress and collaboration on these issues. Therefore, it does not recommend that formal consultations be held between the U.S. Government and the Government of Peru based on the Cooperative Labor Consultation mechanism as indicated in Article 17.7.1 of the Labor Chapter of the FTA.
 - The Public Report can be found at this link:
<https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Peru-InformePublico.pdf>
-

Trade union experience in the use of these procedures has shown certain difficulties, including the need to demonstrate that the violation of the provisions of the Labor Chapter has had an influence on trade or has caused damage to trade, i.e., that the violation of fundamental labor rights has created an unfair competitive advantage for the offending Party.

The viability of the complaint mechanism of the Labor Chapter of Free Trade Agreements has been put in doubt after the Arbitration Panel constituted by the complaint filed against the State of Guatemala in June 2017 ruled against the allegations presented by Guatemalan and U.S. unions that demonstrate the serious labor and union situation in Guatemala.

Supporting Documents on Trade Agreements

- PSI press release: “Protection of fundamental labour rights in free trade agreements (FTAs): A total failure?”
<https://www.world-psi.org/en/protection-fundamental-labour-rights-free-trade-agreements-ftas-total-failure>
- ILO report: “The Social Dimensions of Free Trade Agreements”
https://www.ilo.org/global/research/publications/WCMS_228965/lang--en/index.htm
- ILO handbook: “Handbook on assessment of labour provisions in trade and investment arrangements”
https://www.ilo.org/global/publications/books/WCMS_564702/lang--en/index.htm
- ILO paper: “Assessment of labour provisions in trade and investment arrangements”
https://www.ilo.org/global/publications/books/WCMS_498944/lang--en/index.htm

LABOUR PROTECTION MECHANISMS

6 | IN THE INTERNATIONAL FINANCIAL INSTITUTIONS

6.1

What are the Labor Safeguards of the Multilateral Development Banks?

Among the international spaces where the trade union movement has engaged in order to defend and promote fundamental labor rights are the international financial institutions and in particular, the multilateral development banks. The purpose of this trade union engagement has been to get these financial entities, which grant billions of dollars in loans to governments and companies to finance investment projects, to incorporate among their binding conditions and requirements for access to loans the obligation to respect and protect fundamental labor rights, in accordance with the ILO Declaration on Fundamental Principles and Rights at Work and the Fundamental Labor Conventions. The labor safeguards of the

Multilateral Development Banks can be a relevant tool, complementary to other national and international instruments, to strengthen the struggle of unions for labor and trade union rights at the local and national level.

Currently, most Multilateral Development Banks have incorporated labor safeguards among the conditions for international lending. Governments and companies that want to access international loans, or that have already accessed them and want to maintain or renew them, should respect the rights recognized in the labor safeguards of their workers, whether they are directly hired, subcontracted, or employed by supplier companies in production and supply chains.

What are the Multilateral Development Banks?

- They are international financial entities dedicated to granting loans to public or private entities. The government of these entities corresponds to their member countries represented on the board of directors. The principle of equality between states does not apply insofar as the voting power of each state is a function of the capital contributed to the financial institution. It is for this reason that those who have the capacity to guide their policies, guidelines and activities are above all the developed countries. Recently, “non-traditional” multilateral development banks have been created.
 - The main multilateral banks include:
 - World Bank: <https://www.worldbank.org/>
The World Bank is composed of three entities:
 - International Development Association (IDA) (provides loans to low-income countries)
<https://ida.worldbank.org/>
 - International Bank for Reconstruction and Development (IBRD) (lending to middle-income countries)
<https://www.worldbank.org/en/who-we-are/ibrd>
 - International Finance Corporation (IFC) (provides loans to private companies operating in developing countries, mainly middle-income)
https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/home
 - **Regional Multilateral Development Banks**
 - African Development Bank (AFDB) <https://www.afdb.org/en>
 - Asian Development Bank <https://www.adb.org/>
 - Inter-American Development Bank (IDB) <https://www.iadb.org/>
 - BID Invest (member of the BID group, provides loans to the private sector)
<https://idbinvest.org/>
 - European Bank for Reconstruction and Development (EBRD) (grants loans mainly to private companies) <https://www.ebrd.com/home>
 - European Investment Bank (EIB) <https://www.eib.org/en/index.htm>
 - **“Non-Traditional” Multilateral Development Banks**
 - Asian Infrastructure Investment Bank (AIIB) (a financial institution proposed by the government of China) <https://www.aiib.org/en/index.html>
 - New Development Bank (“BRICS Development Bank”) (financial institution founded by the BRICS Group (Brazil, Russia, India, China and South Africa))
<https://www.ndb.int/>
-

6.2

What are the contents of the multilateral banks' labor safeguards?

