

IV. 2 THE ILO PROCEDURES

The International Labour Organization (ILO) was founded in 1919 and became the first specialized agency of the UN in 1946. Its membership reached 182 countries in 2009. The Organization deals with the whole range of labour issues and sets detailed, widely accepted standards. It has always attached particular importance to certain basic economic and social as well as civil and political rights, which constitute an essential element in all actions designed to improve the conditions of workers. It endeavors to implement these principles by adopting standards on subjects of concern. These ILO standards take the form of international labour conventions and recommendations. ILO's conventions are international treaties, subject to ratification by ILO Member States, whereas recommendations – often dealing with the same subject as conventions – are non-binding. Until June 2009, 188 conventions have been adopted by the ILO; the overall number of ratifications reached 7,650. The process of adoption is explained in detail in chart 25. Conventions vary greatly in their success; some of them are now out-of-date and need to be replaced. But all the eight fundamental (“core”) conventions mentioned below have registered more than 100 ratifications each.

The application of international labour standards is subject to constant supervision by the ILO. Due to its long-standing experience but also because of its unique tripartite structure (bodies are composed according to the 2+1+1 formula: two government representatives and one representative each of employers' and of workers' associations), the procedures of adopting and implementing ILO conventions form part of a most effective mechanism for the protection of human rights within the UN system (see charts 24, 25 and 27).

According to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, all ILO Member States have an obligation to respect, to promote and to realize, in good faith and in accordance with the Constitution, four categories of principles and rights at work, even if they have not ratified the ILO Conventions to which they refer: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These fundamental principles and rights at work are universal and applicable to all human beings in all States, regardless of the level of economic development. They are the essence of the eight “core” ILO Conventions, which express in more detail and in a formal legal structure the scope and content of these fundamental principles and rights:

- Convention No. 87 (1948): Freedom of Association and Protection of the Right to Organize which provides for the right to join an association that is independent of government interference and cannot be dissolved by the government concerned.
- Convention No. 98 (1949): Right to Organize and Collective Bargaining which protects from anti-union discrimination, in particular with regard to hiring and firing practice.

- Convention No. 29 (1930): Forced Labour which is defined as “all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2).
- Convention No. 105 (1957): Abolition of Forced Labour which requires States parties to suppress and abolish forced labour within their territories.
- Convention No. 138 (1973): Minimum Age Convention which requires the establishment of a national minimum age for work.
- Convention No. 182 (1999): Elimination of Worst Forms of Child Labour which defines as worst forms of child labour forced labour, such as forced recruitment of child soldiers; prostitution; drug trafficking; and employment hazardous to the development of the child.
- Convention No. 111 (1958): Discrimination (Employment and Occupation) which defines discrimination as “any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Article 1).
- Convention No. 100 (1951): Equal Remuneration which provides for equal wages for men and women.

All ILO Member States which have not yet ratified those eight core conventions, must report annually about the progress being made.

Supervision of ILO Conventions

The regular supervision of ILO conventions encompasses measures such as required reporting activities of each Member State of the ILO at regular intervals on the measures it has taken to give effect to the provisions of conventions which it has ratified (see chart 27). These reports are first examined in closed meetings by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) composed of 20 independent legal experts which meets every November (=paper-based procedure). The Committee of Experts comments are made in the form either of observations, which are published in the Committee’s report on the Application of Conventions and Recommendations, or of requests dealing with more technical questions, addressed directly to the Governments, which remain unpublished. The Committee’s report is then considered at the annual session of the International Labour Conference by the tripartite Conference Committee on the Application of Conventions and Recommendations (“Committee on Application of Standards”).

In addition, Member States have the obligation to submit reports on conventions they have not yet ratified showing the position of the law and practice in regards to the matters dealt with in the conventions and indicating the difficulties which have prevented or delayed ratification (each year a limited number of conventions are selected for this procedure). The information

supplied provides the basis for a separate report of the Committee of Experts – a general survey of the subject in question. In parallel with these regular supervisory mechanisms, there are special procedures to examine allegations that the provisions of a ratified convention are not effectively being observed. They are briefly described in chart 26.