The labor safeguards:

- a) detail the objectives of the labor safeguards, most of which are related to conformity of the measures with the international instruments of the ILO;
- b) describe the scope of application, which usually includes persons employed or contracted directly, persons contracted indirectly through third parties, or persons contracted by the borrower's suppliers in the context of production chains;
- c) establish a series of requirements regarding working conditions that must be met by the borrowers, such as the duty to provide information to workers on their labor rights, respect for maximum working hours, payment of wages in accordance with national legislation, respect for trade union rights, the principle of equality and non-discrimination, the prohibition of child labor and forced labor, or respect for occupational health and safety measures; and
- d) establish as a requirement the duty to establish mechanisms to deal with complaints and grievances.

The following table contains links of the multilateral development banks' labor safeguards.

Table 18 MULTILATERAL DEVELOPMENT BANKS' LABOR SAFEGUARDS	
■ World Bank	https://projects.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards
■ International Finance Corporation (IFC)	https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps2
■ African Development Bank (AFDB)	https://www.afdb.org/en/documents/document/afdb-integrated-safeguards-system-policy-statement-and-operational-safeguards-34993
■ Asian Development Bank (ADB) (Safeguard Policy Statement)	https://www.adb.org/site/safeguards/main

- European Investment Bank (EIB) <https://www.eib.org/en/publications/environmental-and-social-standards.htm>
 - European Bank for Reconstruction and Development (EBRD) <https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>
 - Inter-American Development Bank (IDB) <https://www.iadb.org/en/mpas>
 - BID Invest <https://www.idbinvest.org/en/consultation/environmental-and-social-sustainability>
 - Asian Infrastructure Investment Bank (AIIB) <https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html>
 - New Development Bank ("BRICS Bank") <https://www.ndb.int/about-us/strategy/environmental-social-sustainability/>
-

Some multilateral development banks have developed, in collaboration with the ILO, handbooks to describe the core labor standards that are included as labor standards in their investment lending policies. One example is the “Core Labor Standards Handbook”¹¹ published in 2006 by the Asian Development Bank. PSI published two documents regarding the policy of this development bank: in 2015 it published a study focusing on the impact on India titled “*Rajasthan Renewable Energy Transmission Investment Programme. A study on ADB’s Compliance with Social Protection Strategy and Core Labour*

Standards”.¹² In 2016 PSI published a guide to further information on Asian Development Bank labor policies and standards and spaces for union action: “*Engaging with Asian Development Bank for Workers Rights. A Trade Union Guide to Understanding ADB*”.¹³ Next, by way of example, requirements are described for the World Bank’s Environmental and Social Standards that must be complied with by signatories regarding union rights, the grievance and complaint mechanism, workers hired by third parties and workers hired by suppliers.

11. <https://www.adb.org/documents/core-labor-standards-handbook>

12. http://www.world-psi.org/sites/default/files/attachment/news/psi_report_on_rajasthan_adb_solar_project_dec2015.pdf

13. http://www.world-psi.org/sites/default/files/documents/research/a_trade_union_guide_to_understanding_adb_psi-2012.pdf

**World Bank Environmental and Social Framework:
Labor and Working Conditions¹⁴**

■ **Scope of application**

- Applies to full-time and part-time, temporary, seasonal and migrant project workers.
- The term project worker refers to persons employed or hired directly, through third parties, by primary suppliers and for community tasks.

■ **Requirements to be met by the borrowers with respect to freedom of association**

- The project will be implemented in accordance with national laws on trade union rights.
- The role of legally established workers' organizations and legitimate workers' representatives will be respected.
- Trade unions and workers' representatives will receive in a timely manner the information necessary to conduct meaningful negotiations.
- The Borrower will not discriminate against or retaliate against project workers who participate or seek to participate in workers' associations and collective bargaining.

■ **Grievance and Complaint Mechanism**

- A complaint and grievance mechanism will be established for all direct and contract workers (and their organizations) so that they can raise workplace concerns.
- Workers will be informed about the grievance mechanism at the time of hire and steps will be taken to protect them from retaliation for its use.
- Measures will be taken to ensure that all project workers have easy access to this mechanism.
- The grievance mechanism will be commensurate with the nature, scale, and potential risks and impacts of the project. It will be designed to address concerns quickly through a clear and transparent process that provides timely responses to those involved, in a language they understand and without retaliation, and will operate independently and objectively.
- The grievance mechanism will not preclude access to other judicial or administrative remedies that may be available under existing laws or arbitration procedures, nor will it replace grievance mechanisms provided through collective agreements.

15. <http://pubdocs.worldbank.org/en/345101522946582343/Environmental-Social-Framework-Spanish.pdf>

■ Requirements to be met by the borrowers with respect to persons hired by third parties

- The Borrower shall make reasonable efforts to ensure that third parties who hire workers are legitimate and reliable entities and have labor management procedures applicable to the project that enable them to operate in accordance with the requirements of this Environmental and Social Standard.
- The Borrower shall establish procedures to manage and monitor the performance of such third parties in relation to the requirements of this Environmental and Social Standard.
- The Borrower shall incorporate the requirements of this Environmental and Social Standard into its contractual agreements with the third parties, together with adequate legal remedies for non-performance.
- In the event of subcontracting, the Borrower shall require such third parties to include equivalent requirements and remedies for noncompliance in their contractual agreements with subcontractors.
- Contracted workers shall have access to a grievance and complaint handling mechanism. In cases where the third party that employs or contracts the workers is not able to provide this mechanism, the Borrower will make available to the contracted workers the grievance and complaint mechanism established under its own grievance mechanism.

■ Requirements to be met by the borrowers with respect to persons hired by providers

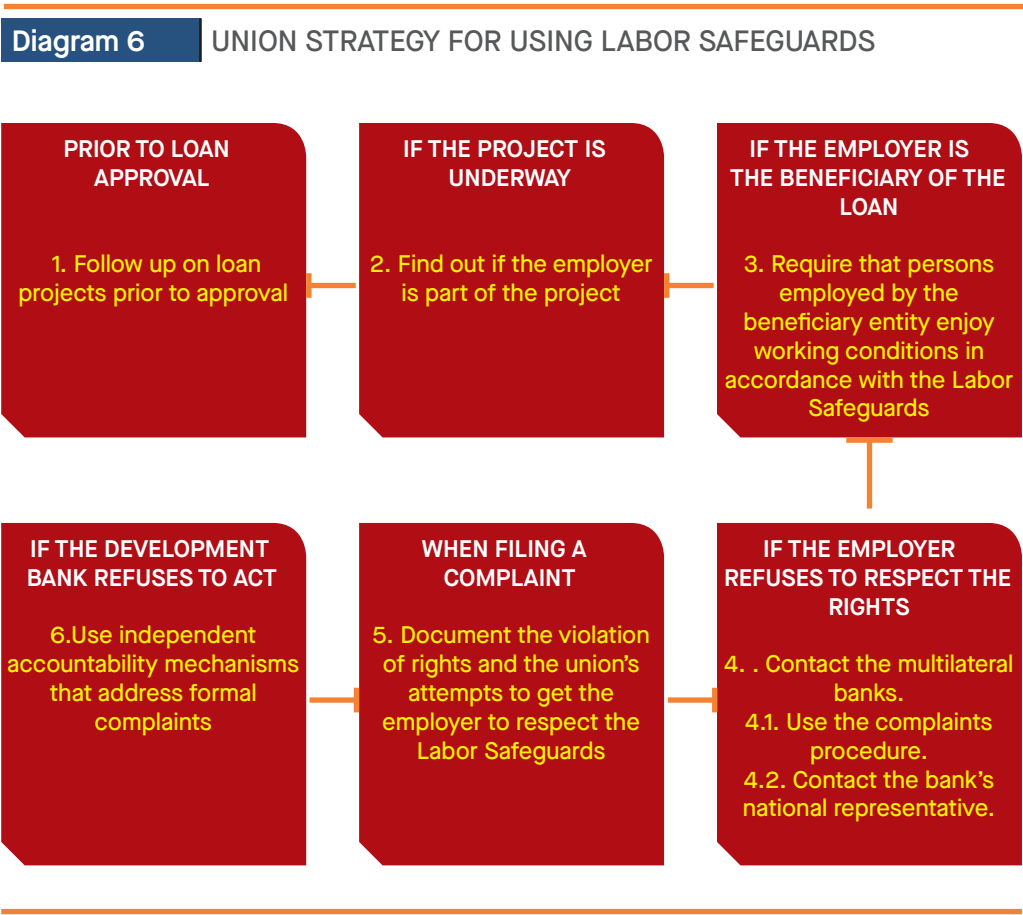
- The Borrower will identify potential risks of child labor, forced labor and serious safety issues that may arise in connection with primary suppliers. Where there is a significant risk of child labor or forced labor in relation to the primary supplier's workers, the Borrower shall require the primary supplier to identify such risks.
- Labor management procedures shall establish roles and responsibilities for monitoring primary suppliers. If child or forced labor is identified, the Borrower shall require the primary supplier to take appropriate steps to remedy the situation.
- When there is a significant risk of serious safety problems related to the primary provider's workers, the Borrower shall require the relevant primary provider to implement procedures and mitigation measures to address them. Such procedures and mitigation measures shall be reviewed periodically to verify their effectiveness.
- When risks cannot be remedied, the Borrower shall, within a reasonable period of time, replace the project's primary suppliers with other suppliers that can demonstrate compliance with the requirements of this Environmental and Social Standard.