Article 24: Representations

Under Article 24 of the ILO Constitution a representation may be filed by a trade union or an employers' organization if a State "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". The representation is handled by the ILO Governing Body; it should be submitted in written form to the International Labour Office and must refer specifically to Article 24 of the ILO Constitution. The representation should contain detailed information concerning the alleged violation. If the representation is judged receivable by the ILO Governing Body, it appoints a tripartite committee of its own members to study the allegations.

The government concerned is asked to comment on allegations. The Committee presents its report, containing its examination of the details of the representation and the government's reply and its conclusions and recommendations to the Governing Body. The Governing Body decides whether to publish the representation and any government reply and notifies the organization and government concerned. Whether or not the Governing Body decides that it is satisfied with the government's explanations, the questions raised in the representation are followed up by the ILO's regular supervisory machinery, the above mentioned two Committees.

Article 26: Complaints

Complaints that a Member State has failed to observe an ILO Convention to which it is party may be submitted by an ILO Member State which has ratified the same convention, by any delegate (government, worker or employer) to the International Labour Conference, or by the ILO Governing Body on its own motion. These complaints are examined according to procedures established by the ILO Constitution.

The Governing Body may handle the matter in a manner similar to that followed under Article 24 before deciding whether a Commission of Inquiry is needed. If the complaint involves freedom of association, it may be referred to the Governing Body's Committee on Freedom of Association (see below).

The independent Commission of Inquiry thoroughly investigates the complaint, setting its procedures as required by the case. The country concerned may be visited. The Commission reports its findings, giving recommendations and a time-frame for their implementation. The report is sent to the government concerned, published, and transmitted to the Governing Body to take note. The Committee of Experts on the Application of Conventions and Recommendations follows up on the implementation of the recommendations.

Special Procedure for Freedom of Association

The most widely used ILO procedure is the special procedure for complaints

about infringements of the right of freedom of association established in 1951. The Committee on Freedom of Association (CFA) of the ILO Governing Body examines complaints alleging that a Member State of the ILO has infringed the basic principles of freedom of association. Such complaints may be submitted by governments, by national employers' or workers' organizations directly concerned with the matter, or by certain international organizations of employers or workers. Therefore, individuals who have concern about infringements of the rights of workers are advised to contact a trade union or another workers' association, which could then decide whether to bring the matter to the attention of the ILO. The procedure in question may be brought against governments even if they have not ratified the ILO's freedom of association conventions. The procedure used by the Committee on Freedom of Association does not require exhaustion of internal remedies as a prerequisite for the admissibility of a complaint.

The CFA is a tripartite body composed of nine members of the Governing Body serving in their personal capacity; it is chaired by an independent person of distinction. It meets three times a year in private session.

The Director-General of ILO plays an active role: complaints received from their authors are communicated by the Director-General of ILO to the governments concerned as soon as possible. To accelerate the proceedings, the Director-General is authorized to determine whether the governments' observations or replies contain sufficient information to enable the Committee to rule in the matter.

Until 2009, the two procedures for inter-state complaints (under Article 26 of the Constitution and under the procedure for freedom of association) have only been used four times and once, respectively. This limited number of complaints is to be explained by the fact that Member states hesitate to put forward complaints, both because of the "unfriendly character" and because of the risk that complaints might lead to reprisals in the form of "counter-complaints".

Public Access to ILO Meetings

The Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association meet in closed session. Furthermore, the public is not allowed to attend meetings of ILO bodies when they examine complaints about failures to observe an ILO Convention. However, the public may observe many meetings at the International Labour Conference, which meets annually in June in Geneva, including the Committee on Application of Standards (see chart 27) and the discussions of the ILO Governing Body about the report of the Committee on Freedom of Association.