6.3 | **How can unions use the labor safeguards of the multilateral banks?**

Local unions in coordination with international unions have used labor safeguards to demand that the multilateral development banks exert pressure and force the recipients of the loans to comply with labor rights. The ITUC’s trade union guide “Labour Standards in the Multilateral Development Banks” describes several cases with positive results for the unions and workers concerned.

The following are some of the steps suggested in the ITUC Trade Union Guide in the process of using labour safeguards. For each of the steps, the ITUC/Global Unions Washington Office is available to help gather information and involve the multilateral development banks.

The contact email is washington@ituc-csi.org



Simplified Methods of Submitting Union Communications

Trade unions can use grievance mechanisms to report noncompliance with labor safeguards by entities receiving loans from the multilateral development banks.

International Finance Corporation: Communication Form for trade unions:

<https://ifcext.ifc.org/ifcext/CommentsPS2.nsf/SurveyForm?Open-Form>

World Bank Grievance Redress Service (GRS) brochure:

<http://pubdocs.worldbank.org/en/513891455136920909/GRS-Brochure-spanish.pdf>

Documents on Labor Safeguards in Multilateral Banks

- Engaging with Asian Development Bank for Workers Rights. A Trade Unions Guide to Understanding ADB
http://www.world-psi.org/sites/default/files/documents/research/a_trade_union_guide_to_understanding_adb_psi-2012.pdf
- Rajasthan Renewable Energy Transmission Investment Programme. A study on ADB's Compliance with Social Protection Strategy and Core Labour Standards
http://www.world-psi.org/sites/default/files/attachment/news/psi_report_on_rajasthan_adb_solar_project_dec2015.pdf
- Labour standards at the multilateral development banks: leverage for workers' power and accountability
<https://www.ituc-csi.org/labour-standards-at-the>
- Labour Standards in World Bank Group Lending Lessons Learned and Next Step
<https://www.ituc-csi.org/normas-del-trabajo-en-los?lang=en>



7 | CRIMINAL RESPONSIBILITY FOR GENOCIDE AND CRIMES AGAINST HUMANITY

7.1 | What are genocide and crimes against humanity?

Genocide and crimes against humanity are two of the crimes that the international community considers most abhorrent and serious and should be prosecuted, tried and punished by both national and international criminal courts.

Genocide

On December 11, 1946 the General Assembly of the United Nations¹⁵ recognized genocide as an international crime and defined it as the denial of the right to exist to entire human groups, on racial, religious, political or any other grounds. Two years later, on December 9, 1948, it adopted the Convention on the

Prevention and Punishment of the Crime of Genocide (Genocide Convention), which represented the first international human rights treaty adopted by the United Nations and a decisive step in the development of international criminal law.

The Genocide Convention states that crimes of genocide are those acts perpetrated, in time of peace as well as in time of war, with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group (Art. 2). The Rome Statute (Article 6) adopted this definition.

Genocide has three main elements: acts of genocide, protected groups and genocidal intent.

¹⁵ It is considered that it was the Polish jurist Raphael Lemkin who coined the term, bringing together the Greek prefix *genos* (race, people) and the Latin suffix *cide* (kill), to refer to the attempt to destroy the bases of survival of a given group. Lemkin escaped from the Nazi regime – without managing to save his parents who died in a concentration camp – and in the United States he fought to have genocide recognized as an international crime.

Table 20	ELEMENTS THAT CONSTITUTE GENOCIDE UNDER THE 1948 GENOCIDE CONVENTION	
Genocidal acts	Protected groups	Genocidal intent
<p>a) Killing of group members;</p> <p>b) Serious injury to the physical or mental integrity of the members of the group;</p> <p>c) Intentional subjection of the group to conditions of existence which must result in its physical destruction, in whole or in part;</p> <p>d) Measures designed to prevent births within the group;</p> <p>e) Forcibly transferring children of the group to another group.</p>	<p>a) National group</p> <p>b) Ethnic group</p> <p>c) Racial group</p> <p>d) Religious group</p>	<p>■ This is a “special” intention”. It is not only the intention to kill or injure, but the intention to kill or injure in order to destroy, partially or totally, a certain protected group.</p> <p>■ Intention is the most difficult element to demonstrate or prove.</p>

Obligations of States that have ratified the 1948 Genocide Convention	■ Obligation not to commit genocide (Article I);
	■ Obligation to prevent genocide (Article I);
	■ Obligation to punish genocide (Article I);
	■ Obligation to enact the laws necessary to give effect to the Convention (Article V);
	■ Obligation to ensure that effective penalties are established for persons found guilty of criminal conduct under the Convention (Article V);
	■ Obligation to try persons accused of genocide before a competent tribunal of the State in whose territory the act was committed, or before an international criminal court with jurisdiction (Article VI);
	■ Obligation to grant extradition in the case of charges of genocide (Article VII).

The Convention states that authorities, officials or individuals (Article IV) who have committed (Article III): genocide; conspiracy to commit genocide; direct and public incitement to commit genocide;

attempted genocide; and complicity in genocide shall be punished.

Currently 152 nation states have ratified or acceded to the Genocide Convention.

Table 21

STATES IN THE AMERICAS THAT HAVE RATIFIED OR ACCEDED TO THE 1948 GENOCIDE CONVENTION

Antigua and Barbuda, Argentina, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad and Tobago, United States, Uruguay, Venezuela

The updated list of the States Parties can be found at this link:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en

The States of the Americas that have not ratified the Genocide Convention are the Dominican Republic (signed only), Grenada, French Guiana, Guyana, St. Lucia, St. Kitts and Nevis, and Suriname.

Crimes against humanity

The category of crimes against humanity was first used at the Nuremberg International Tribunal (1945-1946). The principles of the Statute of the Nuremberg Tribunal were adopted in 1946 by the United Nations General Assembly (Resolution 95.I of December 11, 1946).

The Rome Statute adopted these principles and expanded the list of acts considered to constitute this international crime. Article 7(1) of the Rome Statute states that crimes against humanity are

those acts committed as part of a widespread or systematic attack directed against a civilian population and with knowledge of the attack. The Rome Statute (Article 7(2)) states that “attack against a civilian population” means a course of conduct involving the multiple commission of acts (those mentioned in the following table) against a civilian population, in accordance with the policy of a State or organization to commit such an attack or to further such a policy.

Table 22

ACTS THAT CONSTITUTE CRIMES AGAINST HUMANITY

- a) Murder;
- b) Extermination;
- c) Slavery;
- d) Deportation or forced transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of comparable gravity;

- h) Persecution of a group or collectivity with a distinct identity based on political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as unacceptable under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i) Forced disappearance of persons;
 - j) The crime of apartheid;
 - k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.
-

In 1968, the United Nations adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which establishes that crimes against humanity and the

crime of genocide are not subject to statutory limitations, that is, criminal proceedings to prosecute, investigate, try and punish those responsible for such crimes are never extinguished.

Table 23

STATES IN THE AMERICAS THAT HAVE RATIFIED THE CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

Argentina, Bolivia, Costa Rica, Cuba, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Uruguay.

The updated list of States that have ratified the Convention can be found at this link:
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&clang=_en

The text of the Convention can be found at this link:
<https://www.ohchr.org/SP/ProfessionalInterest/Pages/WarCrimes.aspx>

7.2

Where can unions report crimes against humanity and genocide?

Trade unions can denounce crimes against humanity and genocide in three areas:

- In the competent national court of the State in whose territory the crimes occurred.
- At the International Criminal Court.
- In foreign national courts under the principle of universal jurisdiction.

7.2.1

National courts of the State on whose territory the crimes occurred

Trade unions can denounce the commission of acts of genocide and crimes against humanity before the competent courts of the State on whose territory the acts were committed.

At the national level, genocide and crimes against humanity are regulated by the criminal codes and the jurisprudence of the courts of each country. In some cases, these crimes have been regulated by special legislation, such as certain amnesty laws adopted to prevent investigation, trial and punishment of perpetrators of these crimes in the region's dictatorships. The vast majority of these amnesty laws have now been repealed thanks to civil

society movements and trade unions that fought for respect for the right to truth, justice and reparations.

Most countries in the region have ratified the international treaties that recognize and regulate the international obligation of States to investigate, prosecute, and punish these crimes: the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the Rome Statute. **Table 24** shows the regulation of genocide and some of the acts recognized as crimes against humanity in three national criminal codes.