The Role of NGOs

In addition to the tripartite structure of 2:1:1 of the Organization, which is unique in the UN system and fully guarantees the participation of employers' and workers' associations, the ILO Constitution provides for consultative relations with international NGOs. Three different categories of international NGOs have been established. First, international NGOs with an important

interest in a wide range of the ILO's activities may be granted either general or regional consultative status and be permitted to participate in all ILO meetings. The second category, the special list of International NGOs, includes those NGOs other than employers' and workers' organizations that demonstrate an interest in the ILO's activities. In a third category, the Governing Body may invite international NGOs that meet certain established criteria to attend different meetings of the Organization in which they have shown a particular interest.

Joint ILO/ UNESCO Committee

Reference should also be made to the Joint ILO/UNESCO Committee of Experts on the Recommendation concerning Teaching Personnel (CEART) which is composed of 12 independent experts – six appointed by ILO and six appointed by UNESCO; it meets every three years to study the application of the two international standards specific to teachers: (a) the Joint ILO/UNESCO Recommendation concerning the Status of Teachers of 1966; and (b) the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel of 1997.

One important aspect of its work is the examination of allegations from national and international teachers' organizations on the non-observance of the recommendations' provisions in ILO and UNESCO Member States.

CEART makes recommendations to the Governing Body of the ILO and to the Executive Board of UNESCO on how to improve the conditions of the teaching profession within their respective mandates; it held its 9th Session in Geneva from 30 October to 3 November 2006 and its 10th Session in Paris from 28 September to 2 October 2009.

References

BOIVIN, Isabelle; ODERO, Alberto: The Committee of Experts on the Application of Conventions and Recommendations: Progress achieved in National Labour Legislation. In: *International Labour Review* 145/3: 207-220, September 2006.

CHARNOVITZ, Steve: The International Labour Organization in its Second Century. In: *Max Planck Yearbook of United Nations Law* 4: 147–184, 2000.

INTERNATIONAL LABOUR OFFICE / GOVERNING BODY: Eighth Item on the Agenda. Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations Concerning Teaching Personnel (CEART): Report on Allegations Submitted by Teachers' Organizations. Geneva: ILO, November 2009, 16.

INTERNATIONAL LABOUR OFFICE: Fundamental Rights at Work and International Labour Standards. Geneva: ILO, 2003, VI, 133.

INTERNATIONAL LABOUR OFFICE: Freedom of Association. A User's Guide. Standards, Principles and Procedures of the International Labour Organization. Geneva: ILO, 2000, XI, 83.

This practical reference offers a user-friendly guide to the ILO's freedom of association (FOA) standards, principles and procedures. The guide explains the ILO's Freedom of Association standards and the impact they have had on laws, individuals released from prison, and the right of trade unionists and employers to organize and bargain collectively. It also presents information on how these procedures can be used to help promote and secure Freedom of Association around the world.

ILO/UNESCO: The ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and The UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) with a User's Guide. Geneva: ILO; Paris: UNESCO, 2008, 71.

ILO/UNESCO: Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning Teaching Personnel. Ninth Session, Geneva, 30 October – 3 November 2006. Geneva: ILO; Paris: UNESCO, 2007, 45.

ILO/UNESCO: Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel Report. Eighth Session, Paris, 15–19 September 2003. Paris: UNESCO; Geneva: ILO, 2003, 52.

RODGERS, Gerry, et al.: The International Labour Organization and the Quest for Social Justice, 1919-2009. Geneva: ILO, 2009, XV, 272.

SWEPSTON, Lee: The International Labour Organization and Human Rights. In: KRAUSE, Catarina; SCHEININ, Martin (Ed): International Protection of Human Rights: A Textbook. Turku / Åbo: Institut for Human Rights, Åbo Akademi University, 2009, 323-341.

SWEPSTON, Lee: The International Labour Organization's System of Human Rights Protection. In: SYMONIDES, Janusz (Ed): Human Rights: International Protection, Monitoring, Enforcement. Aldershot / Burlington, VT: Ashgate, 2003, 91–109.

E-Resources

ILO:

<http://www.ilo.org>

CEART:

<http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart>

Handbook of Procedures Relating to International Labour Conventions and Recommendations:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087791.pdf