Table 24 NATIONAL REGULATION OF CRIMES AGAINST HUMANITY AND GENOCIDE		
CRIMINAL CODE	CONTENT	PENALTY
Colombian Criminal Code	<ul style="list-style-type: none">■ The Colombian Criminal Code includes the crime of genocide in the section on “Crimes against life and integrity”. The definition of genocide (Article 101) includes the “political group” as a protected group.■ It regulates forced disappearance (Article 165), torture (Article 178) and forced displacement (Article 180).■ It regulates the commission of inhumane acts in relation to acts of racial discrimination (Article 147).	<ul style="list-style-type: none">■ Genocide: 30-40-year prison sentence.■ If the genocidal intent does not result in death but in other acts (provided for in the Genocide Convention of 1948): imprisonment from 10 to 25 years.■ Advocacy of genocide: imprisonment from 6 to 10 years.■ Torture: Imprisonment from 8 to 15 years.

Table 24 | National regulation of crimes against humanity and genocide

Costa Rican Penal Code	<ul style="list-style-type: none">■ The Criminal Code establishes that, regardless of the provisions in force in the place where the punishable act was committed and the nationality of the perpetrator, those who commit international crimes, including genocide, shall be punished under Costa Rican law (Article 7).■ The regulation on genocide (Article 375) includes the political group as a protected group.■ Crimes against humanity are regulated (Article 375), in accordance with international treaties.	<ul style="list-style-type: none">■ Genocide: Imprisonment from 10 to 25 years■ Crimes against humanity: Imprisonment from 10 to 25 years.
Peruvian Criminal Code	<ul style="list-style-type: none">■ The Peruvian Criminal Code contains a section entitled “Crimes against Humanity” (Articles 319 to 324), which covers the crimes of genocide (Chapter I), enforced disappearance (Chapter II), and torture (Chapter III). The section also includes discrimination (Chapter IV) and genetic manipulation (Chapter V).■ The regulation of genocide in the Peruvian Criminal Code embodies the provisions of the Genocide Convention of 1948, ratified in 1959.	<ul style="list-style-type: none">■ Genocide: imprisonment of not less than 20 years■ Forced disappearance: imprisonment of not less than 15 years.■ Torture: imprisonment of not less than five and not more than ten years. If the torture causes the death of the victim, not less than 8 nor more than 20 years. If it causes a serious injury, no less than 6 nor more than 12 years.

7.2.2 | International Criminal Court

The International Criminal Court is a permanent and independent judicial tribunal composed of 18 judges and 1 prosecutor. It is not an organic part of the United Nations.

It was created by virtue of the adoption of the Rome Statute¹⁶ in 1998 (which came into effect in 2002) with a mandate to investigate and prosecute what the international

16. The text of the Rome Statute can be found at this link: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

community considers to be the most significant and serious crimes: genocide, crimes against humanity, war crimes and crimes of aggression. The International Criminal Court is complementary to national criminal jurisdictions. In other words, the investigation and prosecution of this type of crime will fall in the first

place to the national State in whose territory the crimes occurred. The International Criminal Court will admit a case if it considers that the State is unwilling or unable to investigate and prosecute the crimes.

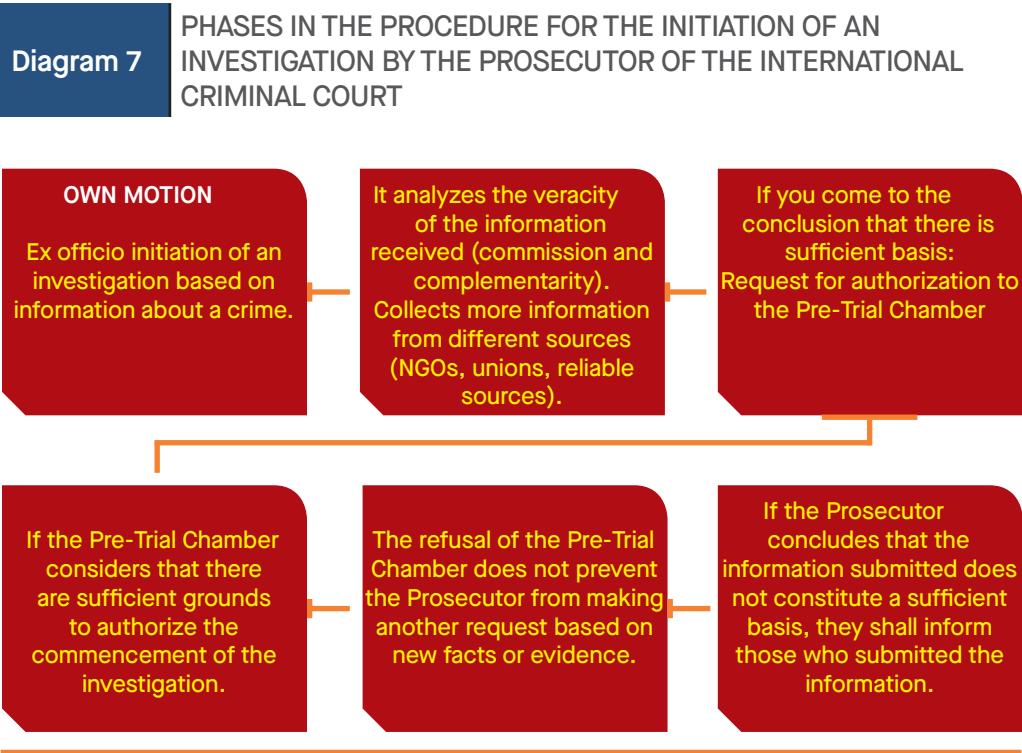
The Court's jurisdiction is determined on the basis of the following elements:

- Cases involving individuals. The jurisdiction of the Court excludes criminal liability of legal persons or collective entities.
- Temporary jurisdiction: The Court's jurisdiction includes acts that occurred on or after July 1, 2002 (the date on which the Rome Statute entered into force). With respect to the State that ratified the Statute after its entry into force, the Court shall have jurisdiction over crimes committed after its entry into force with respect to that State (Article 126), except for the acceptance of jurisdiction under Article 13(3) of the Statute.
- Territorial jurisdiction: The Court has jurisdiction over crimes committed in the territories of States Parties to the Rome Statute.
- Jurisdiction based on the nationality of the perpetrator: the Court has jurisdiction over crimes committed by citizens of States Parties anywhere.

The Court exercises its jurisdiction primarily through the work of the Office of the Prosecutor. The Office of the Prosecutor is a separate body from the judges and acts independently. It is mandated to receive referrals or corroborated information on crimes within the jurisdiction of the Court, to examine and conduct investigations, and to prosecute before the Court through the following modalities:

on the prosecution's own motion (*proprio motu*); following a referral of a situation by a State (or several States) (Articles 13-14 of the Statute); or following a referral by the United Nations Security Council (Article 13 of the Statute).

The following is an outline of the procedure for the initiation of an investigation by the Prosecutor:



Author’s elaboration

Currently 123 national States have ratified the Rome Statute.

Table 25	STATES IN THE AMERICAS THAT HAVE RATIFIED THE ROME STATUTE
Antigua and Barbuda, Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guyana, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela	
The updated list of States Parties to the Rome Statute can be found at this link: https://www.icc-cpi.int/Pages/Main.aspx	

In accordance with the Rome Statute (Article 25), the International Criminal Court may hold criminally liable for

the commission of a crime within its jurisdiction:

■ Whoever commits the crime (alone or with, or through, another person, whether the latter is criminally held liable or not);

■ Whoever orders, proposes or induces the commission of such a crime, whether completed or attempted;

- Whoever is an accomplice or accessory or in any way collaborates in the commission or attempted commission of the crime, including providing the means for its commission;
- Whoever contributes (intentionally) in any other way to the commission or attempted commission of the crime by a group of persons having a common purpose;
- With respect to the crime of genocide, anyone who directly and publicly incites its commission;
- Whoever attempts to commit such a crime by means of acts that represent a significant step toward its execution, even though the crime is not consummated due to circumstances beyond their control.

One element that should be considered is that the body in charge of exercising criminal action is the Office of the Prosecutor of the International Criminal Court, either ex officio (own motion) or by referral from a State (or several States) or from the United Nations Security Council. It is the Prosecutor, acting independently, who decides whether it is necessary to initiate a preliminary examination or an official investigation into any crime committed within the jurisdiction of the International Criminal Court. Within the framework of this procedure, trade unions may submit information and complaints to the Prosecutor of the International Criminal Court on international

crimes (such as genocide or crimes against humanity) that have occurred in the territories of States Parties to the Rome Statute or that have been committed by citizens of States Parties to the Rome Statute in any place where they have been perpetrated.

One suggestion is to contact the Coalition for the International Criminal Court, a global network of civil society organizations that, since its creation in 1995, has played a fundamental role both in the campaign for the creation of the International Criminal Court itself and in promoting the ratification of the Rome Statute and the institutional strengthening of the International Criminal Court.

Contact of the Coalition for the International Criminal Court	<ul style="list-style-type: none">■ http://www.coalitionfortheicc.org/es■ New York Office cicc@coalitionfortheicc.org; Telephone: 1-212-687-2863■ The Hague Office: cicc-hague@coalitionfortheicc.org; Telephone: +31-70-3111080
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An example of the use of this mechanism is the complaint sent to the Prosecutor of the International Criminal Court by the health unions in Brazil, and supported by Public Services International and UNI

Global, against the President of Brazil, Jair Bolsonaro, where he is accused of being the author of crimes against humanity and genocide for taking negligent and irresponsible actions and

implementing a genocidal policy in the management of health in the context of the Covid-19 pandemic, actions which have put the lives of health professionals and the entire Brazilian population at serious risk.

- PSI press release on the filing of the complaint with the International Criminal Court:
<https://publicservices.international/resources/news/global-unions-denounce-bolsonaro-before-the-icc-for-genocide-and-crimes-against-humanity-?id=10986&lang=en>
- Text of the complaint submitted to the Prosecutor of the International Criminal Court:
https://www.uniglobalunion.org/sites/default/files/imce/denuncia_presidente_tpi_final_0.pdf

Complaint submitted to the International Criminal Court by Brazilian health unions and supported by PSI

Among the criminal acts committed by Jair Bolsonaro highlighted in the complaint are:

- His public demonstrations against social isolation.
- His promotion of massive public demonstrations, which he attends without wearing a face mask.
- His defense of chemical substances without scientific studies.
- His having been without a Minister of Health for more than 2 months and having appointed a military officer without knowledge or specialization in public health.
- His condemnation of Governors and/or Mayors for having implemented measures to contain the movement of people and the opening of businesses.
- His promotion of government propaganda: “#oBrasilNãoPodePar”.
- His veto of laws adopted by the National Congress.
- His veto of provisions of Law 14,019 that established the mandatory use of masks throughout the country in commercial and industrial establishments and religious buildings.
- His veto of provisions that established the obligation of employers to provide their workers with free individual protection masks and other protective equipment established by occupational safety and health regulations.
- His veto of provisions on prevention measures in indigenous and African-descendant quilombola territories.

The denunciation by the Brazilian health unions to the Prosecutor of the International Criminal Court has already had great international media repercussion, having been reported by the most important international media outlets on the planet. A first step forward in a process that may have important legal and political implications for Brazil and the rest of the world.

7.2.3 National courts and the principle of universal jurisdiction

The principle of universal jurisdiction is the mechanism that enables national courts of any State to prosecute and try persons accused of committing international crimes (such as genocide or crimes against humanity) regardless of where the crime was committed, the nationality of the perpetrators or the nationality of the victims.

The Genocide Convention of 1948 (Article 6 of the Convention) had identified two possibilities for the criminal jurisdiction of genocide: (a) a competent tribunal of the State in whose territory the genocidal act was committed; (b) an international criminal court that has jurisdiction over that that States have recognized its jurisdiction. The principle of universal jurisdiction constitutes an

extension of the criminal jurisdiction of the crime of genocide to a third possibility: a court of a State other than the State in whose territory the genocidal act was committed.

In order to be applied constructively and realistically, the principle should meet at least two conditions: a) the existence of a link between the crime and the “foreign” State whose court is considering declaring its jurisdiction to prosecute and try persons who have committed international crimes (for example, the victims of the crime include nationals of that State); b) that State should intervene only in the absence of the exercise of the criminal jurisdiction of the State with jurisdiction by reason of territory.¹⁷

The Pinochet Case

- An emblematic example where this principle was applied was the case of Pinochet.
- In 1998, Spanish Judge Baltazar Garzón applied this principle and declared Spanish jurisdiction for crimes of genocide and crimes against humanity that occurred during the Pinochet dictatorship in Chile.
- Judge Baltazar Garzón ordered the international arrest of Pinochet, using the Genocide Convention of 1948 and arguing for the broadening of the concept of genocide to include the elimination of a part of the “national group” that was discriminated against on ideological grounds.
- Pinochet was arrested in London on October 16, 1998 and held in detention in London for about 503 days, until he was released on humanitarian grounds.
- The Pinochet case has made it clear that former heads of state do not have immunity from crimes against humanity or genocide.

¹⁷. CASSESE, Antonio. *I diritti umani oggi*. Bari: Gius Laterza & Figli, 2005, p. 219.



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